BUCKEYE, AZ

PLEASE SILENCE ALL ELECTRONIC COMMUNICATION DEVICES. THANK YOU.

NOTICE OF POSSIBLE QUORUM OF THE CITY OF BUCKEYE PLANNING AND ZONING COMMISSION OR OTHER COUNCIL APPOINTED BOARD: PLEASE NOTE THAT THERE MAY BE A QUORUM PRESENT BUT THERE WILL BE NO VOTING TAKING PLACE BY THE CITY PLANNING AND ZONING COMMISSION OR OTHER COUNCIL APPOINTED BOARD AT THIS MEETING.

CITY OF BUCKEYE
REGULAR COUNCIL MEETING
SEPTEMBER 3, 2024
AGENDA

City Council Chambers
530 East Monroe Avenue
Buckeye, AZ 85326
6:00 p.m.
The doors will be open to the public at least 15 minutes prior to the start time of the meeting.

Accessibility for all persons with disabilities will be provided upon request. Please telephone your accommodation request (623) 349-6911, 72 hours in advance if you need a sign language interpreter or alternate materials for a visual or hearing impairment.

Voting Members will either attend in person or by telephone conference call or video presentation. Items listed may be considered in any order.

Pursuant to A.R.S. § 38-431.03(A)(3) the Council may, by majority vote, recess or adjourn to executive session at one or more times during the meeting, as needed to confer with the City Attorney for legal advice regarding any item listed on this agenda.

1. Call to Order/Invocation/Pledge of Allegiance/Roll Call

2. Comments from the Public- Members of the audience may comment on any non-agenda item of interest.

3. Awards/Presentations/Proclamations

4. CONSENT AGENDA ITEMS / NEW BUSINESS
Approval of items on the Consent Agenda - All items with an (*) are considered to be routine matters and will be enacted by one motion and vote of the City Council. There will be no separate discussion of these items unless a Council member requests. This section may include the approval of Minutes from previous meetings.

***4.A** Council to take action on Resolution No. 59-24 approving the renewal of an Intergovernmental Agreement entered into on July 11, 2019 between the City of Buckeye and the Saddle Mountain Unified School District No. 90 for the shared use of facilities; and authorizing the City Manager to

execute and deliver the Agreement.
Summary: The City of Buckeye has several shared use Agreements with local school districts, including Buckeye Elementary School District, Buckeye Union High School District, and Wickenburg Unified School District. These Agreements allow the City to use school facilities at no cost. Likewise, the schools are able to use City facilities at no cost. The agreements allow the Community Services Department to offer programs at the schools, including before and after school programs, youth sports, and special interest classes. This Intergovernmental Agreement (IGA) renewal with the Saddle Mountain Unified School District No. 90 will allow the City to expand program offerings in Council District 4, benefiting Buckeye residents.
Staff Liaison: Miranda Gomez, Community Services Director, mgomez@buckeyeaz.gov, (623) 349-6353

***4.B** Council to take action on the Cooperative Contract Purchase Addendum (CCPA No. 2025039) between the City of Buckeye, an Arizona municipal corporation, and San Tan Auto Partners, LLC, DBA San Tan Ford, an Arizona limited liability company, for the purchase of light and medium duty vehicles; and authorize the City Manager to execute and deliver said CCPA on behalf of the City of Buckeye.
Summary: Approval of this Cooperative Contract Purchase Addendum with San Tan Ford will allow the City to purchase various Ford produced vehicles in a total amount not to exceed $1,000,000. Approval of this CCPA will ensure City staff have mechanically sound vehicles to perform daily work assignments for the benefit of the residents of the City. Vehicles that have reached or exceeded their life expectancy cost more to maintain and frequently experience higher downtime to staff which results in a lack of timely services.
Staff Liaison: Bret Hodne, Public Works Director, bhodne@buckeyeaz.gov, (623) 349-6801

***4.C** Council to take action on the Cooperative Contract Purchase Addendum (CCPA No. 2025028) between the City of Buckeye, an Arizona municipal corporation, and Don Sanderson Ford, Inc., an Arizona municipal corporation, for the purchase of light and medium duty vehicles, and authorizing the City Manager to execute and deliver said CCPA on behalf of the City of Buckeye.
Summary: Approval of this Cooperative Contract Purchase Addendum with Don Sanderson Ford will allow the City to purchase various Ford produced vehicles in a total amount not to exceed $500,000. Approval of this CCPA will ensure City staff have mechanically sound vehicles to perform daily work assignments for the benefit of the residents of the City. Vehicles that have reached or exceeded their life expectancy cost more to maintain and frequently experience higher downtime to staff which results in a lack of timely services.
Staff Liaison: Bret Hodne, Public Works Director, bhodne@buckeyeaz.gov, (623) 349-6801

***4.D** Council to take action on the Cooperative Contract Purchase Addendum (CCPA No. 2025127) between the City of Buckeye, an Arizona municipal corporation, and Sewer Equipment Co. of America, an Illinois corporation, to purchase a Hydo-Excavator Truck along with authorization for the City Manager to execute and deliver the Cooperative Contract Purchase Addendum on behalf of the City of Buckeye.
Summary: Approval of this Cooperative Contract Purchase Addendum with Sewer Equipment Co. of America will allow the City to purchase a 9-Yard Hydro-Excavator Truck, in an amount not to exceed $ 543,000. Approval of this CCPA will ensure City staff have mechanically sound equipment to perform daily work assignments for the benefit of the residents of the. Equipment that has reached or exceeded their life expectancy cost more to maintain and frequently experience higher downtime to staff which results in a lack of timely services.

Staff Liaison: Bret Hodne, Public Works Director, bhodne@buckeyeaz.gov, (623) 349-6801

***4.E** Council to take action on Task Order No. 7 to the On-Call Consulting Contract (No. 2022003.35) between the City of Buckeye, an Arizona municipal corporation, and Tristar Engineering and Management, Inc., an Arizona corporation, related to civil inspections for various projects/permits such as earthwork, asphalt work, concrete work, wet and dry utilities, traffic control and bridge inspection projects; and authorizing the City Manager to execute and deliver said Task Order of behalf of the City.

Summary: The Development Services Department is requesting funds through Task Order No. 7 to keep up with the current demand for Civil Inspection services. Tristar Engineering and Management, Inc. will provide assistance with Civil Inspections. The total amount to be paid under this Task Order will not exceed $150,000.

Staff Liaison: Brian Craig, Development Services Director, bcraig@buckeyeaz.gov (623) 349-6209

***4.F** Council to take action on a Final Plat of Westpark Phase 2.2 "Parcel 7S," located north of the northwest corner of West Westpark Loop North and West Warner Street.

Summary: Barry Lindner from Atwell, LLC, on behalf of D.R. Horton Inc, is requesting approval of a Final Plat of 109 lots and 18 tracts located north of the northwest corner of West Westpark Loop North and West Warner Street. The proposal is in substantial conformance with the Preliminary Plat. The Final Plat is accompanied by a Certificate of Assured Water Supply from the Department of Water Resources. The subject Final Plat will allow continued development of traditional single-family residences within the City.

Staff Liaison: Patricia Cooley, Planner 1, pcooley@buckeyeaz.gov, (623) 349-6233

***4.G** Council to take action on a Final Plat of Westpark Phase 2.2 "Parcel 8," located at the northwest corner of West Westpark Loop North and West Warner Street.

Summary: Barry Lindner from Atwell, LLC, on behalf of DR Horton Inc, is requesting approval of a Final Plat of Westpark Phase 2.2 "Parcel 8," consisting of 85 lots and 12 tracts located at the northwest corner of West Westpark Loop North and West Warner Street. The proposal is in substantial conformance with the Preliminary Plat. The Final Plat is accompanied by a Certificate of Assured Water Supply from the Department of Water Resources.

Staff Liaison: Patricia Cooley, Planner 1, pcooley@buckeyeaz.gov, (623) 349-6233

***4.H** Council to take action on a Final Plat of Westpark Phase 2.2 "Parcel 19," a subdivision located northeast of the intersection of West Westpark Loop North and West Warner Street.

Summary: Barry Lindner from Atwell, LLC, on behalf of DR Horton Inc, is requesting approval of a Final Plat of Westpark Phase 2.2 "Parcel 19," a subdivision consisting of 105 lots and 12 tracts located northeast of the intersection of West Westpark Loop North and West Warner Street. The proposal is in substantial conformance with the Preliminary Plat. The Final Plat is accompanied by a Certificate of Assured Water Supply from the Department of Water Resources.

Staff Liaison: Patricia Cooley, Planner 1, pcooley@buckeyeaz.gov, (623) 349-6233

***4.I** Council to take action on a Final Plat titled Westpark Phase 2.2 "Parcel 20N," a subdivision located northeast of the intersection of West Westpark Loop North and West Warner Street.

Summary: Barry Lindner from Atwell, LLC, on behalf of DR Horton Inc, is requesting approval of a Final Plat of Westpark Phase 2.2 "Parcel 20N," consisting of 70 lots and 12 tracts located northeast of the intersection of West Westpark Loop North and West Warner Street. The proposal

is in substantial conformance with the Preliminary Plat. The Final Plat is accompanied by a Certificate of Assured Water Supply from the Department of Water Resources.
Staff Liaison: Patricia Cooley, Planner 1, pcooley@buckeyeaz.gov, (623) 349-6233

***4.J** Council to take action on a Final Plat of Westpark Phase 2.2 "Parcel 7N," located north of the northwest corner of West Westpark Loop North and West Warner Street.

Summary: Barry Lindner from Atwell, LLC, on behalf of GDC WP 2.2, LLC, is requesting approval of a Final Plat of Westpark Phase 2.2 "Parcel 7N," consisting of 77 lots and 10 tracts located north of the northwest corner of West Westpark Loop North and West Warner Street. The proposal is in substantial conformance with the Preliminary Plat. The Final Plat is accompanied by a Certificate of Assured Water Supply from the Department of Water Resources.
Staff Liaison: Patricia Cooley, Planner 1, pcooley@buckeyeaz.gov, (623) 349-6233

***4.K** Council to take action on a Final Plat for Buckeye Ten 85, generally located at the southeast corner of State Route 85 and West Southern Avenue.

Summary: Brian Schiltz from Hunter Engineering, on behalf of Creation Equity LLC, is requesting approval of a Final Plat for Buckeye Ten 85, consisting of approximately 265 acres generally located at the southeast corner of State Route 85 and West Southern Avenue. The Final Plat creates four developable light industrial lots and dedicates to the City four well site tracts, public rights of way, and public utility easements as shown on the final plat. The subject Final Plat will provide developable lots for light industrial uses resulting in enhanced employment opportunities for the residents of Buckeye.
Staff Liaison: Bart Wingard, Principal Planner, hwingard@buckeyeaz.gov, (623) 208-8830

***4.L** Council to take action on the Public Improvements In-Lieu Payment Agreement between the City of Buckeye, an Arizona municipal corporation, and CRP/Martens Mission Park Owner, L.L.C., a Delaware limited liability company; and authorize the City Manager to execute and deliver said Agreement on behalf of the City of Buckeye.

Summary: As part of its development of land generally located at the northwest corner of North Perryville Road and West Roosevelt Street, Martens Mission Park Venture, L.L.C. is required to construct certain off-site streetlight improvements. Due to conflicts along the property frontage with large APS powerlines, the streetlights along Perryville Road are unable to be installed at this time. Future development will complete Perryville Road, which will include a median that will then have streetlights installed for this portion of the roadway. The Parties have agreed that rather than the Developer immediately performing the improvements, Developer may make an In-Lieu Payment to the City in the amount of $79,200, to be held by the City until such time as the funds are used to complete the improvements. The Public Improvements In-Lieu Payment Agreement memorializes the terms and conditions related to the payment.
Staff Liaison: Ron Moll, City Engineer, rmoll@buckeyeaz.gov, (623) 986-8442

***4.M** Council to take action on Resolution No. 57-24 accepting a Petition, Waiver and Consent to Formation of a Maintenance Improvement District by the City of Buckeye; declaring the intention to form a Maintenance Improvement District; designating such District as “City of Buckeye Maintenance Improvement District No. MID-2024-002”; and providing for the annual levy of taxes or an annual assessment against the lots within the District in proportion to the benefits received; and ordering the recording and filing of this Resolution.

Summary: Both Street Lighting Improvement Districts (SLIDs) and Maintenance Improvement Districts (MIDs) provide for the benefit of ensuring there is a balance of revenue and expenditures

to provide for the quality of life for the residents/owners of a particular development without an undue burden upon the existing community. MIDS are responsible for maintaining parkways and roadway landscaping on streets within the District. This puts a methodology in place for the future if the parkway or parking areas are not maintained by the development's owners or Homeowners Association (HOA).
Staff Liaison: Brian Craig, Development Services Director, bcraig@buckeyeaz.gov, (623) 349-6209

***4.N** Council to take action on Resolution No. 58-24 ordering the work as described in Resolution No. 57-24; ordering the formation of City of Buckeye Maintenance Improvement District No. MID-2024-002; and ordering the recording and filing of this Resolution.
Summary: Both Street Lighting Improvement Districts (SLIDs) and Maintenance Improvement Districts (MIDs) provide for the benefit of ensuring there is a balance of revenue and expenditures to provide for the quality of life for the residents/owners of a particular development without an undue burden upon the existing community. SLIDs ensure that only the owners that benefit from the lighting in their community pay for that service. Having the costs of street and public park lighting within a SLID borne by the owners in a development ensures that the revenue needed to fund these costs is always in place.
Staff Liaison: Brian Craig, Development Services Director, bcraig@buckeyeaz.gov, (623) 349-6209

***4.O** Council to take action on Resolution No. 55-24 enlarging City of Buckeye Street Lighting Improvement District No. 2006-SLID-009 and ordering recording and filing of this Resolution.
Summary: Both Street Lighting Improvement Districts (SLIDs) and Maintenance Improvement Districts (MIDs) provide for the benefit of ensuring there is a balance of revenue and expenditures to provide for the quality of life for the residents/owners of a particular development without an undue burden upon the existing community. SLIDs ensure that only the owners that benefit from the lighting in their community pay for that service. Having the costs of street and public park lighting within a SLID borne by the owners in a development ensures that the revenue needed to fund these costs is always in place.
Staff Liaison: Brian Craig, Development Services Director, bcraig@buckeyeaz.gov, (623) 349-6209

***4.P** Council to take action on the Job Order Contracts resultant contracts from the Job Order Contracts (Nos. 2025081, 2025082, 2025083, 2025084, 2025085, 2025086, 2025087, 2025088, 2025089, 2025090, 2025091, 2025092, 2025093, 2025094, 2025095, 2025096, 2025097, 2025100, 2025101, 2025102, 2025103, 2025104, 2025105, 2025106, 2025107, 2025108, 2025109, 2025110, 2025111, 2025112, 2025113, and 2025114) between the City of Buckeye and M.R. Tanner Development and Construction, LLC, Haydon Companies, LLC, Sunland Asphalt & Construction, LLC, Talis Construction Corporation, Willmeng Construction, Inc., Haydon Companies, LLC, J. Banicki Construction, Inc., Brycon Corporation, S.D. Crane Builders, Inc., Combs Construction Company, Inc., KBE Building Corporation, BWC Enterprises, Inc., Achen-Gardner Construction, LLC, B & F Contracting, Inc., TF Contracting Services, LLC, DCS Contracting, Inc., Felix Construction Company, MGC Contractors, Inc., Hunter Contracting Co., Schofield Civil Construction, LLC, PCL Construction, Inc., and ASR Construction Group, LLC; authorize the awarding of the Contracts and the City Manager to execute any future Delivery Orders under these contracts on behalf of the City of Buckeye.
Summary: Job Order Contracting is a delivery method the helps the City complete a large

number of repairs, maintenance, renovations and new construction projects with a single competitively awarded contract. There is no money associated with these Contracts. The maximum term for the contracts will be five years, one year base term with four optional years. Delivery Orders will be issued when a need arises for services under specific categories. Individual Delivery Orders/Projects will be limited to $2,000,000 and under and each contractor will be limited to $6,000,000 in total for all Delivery Orders/Projects per fiscal year.
Staff Liaison: Nicola Perrera, Procurement Manager, nperrera@buckeyeaz.gov, (623) 349-6174

***4.Q** Council to take action on the submission of a $670,000 Federal Emergency Management Agency (FEMA) Hazard Mitigation Grant Program (HMGP) Post-Fire Grant application through the Arizona Department of Emergency and Military Affairs (AZDEMA) for the removal of fire fuel to mitigate the risk of wildfire in the White Tank Mountain Range which borders the master-planned community of Verrado.

Summary: The City of Buckeye seeks to address the current community wildfire risk by submitting a grant application that supports the removal of fire fuel to mitigate the risk of wildfire to the White Tank Mountains and the communities that abut the White Tank Mountain Range. The grant funds the removal effort over a three-year period.
Staff Liaison: Rob Roach, Grant Program Manager, rroach@buckeyeaz.gov, (623) 349-6165

***4.R** Council to take action on the Memorandum of Understanding (MOU) between the City of Buckeye, an Arizona municipal corporation, and DMB White Tank, LLC, an Arizona limited liability company (DMB), related to the dedication of real property located West of Verrado High School and North of Indian School Road for the proposed future site for Victory Fire Station #708, related to CIP No. 109260 Verrado North Fire Station Land Acquisition, and authorize the City Manager to execute and deliver the MOU on behalf of the City of Buckeye.

Summary: This Council action will allow for the dedication of land for the future Victory Fire Station #708, as outlined in the revised Memorandum of Understanding (MOU) between the City and DMB. The original Pre-Annexation and Development Agreement (PADA) proposed dedicating land near the intersection of Indian School Road and Verrado Way The newly proposed site is approximately 1.5 acres of land West of Verrado High School and North of Indian School Road. The MOU formalizes this new location and, upon Council approval, will dedicate this site for Victory Fire Station #708, related to CIP No. 109260 Verrado North Fire Station Land Acquisition. Per the MOU language, the exact legal description of the site is to be finalized no later than October 31, 2024.
Staff Liaison: James Zwerg, CIP Project Manager, jzwerg@buckeyeaz.gov, (602) 558-2076

***4.S** Council to take action on the grant of a utility easement, as set forth in the Utility Easement Agreement between the City of Buckeye, an Arizona municipal corporation, and Arizona Public Service Company (APS), an Arizona corporation; and authorize the City Manager to execute and deliver said Agreement on behalf of the City of Buckeye.

Summary: This Agreement is a requirement for the construction and maintenance of electrical services related to CIP No. 100680 Blue Horizons Fire Station #707. This Agreement is necessary for the construction and operation of the future Fire Station #707. This includes constructing, reconstructing, replacing, repairing, operating, and maintaining electrical lines and associated facilities and fixtures necessary for the transmission and distribution of electricity to, through, across, and beyond the property. Additionally, it encompasses the installation, operation, and maintenance of telecommunication wires, cables, conduits, fixtures, and facilities for the sole use of APS to supplying electricity. This is a crucial measure for the project's overall operation

and functionality.
Staff Liaison: Steve Riley, Construction Project Manager, sriley@buckeyeaz.gov, (623) 687-8442

5. Comments from the Mayor and Council

Mayor and Council may present a brief summary of current events and/or report on any of the Boards and Commissions and other organizations as necessary. The Council may not propose, discuss, deliberate, or take any legal action on information presented. Council may direct inquiries to staff.

6. City Manager's Report and Summary of Current Events

7. Proposals for Future Agenda Items

The Mayor or three Council Members may propose items for inclusion in a future agenda. Council shall not discuss the merit or substance of any proposed item: discussion and action shall be limited to whether or not the item shall be included in a future agenda.

8. Adjournment

CITY OF BUCKEYE
Regular Council Meeting
COUNCIL ACTION REPORT

MEETING DATE: 09/03/24	**AGENDA ITEM:** 4.A. CS - Resolution No. 59-24 - Renewal of the Saddle Mountain Unified School District #90 IGA for Shared Use of Facilities
DATE PREPARED: 08/29/24	**DISTRICT NO.:** 4
STAFF LIAISON: Miranda Gomez, Community Services Director, mgomez@buckeyeaz.gov, (623) 349-6353	
DEPARTMENT: Community Services	**AGENDA ITEM TYPE:** Consent Agenda Items / New Business

ACTION/MOTION: (This language identifies the formal motion to be made by the Council)
Council to take action on Resolution No. 59-24 approving the renewal of an Intergovernmental Agreement entered into on July 11, 2019 between the City of Buckeye and the Saddle Mountain Unified School District No. 90 for the shared use of facilities; and authorizing the City Manager to execute and deliver the Agreement.

SUMMARY

PROJECT DESCRIPTION:
The City of Buckeye has several shared use agreements with local school districts, including Buckeye Union High School District, Buckeye Elementary School District and Wickenburg Unified School District. These agreements allow the City to use school facilities at no cost. Likewise, the schools are able to use City facilities at no cost. The agreements allow the Community Services Department to offer programs, activities and events at the schools, including before and after school programs, youth sports and special interest classes. The IGA renewal with Saddle Mountain Unified School District will allow the City to expand program offerings in Council District 4, benefiting Buckeye residents. Each spring, the City will coordinate with the School District on the desired program offerings and the scheduling of facilities.

The Saddle Mountain Unified School District board approved the renewal of the agreement at their August 14, 2024 board meeting.

BENEFITS:
The IGA renewal will allow the City to use the school facilities at no cost and eliminate the need to pay rental fees. This includes the District's campuses, classroom space, gymnasium / cafeteria and parking for approved purposes when not in conflict with the school's use. The School District recognizes the value City programs offered at the school has to their students and residents living nearby and therefore supported extending the IGA for another five years. The agreement also provides the opportunity for the City to expand programs, activities and events to residents living in District 4.

FUTURE ACTION:
The IGA renewal is for a five year term through September 30, 2029. During the course of the term, City staff will coordinate with the superintendent on the programs and activities to be programmed at the schools each spring. As fall 2029 approaches, staff will meet with the District to update the IGA for City Council and the school board's consideration.

FINANCIAL IMPACT STATEMENT:
There is no cost to either party for the renewal of the IGA.

CURRENT FISCAL YEAR TOTAL COST:

None.

Items related to a project or facility location must include an attached vicinity map for Council Review.

ATTACHMENTS:

Saddle Mountain USD First Renewal to IGA 2024-2029 Signed by District.pdf
Resolution 59-24 SMUSD IGA.docx
2019 to 2024 IGA wtih Saddle Mountain USD No. 90.pdf

FIRST RENEWAL OF THE INTERGOVERNMENTAL AGREEMENT DATED JULY 11, 2019 BETWEEN THE CITY OF BUCKEYE AND THE SADDLE MOUNTAIN UNIFIED SCHOOL DISTRICT NO. 90 FOR THE SHARED USE OF FACILITIES

WHEREAS, the City of Buckeye, Arizona, an Arizona municipal corporation ("City") and the Saddle Mountain Unified School District No. 90 ("District") entered into an Intergovernmental Agreement ("IGA") for the Shared Use of Facilities dated July 11, 2019.

WHEREAS, Section 4(A) of the IGA established an Initial Term from September, 2019 through September, 2024, and authorized the Parties to renew the IGA for subsequent five-year terms by mutual, written agreement of the Parties approved by the City Council and District Governing Board; and,

WHEREAS, the Parties desire to renew the Agreement for a First Renewal Term from September 1, 2024 until September 30, 2029.

NOW THEREFORE, the Parties Agree as follows:

Section 1. The foregoing Recitals are incorporated herein by reference.

Section 2. The Intergovernmental Agreement is renewed for a First Renewal Term of September 1, 2024 until September 30, 2029.

Section 3. Section 17 "Notice" is updated to replace the City and District representatives as follows:

If to the City: Dan Cotterman, City Manager
City of Buckeye
530 East Monroe Avenue
Buckeye, Arizona 85326

With copy to: K. Scott McCoy, City Attorney
City of Buckeye
530 East Monroe Avenue
Buckeye, Arizona 85326

If to the District: Dr. Mike Winters, Superintendent
Saddle Mountain Unified School District No. 90
38201 W. Indian School Rd
Tonopah AZ 85354

With a copy to: Denise Lowell-Britt, Attorney
Udall Shumway PLC
1138 N. Alma School Rd. #101
Mesa AZ 85201

Section 4. All remaining terms and conditions of the Intergovernmental Agreement dated July 11, 2019 are hereby affirmed.

CITY OF BUCKEYE

By:_____
Daniel Cotterman, City Manager

SADDLE MOUNTAIN UNIFIED SCHOOL DISTRICT NO. 90

By:_____
Dr. Mike Winters, Superintendent

ATTEST:

_____
Lucinda Aja, City Clerk

CERTIFICATION BY LEGAL COUNSEL

Pursuant to Ariz. Rev. Stat. § 11-952(D), the undersigned attorneys acknowledge that they have reviewed the above agreement on behalf of their respective clients and each attorney has determined that the Agreement is in proper form and is within the powers and authority granted to the respective client under the laws of the State of Arizona.

CITY OF BUCKEYE

_____
K. Scott McCoy, City Attorney

DISTRICT

_____
Denise Lowell-Britt, Udall Shumway PLC

RESOLUTION NO. 59-24

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF BUCKEYE, ARIZONA, APPROVING THE RENEWAL OF AN INTERGOVERNMENTAL AGREEMENT ENTERED INTO ON JULY 11, 2019 BETWEEN THE CITY OF BUCKEYE AND THE SADDLE MOUNTAIN UNIFIED SCHOOL DISTRICT NO. 90 FOR THE SHARED USE OF FACILITIES; AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER THE AGREEMENT.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF BUCKEYE, ARIZONA, as follows:

Section 1. The Renewal of the Intergovernmental Agreement entered into on July 11, 2019 ("Renewal Agreement") between Saddle Mountain Unified School District No. 90 and the City of Buckeye, Arizona for the shared use of facilities is hereby approved in the form on file with the City Clerk.

Section 2. The City Manager is hereby authorized to execute and deliver the Renewal Agreement, and the Mayor, the City Manager, the City Clerk, and the City Attorney are hereby authorized and directed to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Mayor and Council of the City of Buckeye, Arizona, this 3rd day of September, 2024.

By:_____
Eric W. Orsborn, Mayor

ATTEST:

_____
Lucinda Aja, City Clerk

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

INTERGOVERNMENTAL AGREEMENT
BETWEEN
SADDLE MOUNTAIN UNIFIED SCHOOL DISTRICT NO. 90
AND
THE CITY OF BUCKEYE
FOR
THE SHARED USE OF FACILITIES

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is entered into as of July 11, 2019 (the "Effective Date"), between the SADDLE MOUNTAIN UNIFIED SCHOOL DISTRICT NO. 90, a political subdivision of the State of Arizona (the "District"), and the CITY OF BUCKEYE, an Arizona municipal corporation (the "City"). The District and City are referred to herein, individually and collectively, as "Party" or "Parties."

RECITALS

A. This Agreement is made under the authority of A.R.S. §§ 11-951 to -954 and A.R.S. § 15-342(13).

B. A.R.S. § 15-1105(B) permits the use of school buildings, school grounds and other school property by organizations whose membership is open to the public and whose activities promote the educational function of the District as determined in good faith by the District's Governing Board, and A.R.S. § 15-364 permits the District's Governing Board to enter into an agreements with the City for the use of parks and recreational facilities under the District's control. The Governing Board of the District finds that the City is an entity whose activities are open to the public and whose programs promote the educational function of the District. A.R.S. § 9-240 provides that the City Council shall have control over the property of the City.

C. The District and the City serve residents in common and desire to further the public interest by permitting City use of District Facilities (as hereinafter defined) and permitting District use of City Facilities (as hereinafter defined) to minimize the expense to City residents and provide enhanced resources to the community for the benefit of City residents.

D. The District desires to permit the use of its available campuses, classrooms, recreational and parking facilities by the City at no charge in exchange for the District's right to use the City Facilities as provided under this Agreement.

E. The City desires to permit the use of its available recreational and parking facilities under the control of the City's Community Services Department by the District at no charge.

AGREEMENT

NOW, THEREFORE, the Parties hereto agree as follows:

1. DEFINITIONS

A. "District Facility" or "District Facilities" means real property, buildings, parking lots and facilities owned or under District's control, including, but not limited to, campus sites, classrooms, and recreation and parking facilities.

B. "City Facility" or "City Facilities" means real property, buildings, parking lots and facilities owned or under the City's control and within the control of the Community Services Department.

C. "Out-of-Pocket Costs" shall include those direct costs incurred by the City or the District over and beyond normal operating costs budgeted for and expended by each Party. The intent of this definition is to reimburse only those additional direct costs each Party incurs from providing services or facilities to the other.

2. COVENANTS

A. City's Obligations:

1. The City agrees to use the District Facilities in a lawful manner that complies with all applicable statutes, codes, ordinances, and the District's Governing Board Policies. The City shall engage in activities that promote the educational function of the District and that are open to the public. The District is under no obligation to consent to additional or alternative uses.

2. The City shall permit the District to use, at no charge, the City Facilities, for approved purposes pursuant to Section 2(B)(1) of this Agreement at such times when the District's use of the City Facilities is not in conflict with the use of such City Facilities by the City. The City agrees to coordinate its use of the City Facilities with the District to allow for District sponsored or administered recreation, sports, training, and community programs. The District recognizes that the City may have certain City Facilities that may be limited by the City for the District to use.

3. The City, as part of the maintenance of its property, shall reasonably clean, maintain, and repair the City Facilities at its own expense during the term of this Agreement (as may be renewed), and such maintenance obligations shall include, but not be limited to, the routine, preventative, and capital maintenance of the City Facilities, subject to the District's cleaning and removal obligations as set forth in Section 2(B)(4) of this Agreement. Each Party shall be responsible for the repair of any damage caused to the City Facilities by its use. If the City

Facilities are vandalized or damaged when neither the City nor the District is occupying the property, then the City shall be responsible for the repairs.

4. Notwithstanding the foregoing, the City shall immediately clean any waste, hazardous substance, or hazardous condition caused on, and remove equipment placed upon, the District Facilities by its employees, agents, and invitees, after each use of the District Facilities by the City.

5. The City shall pay all reasonable utility charges including water, natural gas, and electricity consumed upon the City Facilities.

6. The City shall pay all reasonable costs associated with normal use of the City Facilities, including, but not limited to, toiletries, soap, hand towels and toilet paper consumed upon the City Facilities.

7. The City shall pay any Out-of-Pocket Costs incurred by its use of the District Facilities.

B. District's Obligations:

1. The District agrees to use the City Facilities in a lawful manner that complies with all applicable statutes, codes, ordinances, and City Council directives. The City is under no obligation to consent to additional or alternative uses.

2. The District shall permit the City to use, at no charge, the District Facilities, for approved purposes pursuant to Section 2(A)(1) of this Agreement at such times when City's use of the District Facilities is not in conflict with the use of such District Facilities by the District. The City's right to use District Facilities at no charge is in exchange for the District's right to use the City Facilities as further provided in this Agreement. The District agrees to coordinate its use of the District Facilities with the City to allow for City sponsored or administered recreation, sports, training, and community programs. The City recognizes that the District may have certain Facilities that may be limited by the District for the City to use.

3. The District, as part of the maintenance of its property, shall reasonably clean, maintain, and repair the District Facilities at its own expense during the term of this Agreement (as may be renewed), and such maintenance obligations shall include, but not be limited to, the routine, preventative, and capital maintenance of the District Facilities, subject to the City's cleaning and removal obligations as set forth in Section 2(A)(4) of this Agreement. Each Party shall be responsible for the repair of any damage caused to the District Facilities by its use. If the District Facilities are vandalized or damaged when neither the District nor the City is occupying the property, then the District shall be responsible for the repairs.

4. Notwithstanding the foregoing, the District shall immediately clean any waste, hazardous substance, or hazardous condition caused on, and remove equipment placed upon, the City Facilities by its employees, agents, and invitees, after each use of the City Facilities by the District.

5. The District shall pay all reasonable utility charges including water, natural gas, and electricity consumed upon the District Facilities.

6. The District shall pay all reasonable costs associated with normal use of the District Facilities, including, but not limited to, toiletries, soap, hand towels and toilet paper consumed upon the District Facilities.

7. The District shall pay any Out-of-Pocket Costs incurred by its use of the City Facilities.

3. ANNUAL JOINT USE SCHEDULING AND MANAGEMENT PROCESS

This Agreement seeks to provide a framework and administrative support for collaboration and decision-making among City and District administrators, school building staff, and City Community Services Department personnel.

A. Joint Use Scheduling Process - Joint use planning and decision-making will occur each spring for the upcoming City fiscal year. All joint use programming scheduled the preceding year will be included in the schedule for the upcoming year unless otherwise negotiated as set forth below.

1. On an annual basis, the City's Community Services Director or designee and a District representative shall meet to review the prior year's facility usage and to discuss changes or modifications that should be made for the upcoming year. During these annual meetings, the Parties shall discuss any challenges or issues that may have developed and that the Parties will work to resolve. This annual meeting will include a review of a cost benefit analysis for both the City and the District and discuss how to maximize the benefits to both Parties. At the annual meeting, the Parties shall discuss parking arrangements to accommodate both Parties and shall review event schedules to coordinate simultaneous events. The Parties shall also review the scheduling process and scheduling dates to determine if any changes are necessary to the scheduling process as set forth below.

2. By March 1st of each year, the City's Community Services Director or designee shall deliver a joint use scheduling confirmation notice for the upcoming City fiscal year to the District representative or designee of each District Facility it intends to use. The notice will list City activities from the preceding year that are proposed to continue and current District usage of the City Facilities. Any new requests for the upcoming year will be identified.

3. Upon receiving the confirmation notice, the District representative or designee shall identify which District activities will continue in the upcoming year and identify new District needs for the use of the City Facilities for the upcoming year. In assessing the needs for the upcoming year, the District representative or designee may either approve the City's proposed schedule of use and return the confirmation notice; or by April 1st, contact the City's Community Services Director or designee to discuss changes or amendments.

4. Upon receiving the confirmation notice completed and approved by the District representative or designee, the City's Community Services Director or designee may either approve the District's proposed schedule of use or contact the District representative or designee to discuss changes or amendments. Once both the District representative or designee and the City's Community Services Director or designee have approved and signed the confirmation notice, the City's Community Services Director or designee will send a copy of the signed notice to the District representative or designee and file it with central administrative offices of both Parties;

5. Unless otherwise agreed to by the Parties, the signed confirmation notice must be filed no later than May 1st of each year with the central administrative offices of both Parties.

B. Resolving Space Availability Conflicts - Efforts at resolution of space availability issues are first encouraged directly between the respective City Facility and District Facility representatives. The central scheduling offices of both Parties will, whenever possible, identify options or ways to accommodate the interests of both Parties.

C. Completing the Joint Use Scheduling Process

1. Timing of Joint Use Scheduling Process - The City and the District shall complete the joint use scheduling process as described above. The City/District collaboration for joint use scheduling will consider all negotiated use agreements and schedules affecting the City Facilities and the District Facilities. Except as identified in Section 3(G) below, the user Party shall deliver scheduled usage confirmation to the respective facilities by July 15th for the upcoming year.

2. Amendments to Joint Use Scheduled Events - Annual plans and associated use permits can be amended through mutual agreement of a District school site representative and the City's Community Services Director or designee. Each Party's central administrative office must be notified of such amendments. Both Parties shall make reasonable accommodations to each other when circumstances outside the control of the Parties arise which may require schedule changes.

D. Central Coordination, Permitting, Record-keeping, and Problem Resolution

1. The District and the City will formally permit all building uses and will jointly maintain the annual joint use schedule. Parties will utilize their existing respective facility reservation forms for single and ongoing use.

2. The District and the City will develop a system for maintaining accurate records of use and tracking and reporting scheduling issues occurring under this Agreement.

3. The City's Community Services Director and the District school site representative or their designees shall meet regularly to provide operational coordination and planning, to coordinate the use of the City Facilities and District Facilities, to discuss future changes in programming, and to provide a regular forum for the resolution of challenges on such issues as scheduling conflicts, maintenance, security, and vandalism.

E. Change in Availability Notification - Both Parties shall honor each other's scheduled events to the greatest extent possible and shall not disrupt scheduled programs. Should an unforeseen event occur which precludes a joint use activity or program from occurring, each Party will seek to accommodate the scheduled program at an alternate facility. Except in the case of an emergency, or due to a situation beyond the control of a Party, a minimum of two weeks' (10 business days') written notice is required to change a regularly scheduled one to three consecutive days program/event, and a minimum of 60 days' written cancellation notice is required to change regularly scheduled leagues and/or programs that are four consecutive days or longer.

F. Temporary Rescheduling of Scheduled Priority Use - In the event the user Party communicates its inability to utilize its scheduled priority use, the owner Party may pursue scheduling other uses temporarily until the user Party is ready to resume its scheduled priority use.

G. Single Use Requests - Written requests to use the City Facilities and the District Facilities outside the annual scheduling confirmation process shall be submitted to each Party's central administrative office. The central administrative office of the requesting Party will verify in advance with the District representative or designee or City's Community Services Director or designee that the City Facility or District Facility is available at the date and time requested. The request will be granted only if the allotted time and space is available.

H. Joint Use Program Requirements - All programs must provide adequate supervision by adults, age 18 and above, trained in emergency procedures specified by the owner Party. The user Party is responsible for providing program staffing or covering expense of owner Party program staffing, if necessary. Staffing must be sufficient to supervise program participants in entry areas, locker rooms, and non-secured spaces of a City Facility or District Facility, as applicable.

I. **Issuance of Facility Keys** - Keys shall be issued or other means of access provided for program events and activities approved under this Agreement. Issuance of keys to City personnel for use of the District Facilities and to District personnel for the City Facilities shall be limited to the requirements of this Agreement. The City and the District agree that issued keys will not be duplicated and assume financial responsibility for the re-keying and other costs resulting from the loss of a key by an employee. Parties will make reasonable efforts to return keys issued after the completion of the program/event within three working days unless otherwise agreed upon by both Parties.

J. **Joint Use Facility Maintenance Responsibilities** -With each occupancy, the user Party shall be responsible for the pre-occupancy preparations. Users must leave the City Facility or District Facility, including displays, furniture and equipment in the condition and arrangement preceding the permitted use.

K. **Access to Storage** - Wherever possible, each Party shall make available storage space on site for joint use program equipment and supplies.

L. **Restitution and Repairs** - The user Party shall make restitution for the repair of any damage to a City Facility or District Facility and its equipment or other property missing from the premises that may occur as a result of scheduled programs for which a permit was issued.

1. **Inspection of Facilities** - The owner Party shall, through its designated representative, inspect all buildings and grounds of a City Facility or District Facility for which a use permit has been issued. Inspection shall be directed toward identification of damage to the City Facility or District Facility and equipment or missing property that may have been caused by the user Party through conduct of its program.

2. **Reporting Method** - The owner Party shall notify the user Party of damage or loss within three working days after inspection. Such notification shall consist of sending a facsimile or electronic mail message to the user Party's designated representative identifying the City Facility or District Facility, permit, date of detection, name of inspector, area or areas involved, description of damage, and estimated and/or fixed costs of repairs or property replacement.

3. **Repairs** - Except as otherwise mutually agreed, the user Party shall not cause repairs to be made to any City Facility or District Facility or item of equipment for which the owner Party has responsibility. The owner Party agrees to make such repairs within the estimated and/or fixed costs agreed upon by the Parties. If it is mutually determined that the user Party is responsible for the damage, then the user Party shall reimburse the owner Party at the estimated and/or fixed costs agreed upon.

4. **Reimbursement Procedure** - The owner Party shall invoice the user Party responsible for the damage within seven working days of completion of repairs or replacement of missing property. The invoice shall itemize all work hours, equipment, and material with cost rates as applied to the repair work. If the repair is contracted, a copy of the contractor's itemized statement must be attached. Actual costs shall be invoiced if less than the estimated and/or fixed costs. The user Party shall reimburse the owner Party within 30 days from receipt of such an invoice.

5. **Disagreements** - The user Party retains the right to disagree with any and all items of damage to the City Facilities or District Facilities, as applicable, or equipment or missing property as identified by the owner Party provided this challenge is made within ten working days after the first notification of the damage.

   a. Disagreements shall be made in writing to the owner Party and shall clearly identify the reasons for refusing responsibility for damages to the City Facility or District Facility or equipment or missing property. Failure to do so within the prescribed time period shall be considered acceptance of responsibility by the user Party.

   b. Settlement of disagreements, after written notification, shall be made following an on-site investigation involving designated representatives of both the owner and user Parties.

   c. In the event an agreement cannot be reached, the matter shall be referred to the District Superintendent and the City Manager or their respective designees for review and consideration.

   d. The owner Party shall have the right to make immediate emergency repairs without voiding the user Party's right to disagree.

M. **Cost Sharing** - The joint use of the City Facilities and District Facilities will be based upon fiscally sound considerations. Neither the District nor the City will be required to subsidize the other's use of its respective facilities under this Agreement.

N. **Requests for Services Outside the Agreement** - Specific requests by the City or District for services, equipment, or facilities not covered under this Agreement may be provided, at direct charge, to the Party making the request.

4. TERM

A. Subject to Sections 8, 11 and 12 of this Agreement, the term of this Agreement shall be for the period commencing September, 2019, and ending on September, 2024, but shall be renewable for subsequent five year terms by mutual, written agreement of the

Parties. Notwithstanding the foregoing, any financial obligation of a Party hereto is subject to the applicable budget laws of the State of Arizona.

B. The execution of this Agreement and renewal or extension of this Agreement must be authorized by both the District Governing Board and City Council.

5. INSURANCE AND INDEMNIFICATION

A. At all times during the term of the Agreement, and during any renewal thereof, each Party shall maintain commercial general liability insurance, at its expense, with coverage limits of not less than $1,000,000 per occurrence and $2,000,000 aggregate limit for bodily injury and property damage, issued by an insurance carrier or via self-insurance and naming the other Party as an additional insured.

B. To the extent permitted by law, District shall hold harmless the City, its officers, employees, agents, and volunteers for, from, and against any and all claims, demands, suits, actions, proceedings, and expenses of any kind or nature, for damages to property or injuries to or death of a person or persons, including employees or agents of the City arising out of the use of the City's property, including, but not by way of limitation, workers' compensation claims, resulting from or arising out of the negligent or wrongful acts, errors, or omissions of the District, its employees, agents, or subcontractors in connection with this Agreement.

C. To the extent permitted by law, the City shall hold harmless District, its officers, employees, agents, and volunteers for, from, and against any and all claims, demands, suits, actions, proceedings, and expenses of any kind or nature, for damages to property or injuries to or death of a person or persons, including employees or agents of District arising out of the use of the District's property, including, but not by way of limitation, workers' compensation claims, resulting from or arising out of the negligent or wrongful acts, errors, or omissions of the City, its employees, agents, or subcontractors in connection with this Agreement.

6. HAZARDOUS MATERIALS

During the term of this Agreement (as may be renewed), neither the District nor the City will use, generate, place, store, transport, release, or otherwise dispose of Hazardous Materials (as defined below) in any portion of the other Party's facilities except in strict accordance with all applicable environmental laws. In the event of a breach of the foregoing, the breaching Party will undertake remediation or removal in accordance with all applicable environmental laws. In addition, to the extent permitted by law, the Parties will indemnify, defend, and hold each other harmless against and reimburse the other Party for, all hazardous materials liabilities caused by the negligent release of a Hazardous Material in violation of applicable environmental laws. As used herein, the term "Hazardous Materials" shall mean asbestos or any hazardous substance, waste, or materials as defined in any federal, state, or local environmental or safety law or regulation including, but not limited to, Resource Conservation and Recovery Act (RCRA) and

Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The obligations of this Section shall survive the expiration or other termination of this Agreement.

7. ENTIRE AGREEMENT

This Agreement embodies the entire agreement between the City and the District. The Parties shall not be bound by or be liable for any statement or representation of any nature not set forth in this Agreement. Changes of any of the provisions of this Agreement shall not be valid unless reduced to writing and approved and signed by both Parties.

8. TERMINATION

Either Party may terminate this Agreement by giving a minimum of six months' prior, written notice to the other Party of its intention to terminate the Agreement. The Parties do not anticipate having to dispose of any property upon partial or complete termination of this Agreement. However, to the extent that a disposition of property is necessary upon termination, property shall be returned to its original owner.

9. WAIVER

The failure or delay of the District or the City to insist upon strict performance of any of the provisions of this Agreement or to exercise any rights or remedies provided by this Agreement, shall not release either Party from any of its responsibilities or obligations imposed by this Agreement and shall not be deemed a waiver of any right of either Party to insist upon strict performance of this Agreement.

10. DISPUTE RESOLUTION

A. Both Parties agree to utilize good faith efforts to informally resolve disputes arising out of this Agreement. In the event of delays, exceptions, or problems arising from this Agreement, the City Manager and the District representative shall be involved in the attempt to resolve the dispute as soon as reasonably practical. In the event the City Manager and District representative cannot agree on a remedy for the dispute they may, upon mutual agreement, request a third individual, acceptable to the City and the District, to serve as a mediator on behalf of the Parties.

B. Within 15 days of the appointment of a mediator, the mediator shall provide a written report to both Parties with proposed recommendations to resolve the matter. Each Party shall have 15 days from the date of the mediator's report to notify the other that it accepts or rejects the mediator's recommendations. If either Party rejects the mediator's recommendations, it may exercise any legal rights and remedies it may have under the laws of the State of Arizona.

11. SUBJECT TO APPROPRIATIONS

This Agreement is subject to the provisions of A.R.S. § 42-17106. The provisions of this Agreement for payment of funds by the City and the District shall and be effective when funds are appropriated for purposes of this Agreement and are actually available for payment. The Parties shall be the sole judge and authority in determining their respective availability of funds under this Agreement and each Party shall keep the other Party fully informed as to the availability of funds for the Agreement. The obligation of the Parties to make any payment pursuant to this Agreement is a current expense of the Parties, payable exclusively from such annual appropriations, and is not a general obligation or indebtedness of the Parties. If the City Council or District Governing Board fails to appropriate money sufficient to pay the amounts as set forth in this Agreement during any immediately succeeding fiscal year, this Agreement shall terminate at the end of the then-current fiscal year and the City and the District shall be relieved of any subsequent obligation under this Agreement.

12. CONFLICT OF INTEREST

The Parties acknowledge that this Agreement is subject to cancellation pursuant to Arizona Revised Statutes Section 38-511, without penalty or further obligation on the part of the District or the City.

13. E-VERIFY, RECORDS AND AUDITS

To the extent applicable under A.R.S. § 41-4401, the Parties and their respective subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Parties' or a subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of the Agreement and may result in the termination of the Agreement by either Party under the terms of this Agreement. The Parties each retain the legal right to randomly inspect the papers and records of the other Party and the other Parties' subcontractors who work under this Agreement to ensure that the other Party and its subcontractors are complying with the above-mentioned warranty. The Parties warrant to keep their respective papers and records open for random inspection during normal business hours by the other Parties. The Parties and their respective subcontractors shall cooperate with the other Parties' random inspections including granting the inspecting Party entry rights onto their respective properties to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

14. COMPLIANCE WITH NON-DISCRIMINATION LAWS

The Parties agree to comply with all provisions of applicable federal, state, and local laws relating to non-discrimination, equal employment opportunity, and the Americans with Disabilities Act. The Parties agree to comply with Arizona Governor's Executive Order No. 75-5, dated April 28, 1975 ("Prohibition of Discrimination in State Contracts - Nondiscrimination in Employment by Government Contractors and Subcontractors"), as amended by Arizona Governor's Executive Order 99-4, dated January 29, 1999, as amended by Arizona Governor's Executive Order 2009-09, dated October 20, 2009, and as may be amended from time to time.

15. GOVERNING LAW

The laws of the State of Arizona shall govern this Agreement and courts in Maricopa County, Arizona shall have jurisdiction of the subject matter hereof.

16. RELATIONSHIP BETWEEN PARTIES

A. Except as otherwise provided by law, in the performance of duties and activities under this Agreement, the Parties hereto will be acting in their individual capacities and not as agents, employees, partners, joint ventures, or associates of each other. The officers, employees, agents, or subcontractors of one Party shall not be deemed or construed to be the employees or agents of the other Party. Each Party shall remain responsible for the supervision of their respective staff and participants and shall maintain insurance coverage as required by law and this Agreement.

B. An employee of either Party shall be deemed to be an "employee" of both public agencies while performing pursuant to this Agreement solely for purposes of A.R.S. § 23-1022 and the Arizona Workers' Compensation laws. The primary employer shall be solely liable for any workers' compensation benefits that may accrue. Each Party shall post notice pursuant to the provisions of A.R.S. § 23-1022 in substantially the following form:

> "All employees are hereby further notified that they may be required to work under the jurisdiction or control of or within the jurisdictional boundaries of another public agency pursuant to an intergovernmental agreement or contract, and under such circumstances they are deemed by the laws of Arizona to be employees of both public agencies for the purposes of workers' compensation."

17. NOTICE

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

If to the City: City of Buckeye
530 East Monroe Avenue
Buckeye, Arizona 85326
Attn: Stephen S. Cleveland, City Manager

With copy to:	GUST ROSENFELD, P.L.C. One East Washington Street, Suite 1600 Phoenix, Arizona 85004-2553 Attn: Shiela B. Schmidt, Esq.
If to the District:	Saddle Mountain Unified School District No. 90 38201 West Indian School Road Tonopah, Arizona 85354 Attn: Superintendent
With copy to:	_____ _____ _____ _____

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

18. AUTHORITY

The individual signing below hereby represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of his/her respective Party. The District represents that this Agreement has been approved at a duly noticed public meeting of the Governing Board of the District and the City represents that this Agreement has been approved at a duly noticed public meeting of the City Council of the City.

19. COUNTERPARTS

This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed original hereof.

[SIGNATURES ON FOLLOWING PAGE.]

CITY: **DISTRICT:**

By: _____ By: _____
Jackie A. Meck, Mayor

Date: September 17, 2019 Date: _____

Attest:

By: Summer Stewart, for
Lucinda Aja, City Clerk

CERTIFICATION BY LEGAL COUNSEL

In accordance with the requirements of A.R.S. § 11-952(D), the undersigned Attorneys acknowledge that (i) they have reviewed the above agreement on behalf of their respective clients and (ii) as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

Shiela B. Schmidt _____
City Attorney

_____
District's Attorney

CITY:

By: _____
Jackie A. Meck, Mayor

Date: _____

Attest:

By: _____
Lucinda Aja, City Clerk

DISTRICT:

By: _____
Dr. Paul Tighe, SMUSD Superintendent

Date: 7/11/19

CERTIFICATION BY LEGAL COUNSEL

In accordance with the requirements of A.R.S. § 11-952(D), the undersigned Attorneys acknowledge that (i) they have reviewed the above agreement on behalf of their respective clients and (ii) as to their respective clients only, each attorney has determined that this Agreement is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

_____
City Attorney

_____
District's Attorney

FAS:cmy 3561600.1 6/28/2019

CITY OF BUCKEYE
Regular Council Meeting
COUNCIL ACTION REPORT

MEETING DATE: 09/03/24	**AGENDA ITEM:** 4.B. PW - Cooperative Contract Purchase Addendum with San Tan Ford to purchase light and medium duty vehicles.
DATE PREPARED: 08/29/24	**DISTRICT NO.:**
STAFF LIAISON: Bret Hodne, Public Works Director, bhodne@buckeyeaz.gov, (623) 349-6801	
DEPARTMENT: Public Works	**AGENDA ITEM TYPE:** Consent Agenda Items / New Business

ACTION/MOTION: (This language identifies the formal motion to be made by the Council)
Council to take action on the Cooperative Contract Purchase Addendum (CCPA No. 2025039) between the City of Buckeye, an Arizona municipal corporation, and San Tan Auto Partners, LLC, DBA San Tan Ford, an Arizona limited liability company, for the purchase of light and medium duty vehicles; and authorize the City Manager to execute and deliver said CCPA on behalf of the City of Buckeye.

SUMMARY

PROJECT DESCRIPTION:
Fleet Management is seeking Council's authorization to enter into the Cooperative Contract Purchase Addendum with San Tan Ford to purchase various light and medium vehicles.

BENEFITS:
The approval of this Cooperative Contract Purchase Addendum will ensure City staff have mechanically sound vehicles to perform daily work assignments for the benefit of the residents of the City of Buckeye. Vehicles that have reached or exceeded their life expectancy cost more to maintain and frequently experience higher downtime to staff which results in a lack of timely services.

FUTURE ACTION:
No further action contemplated.

FINANCIAL IMPACT STATEMENT:
The total amount is not to exceed $1,000,000.00.

CURRENT FISCAL YEAR TOTAL COST:
$1,000,000.00 from vehicle replacement and department budgets that have been approved to purchase supplemental vehicles during the FY25 budget process.

BUDGETED:
Yes

FISCAL YEAR:
FY25

FUND/DEPARTMENT:
Various

Items related to a project or facility location must include an attached vicinity map for Council

Review.
ATTACHMENTS:
CCPA No. 2025039 with San Tan Ford.pdf

COOPERATIVE CONTRACT PURCHASE ADDENDUM (CCPA)
BETWEEN THE CITY OF BUCKEYE
AND
San Tan Auto Partners, LLC DBA San Tan Ford

New Vehicle Purchase
CONTRACT NO. 2025039

THIS COOPERATIVE CONTRACT PURCHASE ADDENDUM (this "Addendum") is entered into as of _____between the City of Buckeye, an Arizona municipal corporation (the "City"), and San Tan Auto Partners, LLC DBA San Tan Ford an Arizona limited liability company (the "Contractor").

WHEREAS, after a competitive procurement process, which is documented in the Award attached hereto as part of **Exhibit A**, "the State of Arizona" and Contractor entered into Contract No. CTR059323, dated March 17, 2022 (such contract and subsequent amendments thereto herein referred to as the "State of Arizona Contract"), which is attached hereto as Exhibit A and incorporated herein by reference); and

WHEREAS, the City is permitted by Section 24-3-16 of the City Procurement Code to make purchases via cooperative purchasing pursuant to a cooperative purchasing contract; and

WHEREAS, the Contractor has made a proposal to the City, which is attached hereto as **Exhibit A** and incorporated herein by reference (the "Contract"); and

WHEREAS, the City desires to accept the Proposal and enter into contract with the Contractor under the terms and conditions of the State of Arizona Contract, by issuing this Addendum to said contract.

THEREFORE, the City now enters into this Addendum with the Contractor for the goods and services set forth in the Proposal. This Addendum incorporates the terms and conditions of the State of Arizona Contract, save that references therein to State of Arizona shall be read to refer to the City of Buckeye. This Addendum shall be effective as of the date set forth below for approval and remain in effect for the remainder of the Contract's term unless such term is modified or extended pursuant to the terms of the State of Arizona Contract. Payments to the Contractor shall be calculated in accordance with the Proposal, which is attached hereto as part of Exhibit A, in a total amount not to exceed $1,000,000.00.

FURTHER, this Addendum is subject to cancellation pursuant to ARS §38-511.

FURTHER, to the extent applicable, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. § 23-214(A). The Contractor's or its subcontractors' failure to comply with such warranty shall be deemed a material breach of this Addendum and may result in the termination of this Addendum by the City. The City retains the

right to inspect the papers of the Contractor's or its subcontractors' employees who perform any work or services pursuant to this Addendum to ensure compliance with these warranties.

FURTHER, to the extent applicable, the Contractor warrants that it is not participating and will not participate in prohibited activity in contravention of A.R.S. § 35-393.01.

FURTHER, to the extent applicable under ARIZ. REV. STAT. § 35-394, Contractor certifies that it does not currently, and agrees for the duration of this Agreement that it will not use (i) the forced labor of ethnic Uyghurs in the Peoples Republic of China ("ethnic Uyghurs"), (ii) any goods or services produced by the forced labor of ethnic Uyghurs, or (iii) any Contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs. If Contractor becomes aware that it is not in compliance with this paragraph, Contractor shall notify the City of the noncompliance within five (5) business days of becoming aware of it. If Contractor fails to provide a written certification that Contractor has remedied the noncompliance within one hundred eighty (180) days after that, this Agreement shall terminate unless the termination date of this Agreement occurs before the end of the remedy period, in which case this Agreement terminates on the Agreement termination date.

FURTHER, the Parties agree that the Addendum and Exhibits thereto shall be governed by State of Arizona law and suits pertaining to the Addendum and Exhibits thereto may only be brought in courts located in Maricopa County, Arizona.

FURTHER, all modifications, including but not limited to service additions and deletions, will be made in writing and with the written agreement of both parties.

FURTHER, in the event of any inconsistency between this Addendum and **Exhibit A**, the documents shall govern in that order.

CLICKWRAP TERMS EXCLUDED, in the event the Consultant's terms of sale or service were provided to the City only upon "acceptance" of a "clickwrap" or "clickthrough" agreement, such terms of sale or service shall not be binding upon the City. No oral agreement, "clickwrap" or "clickthrough" agreement or other understanding shall in any way modify a City issued or approved contract or the terms of this Cooperative Contract Purchase Addendum (CCPA).

THEREFORE, the Parties have executed this Addendum as of the date first set forth above.

CITY

THE CITY OF BUCKEYE,
an Arizona Municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR

San Tan Auto Partners, LLC DBA San Tan Ford
an Arizona limited liability company

By: AJ Sanchez

Its: Government Fleet Director

ATTEST:

_____

Lucinda Aja, City Clerk

RECOMMENDED:



_____

William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____

K. Scott McCoy, City Attorney

EXHIBIT A
TO
COOPERATIVE CONTRACT PURCHASE ADDENDUM
CONTRACT NO. 2025039

[State of Arizona Contract]

See following page(s).

Procurement

ARIZONA DEPARTMENT OF TRANSPORTATION
1655 W. Jackson Street, MD 100P
Phoenix, AZ 85007

Contract Amendment Summary

CONTRACTOR: San Tan Auto Partners	**AMENDMENT NO.: Two (2)**
DESCRIPTION: CTR059323 - New Vehicles Purchases	

Pursuant to the Uniform Terms and Conditions, Section 5, Contract Changes, the above referenced contract is amended. Summary of changes is as follows:

1. Amendment Two (2) to mutually extend this contract from March 17, 2024 through March 16, 2025 unless terminated, canceled or extended as otherwise provided in the contract.

2. The executed SPO205 Forced Labor of Ethnic Uyghurs Ban form is hereby included with this amendment.

3. All other terms, conditions and provisions of this contract remain unchanged.

FORCED LABOR OF ETHNIC UYGHURS BAN

Forced Labor of Ethnic Uyghurs Ban

Please note that if any of the following apply to the Contractor, then the Offeror shall select the "Exempt Contractor" option below:

- Contractor is a sole proprietorship;
- Contractor has fewer than ten (10) employees; OR
- Contractor is a non-profit organization.

Pursuant to A.R.S. § 35-394, the State of Arizona prohibits a public entity from entering into or renewing a contract with a company unless the contract includes written certification that the company does not use the forced labor, or any goods or services produced by the forced labor, of ethnic Uyghurs in the People's Republic of China.

Under A.R.S. §35-394:

1. "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate, that engages in for-profit activity and that has ten or more full-time employees.

2. "Public entity" means this State, a political subdivision of this State or an agency, board, commission or department of this State or a political subdivision of this State.

In compliance with A.R.S. §§ 35-394 et seq., all offerors must select one of the following:

☒	The Company submitting this Offer does not use, and agrees not to use during the term of the contract, any of the following: • Forced labor of ethnic Uyghurs in the People's Republic of China; • Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or • Any Contractors, Subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
☐	The Company submitting this Offer **does** participate in use of Forced Uyghurs Labor as described in A.R.S. § 35-394.
☐	**Exempt Contractor.** Indicate which of the following statements applies to this Contractor (may be more than one): ☐ Contractor is a sole proprietorship; ☐ Contractor has fewer than ten (10) employees; and/or ☐ Contractor is a non-profit organization.

San Tan Ford
Company Name

1429 E Motorplex Loop
Address

Gilbert AZ 85142
City State Zip

Signature of Person Authorized to Sign

Joe Sanchez
Printed Name

Government Fleet Director
Title

October 30, 2023
Date

ADOT
Procurement

OFFER AND ACCEPTANCE

OFFER

TO THE STATE OF ARIZONA:

The undersigned hereby offers and agrees to perform in compliance with all terms, conditions, specifications and amendments of this solicitation and any written exceptions in the offer. Signature also acknowledges receipt of all pages indicated in the Table of Contents.

San Tan Auto Partners DBA San Tan Ford	
Offeror (Company) Name	Signature of Person Authorized to Sign Offer
1429 E Motorplex Loop	Joe Sanchez 1/18/2022
Address	Printed Name Date
Gilbert AZ 85297	Government Fleet Account Manager
City State Zip	Title
joesanchez@santanford.com	480-621-3741
Email Address	Phone Number
fleetsales@santanford.com	480-621-3796
Company Email Address	Fax Number

By signature in the Offer section above, the Offeror certifies that the submission of the Offer did not involve collusion or other anticompetitive practices.

ACCEPTANCE OF OFFER (FOR DEPARTMENT USE ONLY)

The Contractor is now bound to perform based upon Contract Number CTR059323 including all terms, conditions, specifications, amendments, etc., and the Contractor's offer as accepted by the state.

The Contractor is hereby cautioned not to commence any billable work or provide any material, service or construction under this contract until contractor receives a purchase order document.

State of Arizona

Effective this 17th day of March 2022

DocuSigned by:

3/10/2022

Procurement Officer 39C61CE38A6E4BB... Awarded Date

Procurement

STATE OF ARIZONA
ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson St., Ste. A
Phoenix, AZ 85007

REQUEST FOR PROPOSAL

SOLICITATION NUMBER: BPM004157

DESCRIPTION: New Vehicle Purchases

QUESTIONS: Inquiries regarding the solicitation are to be submitted online through the State's e-Procurement system, Arizona Procurement Portal (APP) (https://app.az.gov/) using the Discussion Forum tab.

OFFERORS ARE STRONGLY ENCOURAGED TO READ THE ENTIRE SOLICITATION.

Thomas Kornell
Procurement Officer
Phone: 602-712-8520
Email: Tkornell@azdot.gov

This solicitation is issued in accordance with A.R.S. §41-2534 and A.A.C. R2-7-C301 et seq., Competitive Sealed Proposals.

"An Equal Opportunity Agency"

The Arizona Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the Americans with Disabilities Act (ADA), hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin in consideration for an award.

Persons that require a reasonable accommodation based on language or disability should contact ADOT's Procurement Office by phone (602) 712-2089. Requests should be made as early as possible to ensure the State has an opportunity to address the accommodation.

Las personas que requieran asistencia (dentro de lo razonable) ya sea por el idioma o discapacidad deben ponerse en contacto con ADOT (602) 712-2089.

TABLE OF CONTENTS

SECTION	PAGE
Notice	1
Table of Contents	2
Scope of Work	3
Special Terms and Conditions	7
Uniform Terms and Conditions	19
Federal Provisions	29

EXHIBITS

1 - Title VI/Non-Discrimination Assurances Appendix A	73
2 - Title VI/Non-Discrimination Assurances Appendix E	74
3- Usage Report Exhibit 3	75
4- On-site Manufacturer inspection Compliance Certification Exhibit 4	76
5- Pre-Award Audit and Certification Exhibit 5	77
6- Purchaser's Pre-Award Requirements Certification Exhibit 6	78
7- Post-Award Certification and Requirements Exhibit 7	79
8- Purchaser's Post-Award Requirements Certification Exhibit 8	81

1. Statement of Need

1.1. Pursuant to the Arizona Procurement Code, A.R.S. §41-2501 et seq., the State of Arizona Department of Transportation (Department), has a requirement for New Vehicle Purchase.

2. Introduction and Background

2.1 The State of Arizona Department of Transportation (Department) is seeking to contract with a qualified vendor(s) who can provide new vehicles (all fuel types, hybrid, and full electric) including but not limited to: Sedans, Trucks up to 19,500 GVWR, Vans, Sport Utility Vehicles (SUVs), and Crossovers for the State of Arizona and participating Eligible Agencies. These vehicles will be used to support official organizational goals. These vehicles will be used on highways, city/county roads and shall be designed to operate under typical Arizona ambient temperatures.

2.2 Background: The State and its Eligible Agencies currently spend an estimated twenty-one million dollars in the purchase of new vehicles annually.

2.3 The following are the Three Categories covered in this Scope of Work:

- **Category One: Phase One (1) Vehicle Purchases**
- **Category Two: Phase Two (2) Vehicle Purchases**
- **Category Three: FTA Funded Vehicles**

3 General Requirements

3.1 Vehicles shall be new and supplied with all equipment and accessories indicated as standard equipment in the manufacturer's published literature (or website). Optional equipment necessary to meet the minimum requirements shall be included.

3.2 All vehicles ordered through Phase 1 (off the line) shall be Manufacturer's current year models in production throughout the term of this contract and shall be serviced completely by the vendor before delivery and ready in all respects for use. For the initial contract period; vehicles shall be new model year 2022 or greater.

3.3 Vehicles ordered through Phase 2 (on the lot) shall have less than 100 original odometer miles and be new (have never been previously owned) unless pre-approved in writing by the Eligible Agency.

3.4 All vehicles shall meet requirements of applicable Arizona Motor Vehicle laws and all other applicable Federal Motor Vehicle Safety Standards (including the Federal Bridge Formula), whether or not such requirements are specified in detail.

3.5 For Phase Two (2) vehicles, the Contractor shall supply a quote within five (5) calendar days after receiving a request from the Eligible Agency. The quotation shall include but not be limited to the following information: State contract number, vehicle availability and delivery lead-time, Vehicle Identification Number (VIN), dealer stock number, vehicle base bid price, itemized options, applicable tax, delivery cost, total price, and point of contact. For vehicles requiring up-fit/modifications, all applicable cost may be included in quotation or as a separate quotation.

3.6 Delivery location shall be identified on the issuing agency purchase order. Deliveries shall be made within 120 days of receipt of purchase orders, unless factory delays make this impossible. Dealer shall notify the ordering agency of such delays along with a revised delivery estimate from the factory immediately after it becomes known. If the manufacturer has a website available to check order status, this information will be shown in space provided on Offer Response Form.

3.7 All deliveries shall be made Monday through Friday from 8:00 A.M. to 2:00 P.M. The Contractor shall be required to give the using agency a minimum of 24-hour notification prior to delivery with the anticipated time of delivery and number of units to be delivered.

3.8 All vehicles shall be delivered with four (4) entrance tools and a full tank(s) of fuel, less delivery fuel.

3.9 The following documents shall be provided upon delivery of the vehicle(s):

3.9.1 M.S.O. (Manufacturer Statement of Origin) that includes the odometer statement
3.9.2 Warranty Document
3.9.3 Manufacturers unaltered invoice
3.9.4 Delayed warranty / in service start request form (if requested by ordering entity)
3.9.5 Level 1 Inspection if applicable, completed before delivery

3.10 For Phase One (1) the Contractor shall provide the Eligible Agency copies of the manufacturer's vehicle identification numbers (VIN#) to confirm vehicles have been ordered unless impossible due to manufacture delay within ninety (90) calendar days after receipt of a purchase order. If confirmation of manufacturer's VIN #(s) is not received within this timeframe the Eligible Agency has the option to award to the second lowest bidder meeting specifications. This shall be considered a mandatory requirement and the timeframe must be met unless there is a manufacture delay. Failure to provide this document for each vehicle ordered may be cause for determination of default of contract.

4 Specific Requirements

4.1 The Contractors are encouraged to provide a full line of new vehicles (gasoline, hybrid, full electric) including but not limited to the following categories: Sedans, Trucks up to 19,500 GVWR, Vans (cargo, passenger, transit, etc.), Sport Utility Vehicles (SUVs), and Crossovers. Eligible Agencies throughout the State will have varying vehicle needs. Contractors are to provide a full line of manufactured new vehicles and all subsequent variants of each vehicle; including but not be limited to: models and manufacturer options, trim package, etc. to meet each need of an Eligible Agency.

4.2 As new model year vehicles become available, vendor shall submit pricing at either the same rate as the previous model, or submit a request for an increase or decrease based only on the manufacturer's increase or decrease. Documentation must be submitted to the Procurement Officer within 30 days of the effective date of change. New model year vehicles cannot be offered without approval from the Procurement Officer.

4.3 The following fuel types are allowable under this contract are to include but are not limited too.

4.3.1 Flexible Fuel Vehicles (FFV) also called Ethanol or E85
4.3.2 Diesel

4.3.3 Gasoline
4.3.4 Compressed Natural Gas (CNG): CNG systems must be O.E.M. or O.E.M. approved
4.3.5 Hybrid-Electric Vehicles (HEV)
4.3.6 Plug-in Hybrid Electric Vehicles (PHEV)
4.3.7 Electric Vehicles (EV) also called Battery Electric Vehicles (BEV)
4.3.8 Fuel Cell Vehicles (FCV)

4.4 Vehicle Up-fit / Modifications

4.4.1 The Eligible Agency may request the awarded Contractor(s) to up-fit/modify any vehicle for specific organizational needs. For example, the cab and chassis of ½ ton, ¾ ton, and/or up to 19,500 GVW trucks may require a specialized body (i.e.: dump body, landscape body, etc.). Other vehicles may require interior and/or exterior modifications per the individual Eligible Agency.

4.4.2 The Eligible Agency will supply all up-fit/modification requests to the Contractor. The Contractor shall identify any conditions that apply to the up-fit/modification on a quotation to the Eligible Agency for review before any work commences.

4.5 Minimum Vehicle Requirements: All prices shall include the following equipment:

4.5.1 All standard factory equipment

4.5.2 Automatic transmission [maximum towing/payload capacity shall be provided upon request)

4.5.3 Bluetooth capabilities

4.5.4 AM/FM radio

4.5.5 Cruise Control

4.5.6 Power Door Locks/Power Windows
4.5.7 Power Mirrors when available

4.5.8 Four (4) entrance tools (in any combination allowed; keyless entry remotes, integrated or smart keys, standard cut keys) per vehicle.
a. Type of keys to be provided shall be indicated on quote.

4.5.9 Air conditioning
a. Rear air conditioning on all vehicles, when available

4.5.10 Cloth seats

4.5.11 Rear view mirrors including on driver and passenger doors
a. FOR TRUCKS: Rear view mirrors on driver front and passenger front doors, largest available without upgrading vehicle options package.
b. Back up Camera

4.5.12 Spare tire
a. Full size standard steel wheel with matching Original Equipment Manufacturer spare tire identical to standard equipment with the trim level of the delivered vehicle.
b. If full spare is not available due to space or manufacturer standards, an alternative shall be provided and noted on quote provided.

4.5.13 Floor Mats

a. O.E.M. floor mat sets installed in all seating rows where the vehicle comes with carpeted floors.

b. Fixed driver floor mat

4.5.14 Arizona legal tinted glass

4.5.15 Minimum of 2 USB charging Ports

4.6 Specific Requirements for Trucks (when available)

4.6.1 Anti-slip differential for two-wheel drive pickup trucks, ¾ ton, up to 19,500 GVW.

4.6.2 Skid plate package and anti-slip differential for four-wheel drive vehicles

4.6.3 Front tow hooks

5 Contractor's Responsibilities

Contractor shall be responsible for processing the registration, licensing, title and plating of all new vehicles ordered only if requested by the Eligible Agency.

6 Department's Responsibilities

The Eligible Agencies will provide final acceptance and approval of any equipment and services delivered

SPECIAL TERMS AND CONDITIONS

1. CONTRACT TERM

The term of any resultant contract shall commence on the effective day of award and shall continue for a period of twelve months (12) thereafter, unless terminated, cancelled or extended as otherwise provided herein.

2. CONTRACT EXTENSION

By mutual written contract amendment, any resultant contract may be extended for supplemental periods of up to a maximum of forty-eight (48) months.

3. ELIGIBLE AGENCIES

This contract shall be for the use of all State of Arizona departments, agencies and boards. In addition, eligible universities, political subdivisions and nonprofit educational or public health institutions may participate at their discretion. In order to participate in any resultant contract, a university, political subdivision or nonprofit educational or public health institution must have entered into a cooperative purchasing agreement with the State Procurement Office as required by Arizona Revised Statutes §41-2632.

4. NON-EXCLUSIVE CONTRACT

This contract shall be for the sole convenience of the Department. The Department reserves the right to obtain like goods or services from another source when necessary. The Off-Contract Purchase Authorization and subsequent procurement shall be consistent with the Arizona Procurement Code.

5. ORDERING PROCESS

The Department shall issue a purchase order to the Contractor. Each purchase order must cite the contract number. This purchase order shall be the only document required for the Department to order and the Contractor to deliver the material and/or service.

Any attempts to represent any material and/or service not specifically awarded as being under contract is a breach of the contract and a violation of the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the State inclusive of but not limited to contract cancellation, suspension and/or debarment of the Contractor.

6. SHIPPING TERMS

Delivery shall be F.O.B. Destination to the location designated herein. Contractor shall retain title and control of all goods until they are delivered. All risk of transportation and related charges shall be the responsibility of the Contractor. All claims for visible or concealed damage shall be filed by the Contractor. The Department will notify the Contractor promptly of any damaged goods and shall assist the Contractor in arranging for inspection.

7. DELIVERY

Contract prices shown for each vehicle include delivery cost within a sixty (60) mile radius of Phoenix.

For the purpose of this contract, the address used for mapping the radius within Phoenix will be as follows:

Equipment services shop/ADOT
2225 S 22nd Ave, Phoenix, AZ 85009

Delivery costs for each county outside of the Phoenix area shall be indicated on Offer Response form.

This will be an added cost to the contract price.

Deliveries shall be completed In accordance with the requirements of the contract.
Delivery of the product does not constitute acceptance.

8. INSPECTION AND ACCEPTANCE

Each item delivered shall be subject to a complete inspection by the Department within 10 days after delivery. Inspection criteria shall include, but not be limited to, conformity to the specifications, workmanship, quality and materials.

If the delivered product is not accepted and returned for corrective action, an additional fifteen (15) calendar days shall be allowed for inspection of the corrected or replacement product.

The Contractor shall be responsible for the transport of the material to and from the Department for the correction of items or workmanship not in compliance with the specifications.

Product returned for corrective action may delay payment. Invoices will be processed for payment only after the product is accepted.

9. INVOICING and PAYMENT

Contractor shall submit all billing notices or invoices to the Eligible Agency or Co-Op Buyer at the address Indicated on the applicable Order document.

Separate invoices are required for each shipment of product or delivery of service and shall include at a minimum:

- Department Location's Name and Address
- Vendor Name, Remit to Address and Contact Information
- Contract Number
- Purchase Order Number
- Invoice Number and Date
- Date the items were shipped to the Department
- Applicable payment terms
- Contract Line Item Number
- Line Item Description or Item or Service
- Quantity Purchased

- Line Item Unit of Measure
- Price per Unit and Total per Unit
- Catalog or Other Discount (if applicable)
- Net Unit Price and Total per Unit (if applicable)
- Applicable taxes (as a separate invoice line item)
- Applicable Shipping/Freight Charges etc. (as a separate invoice line item) Materials only.
- Total Invoice Amount Due

Invoices not sent to the proper address, or not containing the necessary and required information may delay payment. A Contractor whose payments are delayed due to improper invoicing shall make no claim against the Department or the State for late or finance charges.

The Department will make every effort to process payment for the purchase of product within thirty (30) calendar days after the Department has conducted the necessary reviews, inspections and acceptance as described herein.

The department acceptance date will be the valid date for starting the thirty (30) calendar day payment period.

Payment due dates, including discount periods, will be computed from the date of acceptance or date of correct invoice (whichever is later) to the date the Department's warrant is mailed.

10. ESTIMATED USAGE

The Department anticipates considerable usage under this contract. The Department reserves the right to increase or decrease actual quantities ordered as circumstances may require. No guarantees are made concerning actual purchases under this contract.

11. PRICING

1 Phase 1 and 2 pricing for vehicles shall be a minimum Percentage off MSRP, less the manufacturer's rebates and any additional discounts available for that model/power-train combination.

a. Contractor shall provide a copy of manufacturer's invoice to the ordering agency upon request. The manufacturer's invoice shall be unaltered to include original pricing from the manufacturer.
b. Transportation costs to transfer a vehicle from another dealer for a Phase 2 or purchase from stock may be added to the cost of the vehicle. The justification for this cost is at the discretion of the Eligible Agency.
c. Any reference to Phase 1 pricing shall be in reference to vehicles ordered prior to the factory cut-off date.
d. Any reference to Phase 2 pricing shall be in reference to vehicles purchased from stock or "on the lot".
e. Phase 2 pricing shall receive the same cost considerations as Phase 1 pricing, all discounts and rebates should be passed onto the Eligible Agency.
f. All vehicles are to be billed at prices in effect at the time of order, not the date of shipment.

g. Pricing for vehicles shall include all discounts and deductions, less Federal and State taxes. Pricing shall be firm for life of contract unless amended by way of contract change order.

2 CONTRACTOR'S BEST PRICING: Supplier warrants that, for the term of the Contract, the prices and discounts set out in the Pricing Documents, including any subsequent agreed amendment to it (the "Contract Pricing"), will be equal to or better than the lowest prices and largest discounts, both separately and in combination, at which Contractor sells equivalent items of equipment and materials.

2.1 That price-plus-discount equivalence ("Contractor's Best Pricing") is intended to be irrespective of whether or not those other sales have special purchase terms, conditions, rebates or allowances.

2.2 If Contractor's Best Pricing for equivalent items of equipment and materials is better than the Contract Pricing, then Contractor agrees to adjust the Contract Pricing to match the Contractor's Best Pricing for all sales related to the Contractor made after the date when the Contractor's Best Pricing was first better than the Contract Pricing.

2.3 For clarification of intent, that date is intended to be the date when the difference first occurred, which might have been before the difference was first identified. If it was before, then Supplier agrees to charge at less than the Contract Pricing until the extended difference that would have been realized (i.e., if the Contractor's Best Pricing had been applied when it should have been) has been settled.

3 PRICING-ALL-INCLUSIVE: Pricing is all-inclusive, including any ancillary fees and costs required to accomplish the Scope of Work and all aspects of Contractor's offer as accepted by State. Details of service not explicitly stated in the Scope of Work or in Contractor's Offer, but necessarily a part of, are deemed to be understood by Contractor and included herein. All administrative, reporting, or other requirements, all overhead costs and profit and any other costs toward the accomplishment of the requirements in the Contract are included in the pricing provided.

4 LARGE VOLUME DISCOUNT PRICING: An Eligible Agency may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible Agency for large volume purchases.

5 A price reduction adjustment may be offered at any time during the term of a contract and shall become effective upon notice through a written contract amendment.

12. PRICE INCREASE

The Department will review **fully documented** requests for price increases for any contract which will or has been in effect for twelve (12) months. The request shall be submitted no less than 60 days prior to the contract renewal date. The Contractor shall provide fully documented information which supports the price increase request. Fully documented means that the request shall present detailed information and calculations that make it clear how the claimed increase has an impact on the contract unit prices. All assumptions regarding cost factors that have an impact on the requested increase shall also be

clearly identified and justified. The requested price increase must be based upon a cost increase that was clearly unpredictable at the time of the offer and can be shown to directly affect the price of the item concerned. Any price increase adjustment request prior to the time of contract extension will be a factor in the extension review process. The Department will determine whether the requested price increase or an alternate option, is in the best interest of the State. All pricing should reflect the minimum percentage of MSRP.

13. SAFETY STANDARDS

Items supplied under this contract shall comply with all current applicable safety standards and regulations including the Occupational Safety and Health Standards of the State of Arizona Industrial Commission, the National Electric Code and the National Fire Protection Association Standards.

14. WARRANTY

The Contractor warrants:

1. That all services performed hereunder shall conform to the requirements of this contract and shall be performed by qualified personnel in accordance with the highest professional standards.

2 At a minimum all equipment supplied under these specifications shall be fully warranted by the vehicle manufacturer against mechanical and electrical defects for a minimum period of thirty-six (36) months from the date vehicle is placed in service.

3 This warranty shall cover such items as actual repair labor, parts, and shipping charges to and from the nearest service facility or other designated repair depot.

4 Any defects of design, workmanship or material, shall be fully corrected by the vendor without cost to the state agency or political subdivision.

5 The written warranty shall be included with the delivered vehicles to the Eligible Agency. The warranty terms shall be stated on Attachment 3-A, where indicated. Failure to provide this general information may result in the offer being rejected.

6 Hybrid / Electric Vehicle Warranty: Hybrid-related components including catalytic convertor, electronic control unit, onboard emissions diagnostic device, high voltage battery, transmission, DC/DC convertor for hybrid vehicles shall be covered for 8 years/100,000 miles, battery for electric vehicles shall be 8/years/100,000 miles and bidder shall indicate limitation of warranty due to voltage and amps. The warranty terms shall be stated where indicated on Attachment 3-A. Failure to provide this general information may result in the bid being rejected.

15. CURRENT PRODUCTS

All products supplied under this contract shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in the contract.

16. PRODUCT DISCONTINUANCE

In the event that a product or model is discontinued by the manufacturer, the Department at its sole discretion may allow the Contractor to provide a substitute for the discontinued item. The Contractor shall request authorization to substitute a new product or model and provide the following:

1. A formal announcement from the manufacturer that the product or model has been discontinued.

2. Documentation from the manufacturer that names the replacement product or model.

3. Documentation that provides clear and convincing evidence that the replacement meets or exceeds all specifications required by the original solicitation.

4. Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.

5. Documentation confirming that the price for the replacement is the same as or less than the discontinued product or model.

17. CONTRACT ADMINISTRATION

The Contractor shall contact the assigned Procurement Officer for guidance or direction in matters of contract interpretation or questions regarding the terms, conditions or scope of the contract.

18. NOTICES

All notices, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purposes of this provisions collectively called "Notices"), shall be in writing and shall be sent by certified United States mail, return receipt requested, or by any other method that provides evidence of receipt, addressed to the party or parties to receive such notice as follows:

A. If intended for the State, to:

Arizona Department of Transportation, Procurement Group
1739 W. Jackson Street, MD 100P
Phoenix, Arizona 85007-3276

B. If intended for the Contractor, to the address as identified in the Contractor's electronic vendor profile. Or to such other address as either party may from time to time furnish in writing to the other by notice hereunder. Any notice so mailed shall be deemed to have been given as of the date such notice is received as shown on the return receipt. Furthermore, such notice may be given by delivering personally such notice, if intended for the State, to the Arizona Department of Transportation, Procurement Officer and, if intended for the Contractor, to the person named on the Offer & Contract Award of this contract, or to such other person as either party may from time to time furnish in writing to the other by notice hereunder. Any notice so delivered shall be deemed to have been given as of the date such notice is personally delivered to the other party.

19. CANCELLATION FOR POSSESSION OF WEAPONS ON ADOT PROPERTY

This contract may be cancelled if Contractor or any subcontractors or others in the employ or under the supervision of the Contractor or subcontractors is found to be in possession of weapons.

Possession of weapons (firearms, explosive device, knife or blade of more than three inches, or any other instrument designed for lethal or disabling use) is prohibited on ADOT property.

Further, if the Contractor or any subcontractors or others in the employ or under the supervision of the Contractors or subcontractors are asked by an ADOT official to leave the ADOT property, they are advised that failure to comply with such a request shall result in cancellation of the contract and anyone who refuses, whether armed or not, is subject to prosecution under A.R.S. § 13-1502, "Criminal trespass in the third degree; classification."

20. INDEMNIFICATION CLAUSE

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona. This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

21. INSURANCE REQUIREMENTS

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

21.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way

warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

21.3 Minimum Scope and Limits of Insurance Contractor shall provide coverage with limits of liability not less than those stated below.

21.3.1 Commercial General Liability (CGL) – Occurrence Form

The Contractor shall furnish Certificate(s) of Insurance inclusive of the following requirements to the Department. Certificate(s) shall be received within 10 calendar days of notification of contract award by the Procurement Officer.

Policy shall include bodily injury, property damage, and broad form

contractual liability coverage.

- General Aggregate $2,000,000
- Products – Completed Operations Aggregate $1,000,000
- Personal and Advertising Injury $1,000,000
- Damage to Rented Premises $50,000
- Each Occurrence $1,000,000

a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

21.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) $1,000,000

a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving

automobiles owned, hired and/or non-owned by the Contractor.

b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

21.3.3 Workers' Compensation and Employers' Liability

• Workers' Compensation	Statutory
• Employers' Liability	
o Each Accident	$1,000,000
o Disease – Each Employee	$1,000,000
o Disease – Policy Limit	$1,000,000

a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

21.4 Additional Insurance Requirements The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

21.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

21.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

21.5 Notice of Cancellation Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

21.6 Acceptability of Insurers Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of

not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

21.7 Verification of Coverage Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

21.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

21.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

21.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

21.8 Subcontractors Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

21.9 Approval and Modifications the Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

21.10 Exceptions In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

22. USAGE REPORT

The Contractor shall furnish Two (2) Usage reports, the first to the Department on a quarterly basis showing purchasing activity under this contract. This usage report shall be provided in a form substantially equivalent to Exhibit 03. Usage reports shall be submitted to the Procurement Officer no later than 30 days after the end of each quarter.

Usage report quarters shall be defined as follows:

- January through March – Report due April 30
- April through June – Report due July 30
- July through September – Report due October 30
- October through December – Report due January 30

Contractor shall submit the second to the State documenting all Contract sales to both Eligible Agencies and Co-Op Buyers, itemized separately. A *Quarterly Usage Report* shall still be submitted; even if there have been no sales to either Eligible Agencies and/or Co-Op Buyers. Contractor shall further itemize divisions, groups or areas within a given Eligible Agency if they place Orders independently of each other. Failure to submit the report is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Contractor shall submit the report using the forms and following the instructions on the State Procurement Office website:

https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee

23. CONTRACT ORDER OF PRECEDENCE

In the event of a conflict in the provisions of the Contract, as accepted by the Department and as they may be amended, the following shall prevail in the order set forth below:

- Federal Provisions
- Special Terms and Conditions
- Uniform Terms and Conditions
- Statement or Scope of Work
- Specifications
- Attachments
- Exhibits
- Special Instructions to Offerors
- Uniform Instructions to Offerors
- Other documents referenced or included in the Solicitation

24. LICENSES, PERMITS, CERTIFICATIONS

Contractor, at their expense, shall maintain in current status without any violations, complaints, or suspensions during the term of this contract all Federal, State and Local licenses, permits and certifications required for the operation of a business conducted by the Contractor.

25. CO-OP USAGE

Contractor shall verify if an ordering entity is a bona fide Co-Op Buyer before selling Materials to or providing Services for them under the Contract. The current list of Co-Op Buyers is available on the State Procurement Office website:

https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee

Contractor shall sell to Co-Op Buyers at the same price, and with the same lead times and other terms and conditions under which it sells to Eligible Agencies. With the sole exception of any legitimate additional costs for extraordinary shipping, or delivery requirements, if the Co-Op Buyer is having Materials delivered or installed or Services performed at locations not contemplated in the contracted pricing (e.g. delivery to a location outside Arizona).

Contractor shall acknowledge each Order from Co-Op Buyers in conformance with each buyer's instructions given at the time of ordering or in any supplemental participating agreement Contractor might have with them. Orders from Co-Op Buyers create no obligation on State's part, since they are entirely between the Co-Op Buyer and Contractor. That notwithstanding, Contractor's obligation under the Contract is to service Co-Op Buyers commercially as though they were with an Eligible Agency, and Contractor's refusal to do so would be a material breach of the Contract.

26. POST AWARD MEETING

At the discretion of the Department, the Contractor, at their expense, shall attend and participate in post award meetings as scheduled by the Procurement Officer.

1. Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

1.1. *"Attachment"* means any item the Solicitation requires the Offeror to submit as part of the Offer.

1.2. *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.

1.3. "*Contract Amendment*" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.

1.4. *"Contractor"* means any person who has a Contract with the State.

1.5. *"Days"* means calendar days unless otherwise specified.

1.6. *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.

1.7. *"Gratuity"* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

1.8. "*Materials"* means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.

1.9. *"Procurement Officer"* means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.

1.10. *"Services"* means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.

1.11. *"Subcontract"* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

1.12. *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.

1.13. *"State Fiscal Year"* means the period beginning with July 1 and ending June 30.

2. Contract Interpretation

2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona

Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.

2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

- Federal Provisions
- Special Terms and Conditions
- Uniform Terms and Conditions
- Statement or Scope of Work
- Specifications
- Attachments
- Exhibits
- Special Instructions to Offerors
- Uniform Instructions to Offerors
- Other documents referenced or included in the Solicitation

2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

2.6. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract Administration and Operation

3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

3.7. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

3.8. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the

State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

3.9. Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.

3.10 E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

3.11 Offshore Performance of Work Prohibited.
Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4. Costs and Payments

4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

4.3. Applicable Taxes.

4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if

applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.

4.4. Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

4.5. Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

4.5.1. Accept a decrease in price offered by the contractor;

4.5.2. Cancel the Contract; or

4.5.3. Cancel the contract and re-solicit the requirements.

5. Contract Changes

5.1. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. **Risk and Liability**

6.1. Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

6.2. Indemnification

6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."

6.3. Indemnification - Patent and Copyright**.** The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4. Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term *"force majeure"* means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall not include the following occurrences:

6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

7.1. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1. Of a quality to pass without objection in the trade under the Contract description;

7.2.2. Fit for the intended purposes for which the materials are used;

7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4. Adequately contained, packaged and marked as the Contract may require; and

7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.

7.3. Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4. Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5. Compliance With Applicable Laws. The materials and services supplied under this

Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

7.6. Survival of Rights and Obligations after Contract Expiration or Termination.

7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

8.1. Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. Stop Work Order.

8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the

materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.5. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. Contract Termination

9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

9.2. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

9.3. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

9.4. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The

Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5. Termination for Default.

9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6. Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. Contract Claims

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11. Arbitration

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

12. Comments Welcome

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

1. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The following provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220 available at: https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

The Federal Terms and Conditions under this Contract shall be incorporated in any sub-contractor, or lower-tier agreement for any federally-funded task assignment / project awarded under this Contract.

2. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

The Department and Contractor acknowledge and agree that, notwithstanding any concurrence b the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Department, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by Federal Funding Agency. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

3. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project.

Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) (5323(I)) on the Contractor, to the extent the Federal Government deems appropriate.

Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

4. ACCESS TO RECORDS AND REPORTS

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor shall - provide the Purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also , pursuant to 49 C. F. R. 633.15, provide authorized FTA representative including any PMO Contractor access to Contractor's records and construction sites pertaining to a capital project, defined at 49
U.S.C. 5302(a)1, which is receiving assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.15, Contractor shall provide the Purchaser, authorized FTA representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which receives FTA assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at
$250,000.00.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non- profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor shall provide the Purchaser, FTA, the US Comptroller General or their authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where a Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor shall retain, and shall require its subcontractors at all tiers, all books, records, accounts and reports required under this contract for a period of not less than five years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

5. TERMS OF THE MASTER AGREEMENT AND COMPLIANCE

Contractor shall at all times comply with all applicable Federal Funding Agency laws, regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement, available at https://www.transit.dot.gov/funding/grantee-resources/sample-fta- agreements/fta-grant-agreements, between the Department and FTA, as they may be amended or promulgated from time to time during the term of this contract. This Master Agreement does not have an Expiration Date. This Master Agreement continues to apply to the Recipient and its Underlying Agreement, until modified or superseded by a more recently enacted or issued applicable federal law, regulation, requirement, or guidance, or amendment to this Master Agreement or the Underlying Agreement. To assure compliance the Recipient must take measures to assure that other participants in its Underlying Agreements (*e.g.*, Third Party Participants) comply. Contractor's failure to so comply shall constitute a material breach of this contract.

All contractual provisions required by the U.S. Department of Transportation are hereby incorporated by reference. In the event of additional funding provided by FHWA, the applicable requirements of the Stewardship Agreement, available at https://www.fhwa.dot.gov/federalaid/stewardship, between the Department and FHWA are incorporated by reference.

6. CIVIL RIGHTS REQUIREMENTS

The AGENCY is an Equal Opportunity Employer. As such, the AGENCY agrees to comply

with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the AGENCY agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

Equal Employment Opportunity

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex(including sexual orientation and gender identity), age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements Federal Funding Agency may issue.

2. Race, Color, religion, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements Federal Funding Agency may issue.

3. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements Federal Funding Agency may issue.

4. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42
U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements Federal Funding Agency may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided, modified only if necessary to identify the affected parties.

7. TERMINATION

Termination of the contract shall be in accordance with the Uniform Terms and Conditions, Section 9., paragraph 9.1 through 9.6.

8. DEBARMENT OR SUSPENSION

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940and 29.945. The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

a) Debarred from participation in any federally assisted Award;

b) Suspended from participation in any federally assisted Award;

c) Proposed for debarment from participation in any federally assisted Award;

d) Declared ineligible to participate in any federally assisted Award;

e) Voluntarily excluded from participation in any federally assisted Award; or

f) Disqualified from participation in ay federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Department. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Department, the

Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8.1 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

The Contractor agrees to the following:

(1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following:

(a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note,

(b) It will review the U.S. GSA "System for Award Management," https://www.sam.gov, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and

(c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:

(1) Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at https://www.sam.gov, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and

If the Department suspends, debars, or takes any similar action against a Third Party Participant or individual, the Department will provide immediate written notice to the:

(a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project,
(b) FTA Project Manager if the Project is

administered by an FTA Headquarters Office, or

(c) FTA Chief Counsel.

9. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER

POLLUTION CONTROL ACT Clean Water

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding $150,000 financed in whole or in part with FTA assistance.

Clean Air

1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

2) Contractor shall include these requirements in each subcontract exceeding $150,000 financed in whole or in part with FTA assistance.

10. BUY AMERICA

In any task assignment / project for construction, acquisition of goods, or rolling stock valued at more than $150,000, the contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than $150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 65% domestic content for FY2019 and a minimum 70% domestic content for FY2020 and beyond. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed a certification shall be rejected as

nonresponsive. This requirement does not apply to lower tier subcontractors.

11. BREACHES AND DISPUTE RESOLUTION

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the Department. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the Department. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Department shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved. Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Department and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Department or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

12. LOBBYING

The Contractor agrees to comply with the provisions of Title 31, U.S. C 1352 as

amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. 1601, et seq.] and (Public Law 101.121) as codified in Title 48, Federal Acquisition Regulations Subpart 3.8 and Subpart 52.203-11. The legislation prohibits Federal funds from being expended by a recipient or any lower tier sub- recipients of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence a Federal agency or Congress in connection with the award of any Federal contract, the making of any Federal grant or loan, or entering into any cooperative agreement, including the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement. All disclosure statements are to be furnished to the Department.

Contractors who apply or propose/bid for an award of $100,000 or more in value shall file the attached Lobbying Certification {01Lobbying Certification document} required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

13. FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government- financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not
available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

14. ENERGY CONSERVATION

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

15. CONFLICTS OF INTEREST / EMPLOYMENT OF FEDERAL PERSONNEL

Contractors will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the Department or the Federal funding agency shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: The employee, officer or agent, any member of his immediate family, His or her partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. Department officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

16. COPYRIGHT AND PATENT

To the extent permitted by A.R.S. § 41-621 and § 35-154, the Contractor shall indemnify and hold harmless ADOT against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of this contract performance or use by ADOT of materials furnished or work performed under this contract. ADOT shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph.

Copyrights pursuant to 23 CFR 420.121 (b): The Department, as a State DOT may copyright any books, publications, or other copyrightable materials developed in the course of the project, and does herein exercise that right. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

Patents pursuant to 23 CFR 420.121 (i): The Department, as a State DOT is subject to the provisions of 37 CFR part 401 governing patents and inventions and must include or cite the standard patent rights clause at 37 CFR 401.14, except for §401.14(g), in all subgrants or contracts. In addition, State DOTs must include the following clause, suitably modified to identify the parties, in all subgrants or contracts, regardless of tier, for experimental, developmental or research work: “The subgrantee or contractor will retain all rights provided for the State in this clause, and the State will not, as part of the consideration for awarding the subgrant or contract, obtain rights in the subgrantee's or contractor's subject inventions.”

Standard Patent Rights required pursuant to 37 CFR 401.14:

(a) Definitions

(1) Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C.

2321 et seq.).

(2) Subject invention means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(3) Practical Application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) Small Business Firm means a small business concern as defined at section 2 of Pub. L. 85-536 (15
U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) Nonprofit Organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(7) The term statutory period means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112-29.

(8) The term contractor means any person, small business firm or nonprofit organization, or, as set forth in section 1, paragraph (b)(4) of Executive Order 12591, as amended, any business firm regardless of size, which is a party to a funding agreement.

(b) Allocation of Principal Rights

The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention

throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Application by Contractor

(1) The contractor will disclose each subject invention to the Federal Agency within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the contractor.

(2) The contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where a patent, a printed publication, public use, sale, or other availability to the public has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. If the contractor files a provisional application as its initial patent application, it shall file a non-provisional application within 10 months of the filing of the provisional application. The contractor will file patent applications in additional countries or international patent offices within either ten months of the first filed patent application or six months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) For any subject invention with Federal agency and contractor co-inventors, where the Federal agency employing such co-inventor determines that it would be in the interest of the government, pursuant to 35 U.S.C. 207(a)(3), to file an initial patent application on the subject invention, the Federal agency employing such co-inventor, at its discretion and in consultation with the contractor, may file such application at its own expense, provided that the contractor retains the ability to elect title pursuant to 35 U.S.C. 202(a).

(5) Requests for extension of the time for disclosure, election, and filing under

paragraphs (1), (2), and (3) of this clause may, at the discretion of the Federal agency, be granted. When a contractor has requested an extension for filing a non-provisional application after filing a provisional application, a one-year extension will be granted unless the Federal agency notifies the contractor within 60 days of receiving the request.

(d) Conditions When the Government May Obtain Title

The contractor will convey to the Federal agency, upon written request, title to any subject invention—

(1) If the contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title.

(2) In those countries in which the contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the contractor shall continue to retain title in that country.

(3) In any country in which the contractor decides not to continue the prosecution of any non- provisional patent application for, to pay a maintenance, annuity or renewal fee on, or to defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to Contractor and Protection of the Contractor Right to File

(1) The contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the contractor fails to disclose the invention within the times specified in (c), above. The contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the contractor is a party and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency except when transferred to the sucessor of that party of the contractor's business to which the invention pertains.

(2) The contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the contractor, its licensees, or the domestic

subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the contractor a written notice of its intention to revoke or modify the license, and the contractor will be allowed thirty days (or such other time as may be authorized by the funding Federal agency for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) Contractor Action to Protect the Government's Interest

(1) The contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the contractor each subject invention made under contract in order that the contractor can comply with the disclosure provisions of paragraph (c) of this clause, to assign to the contractor the entire right, title and interest in and to each subject invention made under contract, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) For each subject invention, the contractor will, no less than 60 days prior to the expiration of the statutory deadline, notify the Federal agency of any decision: Not to continue the prosecution of a non- provisional patent application; not to pay a maintenance, annuity or renewal fee; not to defend in a reexamination or opposition proceeding on a patent, in any country; to request, be a party to, or take action in a trial proceeding before the Patent Trial and Appeals Board of the U.S. Patent and Trademark Office, including but not limited to post-grant review, review of a business method patent, inter partes review, and derivation proceeding; or to request, be a party to, or take action in a non-trial submission of art or information at the U.S. Patent and Trademark Office, including but not limited to a pre-issuance submission, a

post-issuance submission, and supplemental examination.

(4) The contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention."

(g) Subcontracts

(1) The contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a subcontractor.. The subcontractor will retain all rights provided for the contractor in this clause, and the contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by (cite section of agency implementing regulations or FAR).

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on Utilization of Subject Inventions

The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the agency may reasonably specify. The contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the government without permission of the contractor.

(i) Preference for United States Industry

Notwithstanding any other provision of this clause, the contractor agrees that neither

it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights

The contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that:

(1) Such action is necessary because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special Provisions for Contracts with Nonprofit Organizations

If the contractor is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the contractor;

(2) The contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the contractor agrees that the Federal agency may review the contractor's licensing program and decisions regarding small business applicants, and the contractor will negotiate changes to its licensing policies, procedures, or practices with the Federal agency when the Federal agency's review discloses that the contractor could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4). In accordance with 37 CFR 401.7, the Federal agency or the contractor may request that the Secretary review the contractor's licensing program and decisions regarding small business applicants.

17. RECOVERED MATERIALS

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

18. SAFE OPERATION OF MOTOR VEHICLES

a. Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

(1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles, and

(2) Including a "Seat Belt Use" provision in each third party agreement related to the Award.

b. Distracted Driving, Including Text Messaging While Driving. The Recipient agrees to comply with:

(1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225),

(2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, and

(3) The following U.S. DOT Special Provision pertaining to Distracted Driving:

(a) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award,

(b) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and

(c) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34.b(3)(a) – (b) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

19. CERTIFICATION AND ASSURANCES

The FTA Certifications and Assurances are incorporated herein by reference. Upon award or contract renewal, the Contractor must agree to comply with the most current FTA Certifications and Assurances by signing and submitting the signature page provided by the Department. In the event FTA issues new Certifications and Assurances, the Department reserves the right to require submission of a new signature page agreeing to comply; to be added to the terms and conditions by Amendment. All such requests are a condition of continued award.

20. DISADVANTAGED BUSINESS ENTERPRISES

1.0 Policy:

The Arizona Department of Transportation (hereinafter the Department) has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. The Department has received Federal financial assistance from the U.S. Department of Transportation and as a condition of receiving this assistance, the Department has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Department to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also the policy of the Department:

1. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
3. To ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are counted as DBEs;
5. To help remove barriers to the participation of DBEs in USDOT-assisted contracts;
6. To assist in the development of firms that can compete successfully in the market place outside the DBE program; and
7. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities.

It is also the policy of the Department to facilitate and encourage participation of Small Business Concerns (SBCs), as defined herein, in USDOT-assisted contracts. The Department encourages contractors to take reasonable steps to eliminate obstacles to SBCs' participation and to utilize SBCs in performing contracts.

2.0 Assurances of Non-Discrimination:

The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, sex or national origin in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Department deems appropriate, which may include, but are not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;

3. Liquidated damages;
4. Suspension or Debarment per Uniform Terms and Conditions Paragraph 9.3 of the contractor from future bidding; and/or
5. Cancellation, termination, or suspension of the Contract, in whole or in part.

The contractor, subrecipient, or subcontractor shall ensure that all subcontract agreements contain this non-discrimination assurance.

3.0 Definitions:

(A) Commercially Useful Function (CUF): Commercially Useful Function is defined fully in 49 CFR 26.55, which definition is incorporated herein by reference.

(B) Disadvantaged Business Enterprise (DBE): a for-profit small business concern which meets both of the following requirements:

(1) Is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more such individuals; and,

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(C) NAICS Code: The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

(D) Non-DBE: any firm that is not a DBE.

(E) Race-Conscious (RC): a measure or program focused specifically on assisting only DBEs, including women-owned DBEs.

(F) Race-Neutral (RN): a measure or program used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

(G) Small Business Concern (SBC): a business that meets all of the following conditions:

(1) Operates as a for-profit business registered to do business in Arizona;

(2) Operates a place of business primarily within the U.S., or makes a significant contribution to the U.S. economy through payment of taxes

or use of American products, materials, or labor;

(3) Is independently owned and operated;

(4) Is not dominant in its field on a national basis; and

(5) Does not have annual gross receipts that exceed the Small Business Administration size standards average annual income criteria for its primary North American Industry Classification System (NAICS) code.

(H) Socially and Economically Disadvantaged Individuals: any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

(1) Any individual who is found to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are enrolled members of federally or State recognized Indian tribe, Alaskan Natives or Native Hawaiians;

(iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Republic of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) "Women;"

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business

Administration (SBA), at such time as the SBA designation becomes effective.

4.0 Working with DBEs:

The Department works with DBEs and assists them in their efforts to participate in the highway construction. All proposers should contact the Department's Business Engagement and Compliance Office (BECO) by phone, through email, or at the address shown below, for assistance in their efforts to use DBEs in the highway construction industry. BECO contact information is as follows:

Arizona Department of Transportation Business Engagement and Compliance Office 1801 W. Jefferson St., Ste. 101, Mail Drop 154A
Phoenix, AZ 85007
Phone (602) 712-7761
FAX (602) 712-8429
Email: contractorcompliance@azdot.gov Website: www.azdot.gov/bec

4.01 Mentor-Protégé Program:

The Department has established a Mentor- Protégé program as an initiative to encourage and develop disadvantaged businesses in the highway construction industry. The program encourages prime contractors to provide certain types of assistance to certified DBE subcontractors. ADOT encourages contractors and certified DBE subcontractors to engage in a Mentor-Protégé agreement under certain conditions. Such an agreement must be mutually beneficial to both parties and to ADOT in fulfilling requirements of 49 CFR Part 23. For guidance regarding this program refer to the Mentor-Protégé Program Guidelines available on the BECO website.

The Mentor-Protégé program is intended to increase legitimate DBE activities. The program does not diminish the DBE rules or regulations, and participants may not circumvent these rules.

5.0 Applicability:

The Department has established an overall annual goal for DBE participation on Federal aid contracts. The Department intends for the goal to be met with a combination of race conscious efforts and race neutral efforts. Race conscious participation occurs when the contractor uses a percentage of DBEs, as defined herein, to meet the contract specified goal. Race neutral efforts are those that are, or can be, used to assist all small businesses or increase opportunities for all small businesses. The regulation, 49 CFR 26, defines race neutral as when a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract

on a prime contract that does not carry a DBE contract goal.

Prime contractors are encouraged to obtain DBE participation even if a DBE goal was not established on a contract.

The DBE provisions are applicable to all contractors including DBE contractors.

6.0 Certification and Registration:

6.1 DBE Certification:

Certification as a DBE shall be predicated on:

(1) The completion and execution of an application for certification as a "Disadvantaged Business Enterprise".

(2) The submission of documents pertaining to the firm(s) as stated in the application(s), including but not limited to a statement of social disadvantage and a personal financial statement.

(3) The submission of any additional information which the Department or the applicable Arizona Unified Certification (UCP) agency may require to determine the firm's eligibility to participate in the DBE program.

(4) The information obtained during the on-site visits to the offices of the firm and to active job-sites.

Applications for certification may be filed online with the Department or the applicable UCP agency at any time through the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) website at http://www.azutracs.com.

DBE firms and firms seeking DBE certification shall cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for denial or removal of certification.

ADOT is a member of the AZ Unified Certification Program (AZUCP). Only DBE firms that are certified by the AZUCP are eligible for credit on ADOT projects. A list of DBE firms certified by AZUCP is available on the internet at http://www.azutracs.com/. The list will indicate contact information and specialty for each DBE firm, and may be sorted in a variety of ways. However, ADOT does not guarantee the accuracy and/or completeness of this information, nor does ADOT represent that any licenses or registrations are appropriate for the work to be done.

The Department's certification of a DBE is not a representation of qualifications and/or abilities nor does it mean that a DBE firm is guaranteed or entitled to receive or be awarded a contract. Being certified simply means that a firm has met the criteria for

DBE certification as outlined in 49 CFR Part 26. The contractor bears all risks of ensuring that DBE firms selected by the contractor are able to perform the work.

6.2 SBC Registration:

To comply with 49 CFR Part 26.39, ADOT's DBE Program incorporates contracting requirements to facilitate participation by Small Business Concerns (SBCs) in federally assisted contracts. SBCs are for- profit businesses authorized to do businesses in Arizona that meet the Small Business Administration (SBA) size standards for average annual revenue criteria for its primary North American Industry Classification System (NAICS) code.

While the SBC component of the DBE program does not require utilization of goals on projects, ADOT strongly encourages contractors to utilize small businesses that are registered in AZ UTRACS on their contracts, in addition to DBEs meeting the certification requirement. The contractor may use the AZ UTRACS website to search for certified DBEs and registered SBCs that can be used on the contract. However, SBCs that are not DBEs will not be counted toward DBE participation.

SBCs can register online at the AZ UTRACS website.

The Department's registration of SBCs is not a representation of qualifications and/or abilities nor does it mean that an SBC firm is guaranteed or entitled to receive or be awarded a contract. Being SBC registered simply means that a firm has met the criteria for SBC registration as outlined in 49 CFR Part
26. The contractor bears all risks of ensuring that SBC firms selected by the contractor are able to perform the work.

7.0 DBE Financial Institutions:

The Department thoroughly investigates the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in its service area and makes reasonable efforts to use these institutions. The Department encourages prime contractors to use such institutions on USDOT assisted contracts. However, use of DBE financial institutions will not be counted toward DBE participation.

The Department encourages prime contractors to research the Federal Reserve Board website at www.federalreserve.gov to identify minority-owned banks in Arizona derived from the Consolidated Reports of Condition and Income filed quarterly by banks (FFIEC 031 and 041) and from other information on the Board's National Information Center database.

8.0 Time is of the Essence:

TIME IS OF THE ESSENCE IN RESPECT TO THE DBE PROVISIONS.

9.0 Computation of Time:

In computing any period of time described in this DBE special provision, such as calendar days, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal or State holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal or State holiday. In circumstances where the Department's offices are closed for all or part of the last day, the period extends to the next day on which the Department's offices are open.

10.0 Contractor and Subcontractor Requirements:

10.1 General:

Each contractor shall establish a program that will ensure nondiscrimination in the award and administration of contracts and subcontracts.

Agreements between the bidder and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders are prohibited.

10.2 DBE Liaison:

The contractor shall designate a DBE Liaison responsible for the administration of the contractor's DBE program. The name of the designated DBE Liaison shall be included in the DBE Intended Participation Affidavit Summary.

11.0 DBE Goals

The Department has not established contract goals for DBE participation in this contract.

Contractors are still encouraged to employ reasonable means to obtain DBE participation. Contractors must retain records in accordance with these DBE specifications. The contractor is notified that this record keeping is important to the Department so that it can track DBE participation where only race neutral efforts are employed.

11.1 Race Neutral Contract (With No DBE Goal)

The Department has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. ADOT has received federal financial assistance from the USDOT and as a condition of receiving this assistance, ADOT has signed an assurance that it shall comply with 49 CFR Part 26.

It is ADOT's policy to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in federally-funded contracts.

NO CONTRACT DBE GOAL HAS BEEN ESTABLISHED FOR DBE PARTICIPATION ON THIS CONTRACT.

Contractors are still encouraged to employ reasonable means to obtain DBE participation. Contractors must retain records in accordance with these DBE specifications. The consultant is notified that this record keeping is important to the Department so that it can track DBE participation where only race neutral efforts are employed.

12.0 Bidders/Proposers List and AZ UTRACS Registration Requirement:

Under Title 49 CFR of the Code of Federal Regulations, Part 26.11, DOTs are required to collect certain information from all contractors and subcontractors who seek to work on federally-assisted contracts in order to set overall and contract DBE goals. ADOT collects this information when firms register their companies on the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) web portal at http://www.azutracs.com/ a centralized database for companies that seek to do business with ADOT. This information will be maintained as confidential to the extent allowed by federal and state law.

Prime contractors and all subcontractors, including DBEs listed in the offer must be registered in AZUTRACS. Proposers may verify that their firm and each subcontractor is registered using the AZUTRACS website.

Proposers may obtain additional information at the AZ UTRACS website or by contacting BECO.

All proposers shall create a Bidders/Proposers list in the AZ UTRACS by selecting all firms, service providers, and vendors that expressed interest or submitted proposals or quotes for this contract. The Bidders/Proposers List form must be complete and must include the names for all subcontractors, service providers, and vendors that submitted proposals or quotes on this project regardless of the proposer's intentions to use the those firms on the project.

All proposers must complete and submit the Bidders/Proposers List online at AZ UTRACS prior to Offer submittal. A confirmation email will be generated by the system. This email confirmation shall be submitted with the Offer.

13.0 Payment Reporting:

The contractor shall report on a monthly basis indicating the amounts paid to all subcontractors, of all tiers, working on the project. Reporting shall be in accordance with below.

Subcontracts:

a. Sub-Contract Terms:

1. The Contractor agrees to execute a written Contract with all Subcontractors for work to be completed under this Contract. The executed Contract shall include Subcontractor's Scope of Work and all the Uniform Terms and Conditions set forth in this Contract.

2. The Contractor shall provide electronic copies of signed subcontract agreements with all Subcontractors to ADOT Business Engagement and Compliance Office (BECO) by uploading them to the BECO's online DBE Contract & Labor Compliance Management System (**DBE System**) at https://adot.dbesystem.com. Subcontract agreements shall include all required assurances and required clauses as outlined in this Contract. Each agreement and required attachment shall be dated and signed by the Subcontractor in order for the subcontract to be considered valid.

3. The Contractor may be in breach of this Contract if the Contractor materially modifies the federal regulations and State statutes in its subcontract agreements terms and conditions with its Subcontractors. Deviations from the terms of this Contract may result in termination of the Contract, or any other such remedy as deemed appropriate by the Department.

b. Sub-Contract Payments

1. Retention: If the prime contract does not provide for retention, the contractor and each subcontractor of any tier shall not withhold retention on any subcontract. If the prime contract provides for retention, the prime contractor and each subcontractor of any tier shall not retain a higher percentage than the Department may retain under the prime contract. Retainage shall be paid to the subcontractor within 7 days of satisfactory completion of the work performed by the subcontractor.

2. No Set-offs Arising from Other Contracts: If a subcontractor is performing work on multiple contracts for the same contractor or subcontractor of any tier, the contractor or subcontractor of any tier shall not withhold or reduce payment from its subcontractors on the contract because of disputes or claims on another contract.

3. Partial Payment: The contractor and each subcontractor of any tier shall make prompt partial payments to its subcontractors within seven days of receipt of payment from the Department. Notwithstanding any provision of Arizona Revised Statutes Section 28-411, the parties may not agree otherwise.

4. Final Payment: The contractor and each subcontractor of any tier shall make prompt final payment to each of its subcontractors. The contractor and each subcontractor of any tier shall pay all monies, including retention, due to its subcontractor within seven days of receipt of payment. Notwithstanding any provision of Arizona Revised Statutes Section 28-411, the parties may not agree otherwise.

5. Payment Reporting: For the purposes of this subsection "Reportable Contracts" means any subcontract, of any tier, DBE or non-DBE, by which work shall be performed on behalf of the contractor and any contract of any

tier with a DBE material or service supplier.

The requirements of this subsection apply to all Reportable Contracts.

Payment Reporting for all Reportable Contracts shall be done through the Department's web- based DBE System. The DBE System can be accessed from the Department's BECO website. No later than fifteen calendar days after the Notice to Proceed is issued, the contractor shall log into the Department's web based DBE System and enter or verify the name, contact information, and subcontract amounts for Reportable Contracts on the project. As Reportable Contracts are approved over the course of the contract, the contractor shall enter them in the system. Reportable contracts shall be entered into the system no later than five calendar days after approval by the Department.

The contractor shall report on a monthly basis indicating the amounts actually paid and the dates of each payment under any Reportable Contract on the project. In addition, the contractor shall require that all participants in any Reportable Contract electronically verify receipt of payment on the contract by the last day of the month and the contractor shall actively monitor the Department's DBE System to ensure that the verifications are input. The contractor shall proactively work to resolve any payment discrepancies in the DBE System between payment amounts it reports and payment confirmation amounts reported by others.

The contractor shall ensure that all Reportable Contract activity is reported to the Department. This includes all lower-tier Reportable Contracts, regardless of whether a DBE is involved or not.

The contractor shall maintain records for each payment explaining the amount requested by the subcontractor, and the amount actually paid pursuant to the request, which may include but are not limited to, estimates, invoices, pay requests, copies of checks or wire transfers, and lien waivers in support of the monthly payments in the DBE System.

The contractor shall provide information for payments made on all Reportable Contracts during the previous month by the 15th day of the current month. In the event that no payments were made during a given month, the contractor shall identify that by entering a dollar value of zero. If the contractor does not pay the full amount of any invoice from a subcontractor, the contractor shall note that and provide the reasons in the comment section of the Monthly Payment Audit of the DBE System.

For each Reportable Contract on which the contractor fails to submit timely payment information the Department will retain $1,000.00 as liquidated damages, from the monies due to the contractor. Liquidated damages will be deducted each month for each Reportable Contract on which the contractor fails to submit payment information until the contractor provides the required information as described herein. After 90 consecutive days of non- reporting, the liquidated damages will increase to $2,000.00 for each subsequent month, for each Reportable Contract on which the contractor fails to report until the information is provided. These liquidated damages

shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

Payment reporting requirements apply to all contracts, federal and non-federal funded.

The contractor shall ensure that a copy of this Subsection is included in every Reportable Contract of every tier.

(a) Sanctions for Inadequate Reporting:

For each Reportable Contract on which the contractor fails to submit timely and complete payment information the Department will retain $1,000.00 as liquidated damages, from the monies due to the contractor. Liquidated damages will be deducted each month for each Reportable Contract on which the contractor fails to submit payment information until the contractor provides the required information as described herein. After 90 consecutive days of non-reporting, the liquidated damages will increase to $2,000.00 for each subsequent month, for each Reportable Contract on which the contractor fails to report until the information is provided. These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

6. Completion of Work: A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted by the Department.

7. Disputes: If disputes arise regarding payment of subcontractors, the contractor shall immediately provide the ADOT Project Manager with a written, verifiable explanation if:

   - The contractor does not pay the full amount of any invoice from a subcontractor within seven days of receipt of a progress payment from the Department, or
   - The monthly estimate does not include all work claimed by a subcontractor to have been performed.

   The Department will determine whether the contractor has acted in good faith concerning any such explanations. The Department reserves the right to request and receive documents from the contractor and all subcontractors of any tier, in order to determine whether termination requirements were met. The contractor shall implement and use the dispute resolution process outlined in the subcontract, as described in Uniform Terms and Conditions Paragraph, to resolve payment disputes.

8. Non-Compliance: Failure to make prompt partial payment or prompt final payment including any retention, within the time frames established in this contract, will result in remedies, as the Department deems appropriate, which may include, but are not limited to:

   - Liquidated Damages: These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the

contract.

(i) The Department will withhold two times the disputed dollar amount not paid to each subcontractor.
(ii) If full payment is made within 30 days of the Department's payment to the contractor, the amount withheld by the Department will be released.
(iii) If full payment is made after 30 days of the Department's payment to the contractor, the Department will release 75 percent of the funds withheld. The Department will retain 25 percent of the monies withheld as liquidated damages.

- Additional Remedies: If the contractor fails to make prompt payment for three consecutive months, or any four months over the course of one project, or if the contractor fails to make prompt payment on two or more contracts within 24 months, the Department may, in addition, invoke the following remedies:

(i) Withhold monthly progress payments until the issue is resolved and full payment has been made to all subcontractors and vendors subject to the requirements outlined under "Liquidated Damages" above,
(ii) Terminate the contract for default in accordance with this Contract, and/or
(iii) Suspension or Debarment per Uniform Terms and Conditions Paragraph 9.3 of the contractor from future bidding temporarily or permanently, depending on the number and severity of violation.
(iv) Reflect the contractor's performance in submitting payment reports and making subcontractor payments utilizing the Department's Vendor Performance Report.

14.0 Crediting DBE Participation:

14.01 General Requirements:

To count toward DBE participation, the DBE firms must be certified at the time of Offer submission in each NAICS code applicable to the kind of work the firm will perform on the contract. NAICS for each DBE can be found on the AZ UTRACS website. General descriptions of all NAICS codes can be found at http://www.naics.com/search/.

Credit is given only after the DBE has been paid for the work performed.

The entire amount of a contract that is performed by the DBE's own forces, including the cost of supplies and materials purchased by the DBE for the work on the contract and equipment leased by the DBE will be credited toward DBE participation. Supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate will not be credited toward DBE participation.

The contractor bears the responsibility to determine whether the DBE possesses the

proper contractor's license(s) to perform the work and, if DBE credit is requested, that the DBE subcontractor is certified for the requested type of work.

The Department's certification is not a representation of a DBE's qualifications and/or abilities. The contractor bears all risks that the DBE may not be able to perform its work for any reason.

A DBE may participate as a prime contractor, subcontractor, or as a vendor of materials or supplies. The dollar amount of work to be accomplished by DBEs, including partial amount of a lump sum or other similar item, shall be on the basis of subcontract, purchase order, hourly rate, rate per ton, etc., as agreed to between parties.

DBE credit may be obtained only for specific work done for the project, supply of equipment specifically for physical work on the project, or supply of materials to be incorporated in the work. DBE credit will not be allowed for costs such as overhead items, capital expenditures (for example, purchase of equipment), and office items.

The contractor may credit second-tier subcontracts issued to DBEs by non-DBE subcontractors. Any second-tier subcontract to a DBE must meet the requirements of a first-tier DBE subcontract.

A prime contractor may credit the entire amount of that portion of a contract that is performed by the DBE's own forces. The cost of supplies and materials obtained by the DBE for the work of the contract can be included so long as that cost is reasonable. Leased equipment may also be included. No credit is permitted for supplies purchased or equipment leased from the prime contractor or its affiliate(s).

When a DBE subcontracts a part of the work of its contract to another firm, the value of the subcontract may be credited towards DBE participation only if the DBE's subcontractor is itself a DBE and performs the work with its own forces. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE participation.

A prime contractor may credit the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consulting, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

14.02 DBE Prime Contractor:

When a certified DBE firm proposes on a contract/Task Assignment all the work that is performed by the DBE contractor or any other DBE subcontractors and DBE suppliers will count toward DBE participation.

14.03 Effect of Loss of DBE Eligibility:

For On-Call Task Assignment contracts, if a DBE is deemed ineligible (decertified) or suspended by ADOT or one of its UCP Partner Agencies in accordance with 49 CFR 26.87 and 26.88, the DBE may not be count toward DBE participation on a new Task Assignment, but may be considered for the contract/Task Assignment DBE participation if a subcontract or contract modification for the work to be completed on the Task Assignment was executed before the DBE suspension or decertification is effective.

A subcontract or contract modification for work on the task assignment means, any subcontract or agreement for the task assignment, which includes a specific ADOT TRACS/Project Number, defined scope, duration and budget for the work to be completed under the Task Assignment that is duly signed by the contractor/contractor and subcontractor/subcontractor.

When the contractor/contractor intents to use an ineligible DBE firm or ADOT made a commitment to use an ineligible DBE prime contractor/contractor, but a subcontract or Contract Modification for the work to be completed on the Task Assignment has not been executed before a decertification notice is issued to the DBE firm by its certifying agency, the ineligible firm does not count toward DBE participation. When a subcontract or contract modification is executed with the DBE firm for the work to be completed on the Task Assignment before ADOT notified the firm of its ineligibility, the DBE's work on the Task Assignment may continue to be credited toward DBE participation for the firm's work.

14.04 Notifying the Contractor of DBE Certification Status:

Each DBE contract at any tier shall require any DBE subcontractor or supplier that is either decertified or certified during the term of the contract to immediately notify the contractor and all parties to the DBE contract in writing, with the date of decertification or certification. The contractor shall require that this provision be incorporated in any contract of any tier in which a DBE is a participant.

14.05 Commercially Useful Function:

A prime contractor can credit expenditures to a DBE subcontractor only if the DBE performs a Commercially Useful Function (CUF).

A DBE performs a CUF when it is responsible for execution of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself that it uses on the project. To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually

performing and the DBE credit claimed for its performance of the work, and other relevant factors.

A DBE will not be considered to perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the Department will examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Department will presume that the DBE is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function as provided above, the DBE may present evidence to rebut this presumption. The Department will determine if the firm is performing a CUF given the type of work involved and normal industry practices.

The Department will notify the contractor, in writing, if it determines that the contractor's DBE subcontractor is not performing a CUF. The contractor will be notified within seven calendar days of the Department's decision.

Decisions on CUF may be appealed to the Chief Procurement Officer (CPO). The appeal must be in writing and personally delivered or sent by certified mail, return receipt requested, to the CPO. The appeal must be received by the CPO no later than seven calendar days after the decision of BECO. BECO's decision remains in place unless and until the CPO reverses or modifies BECO's decision. CPO will promptly consider any appeals under this subsection and notify the contractor of CPO's findings and decisions. Decisions on CUF matters are not administratively appealable to USDOT.

The BECO may conduct project site visits on the contract to confirm that DBEs are performing a CUF. The contractor shall cooperate during the site visits and the BECO's staff will make every effort not to disrupt work on the project.

15.0 Required Provisions for DBE Subcontracts:

All subcontracts of any tier, all supply contracts, and any other contracts in which a DBE is a participant shall include as a physical attachment, DBE Subcontractor Compliance Assurances refer to the Federal Attachments and Exhibits.

Contractors executing agreements with subcontractors, DBE or non-DBE, that materially modify federal regulation and state statutes such as, prompt payment and retention requirements, through subcontract terms and conditions will be found in breach of contract which may result in termination of the contract, or any other such

remedy as the deemed appropriate as outlined in DBE Subsection 2.0 of these DBE provisions.

The Department reserves the right to conduct random reviews of DBE and non-DBE subcontract documentation to ensure compliance with federal requirements.

The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials require that the subcontract and all lower tier subcontracts be performed in accordance with 49 CFR Part 26 provisions.

The Contractor shall provide electronic copies of subcontract agreements with all Subcontractors by uploading them within 15 calendar days of an executed contract to the ADOT DBE System. Subcontract agreements shall include all required assurances and clauses as outlined in DBE Subcontractor Compliance Assurances refer to the Federal Attachments and Exhibits of the Contract. Each agreement and required attachment shall be dated and signed by the Subcontractor in order for the subcontract to be considered valid.

The Contractor shall be in breach of this Contract if the Contractor materially modifies the federal regulations and State statutes in its subcontract agreements terms and conditions with its Subcontractors. Deviations from the terms of this Contract may result in termination of the Contract, or any other such remedy as deemed appropriate by the Department

16.0 Certification of Final DBE Payments:

DBE participation on the contract is measured by actual payments made to the DBEs. The contractor shall submit the “Certification of Final DBE Payments” form for each DBE firm working on the contract. This form shall be signed by the contractor and the relevant DBE, and submitted to the Engineer no later than 30 days after the DBE completes its work.

The contractor will not be released from the obligations of the contract until the ”Certification of Final DBE Payments” forms are received and deemed acceptable by the Engineer and BECO.

17.0 False, Fraudulent, or Dishonest Conduct:

In addition to any other remedies or actions, the Department will bring to the attention of the US Department of Transportation any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take steps such as referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General for possible initiation of suspension and debarment proceedings against the offending parties or application of “Program Fraud and Civil Penalties” rules provided in 49 CFR Part 31.

21. NONDISCRIMINATION

1. During the performance of this Contract, the Consultant, for itself, its Subconsultants, assignees and successors shall:

   a. Not discriminate on the basis of race, color, national origin, or sex and shall carry out applicable requirements of 49 CFR Part 26 in the performance of this Contract. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract, disqualification from proposing on other Contracts or other remedy as the State deems appropriate.

   b. Comply with Executive Order 2009-09, "Prohibition of Discrimination in Employment by Government Contractors and Subcontractors," which is hereby included in its entirety by reference and considered a part of this Contract.

   c. Comply with the provisions of Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). Said provisions are made applicable by reference and are hereinafter considered a part of this Contract.

   d. Post in conspicuous places available to employees and applicants for employment, the following notice:

      "It is the policy of this company not to discriminate against any employee, or applicant for employment, because of race, color, religion, creed, national origin, sex, age, handicapped, or disabled veterans and Vietnam era veterans. Such actions shall include, but are not limited to: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising; laying- off or termination; rates of pay or other compensation; and selection for training, and on-the- job training. Also, it is the policy to ensure and maintain a working environment free of harassment, intimidation and coercion."

   e. Comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the
      U.S. Department of Transportation (hereinafter USDOT), 49 CFR Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

   f. Not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or

indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices.

g. In all solicitations either by competitive bidding or negotiations made by the Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, notify each potential Subconsultant or supplier of the Consultant's obligations under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, or national origin.

h. Provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the State as appropriate, and shall set forth what efforts it has made to obtain the information.

2. In the event of the Consultant's noncompliance with the NONDISCRIMININATION provision (Section A) of this Contract, the State shall impose such Contract sanctions as the State or FHWA may determine to be appropriate, including but not limited to:

   a. Withholding of payments to the Consultant under the Contract until the Consultant complies,

   and/or;

   b. Cancellation, termination, or suspension of the Contract, in whole or in part.

3. The Consultant shall include the provisions of paragraph 1.a. through 1.h. in every subcontract with Subconsultants, DBEs and non-DBEs, including procurement of materials and equipment leases, unless exempt by the Regulations or directives issued pursuant thereto.

4. The Consultant shall take such action with respect to any Subconsultants or procurement as the State or the Federal Aviation Administration (FAA), FHWA and the Federal Transit Administration (FTA) may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Consultant becomes involved in or is threatened with litigation with a Subconsultant or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State, and in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

22. AFFIRMATIVE ACTION

Contractor shall take the following affirmative action steps with respect to securing supplies, equipment, or services under the terms of this contract:

a. Include qualified firms owned by socially and economically disadvantaged individuals on solicitation lists.

b. Assure that firms owned by socially and economically disadvantaged individuals are solicited whenever they are potential sources.

c. When economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum participation by firms owned by socially and economically disadvantaged individuals.

d. Where the requirement permits, establish delivery schedules which will encourage participation by firms owned by socially and economically disadvantaged individuals.

e. Use the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce, and the Community Services Administration, as required.

23. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed

with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

24. FEDERAL CHANGES

The Contactor and its sub-contractors shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Department and FTA, as they be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

25. PROMPT PAY

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

26. FULL AND OPEN COMPETITION

In accordance with 49 U.S.C. § 5325(h) all procurement transactions shall be

conducted in a manner that provides full and open competition.

27. PROHIBITION AGAINST EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

28. CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg.1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

29. ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy.

Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

30. NOTIFICATION OF FEDERAL PARTICIPATION

To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of $500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

31. INTEREST OF MEMBERS OR DELEGATES TO CONGRESS

No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

32. INELIGIBLE CONTRACTORS AND SUBCONTRACTORS

Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors (https://www.sam.gov/SAM/) for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

33. OTHER CONTRACT REQUIREMENTS

To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the Department.

34. COMPLIANCE WITH FEDERAL REGULATIONS

Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT- required contractual provisions, as set forth in FTA Circular 4220, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

35. REAL PROPERTY

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by Map-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

36. ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP)

Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

37. ENVIROMENTAL JUSTICE

Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42
U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

38. ENVIRONMENTAL PROTECTIONS

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

39. GEORGRAPHIC INFORMATION RELATED TO SPATIAL DATA

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

40. GEOGRAPHIC PREFERENCE

Pursuant to 2 CFR 200.319(b), all procurements must be conducted in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract).

41. ORGANIZATIONAL CONFLICTS OF INTEREST

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows:

(1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage:

(a) To that Third Party Participant or another Third Party Participant performing the Project work, and
(b) That impairs that Third Party Participant's objectivity in performing the Project work, or

(2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions,

(3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient:

(a) Any instances of organizational conflict of interest, or
(b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and

(4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

42. VETRANS PREFERENCE

As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

(1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and
(2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

43. CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) IDENTIFICATION NUMBER

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

44. AMERICANS WITH DISABILITIES ACT (ADA)

The contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

45. BYRD ANTI-LOBBYING AMENDMENT

Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonfederal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Agency."

46. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

The Agency and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Agency, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

44. BUS TESTING

The operator of the bust testing facility is required to provide the resulting test report to the entity that submits the bus for testing. The manufacturer or dealer of a new bus

model or a bus produced with a major change in component or configuration is required to provide a copy of the corresponding full bus testing report and any applicable partial testing report(s) to the Agency during the point in the procurement process specified by the Agency, but in all cases before final acceptance of the first bus by the Agency. The complete bus testing report requirements are provide in 49 C.F.R. § 665.11.

45. CARGO PREFERENCE REQUIREMENTS

The contractor agrees:

a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "onboard" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and

c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

46. E-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

EXHIBIT 1
Title VI/Non-Discrimination Assurances
Appendix A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the *Federal Highway Administration,* as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** The contractor, with regard to the work performance by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the *Federal Highway Administration* to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the *Federal Highway Administration,* as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *Federal Highway Administration* ,may determine to be appropriate, including, but not limited to:

    a. withholding payments to the contractor under the contract until the contractor complies; and/or
    b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with request to any subcontract or procurement as the Recipient or the *Federal Highway Administration* may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that **if** the contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

EXHIBIT 2
Title VI/Non-Discrimination Assurances
Appendix E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.,* 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin): and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *etseq.),* (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.),* as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.),* (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1687 et. seq).

EXHIBIT 3
ADOT Procurement Quarterly Usage Report

This exhibit outlines the content required for the quarterly usage report. Usage reports will be submitted to the appropriate Procurement Officer in accordance with the requirements specified in Special Terms and Conditions. The Department reserves the right to make additions, deletions and changes as deemed necessary.

Reporting Period:

Contract ID/Code:		Contact Name:		Alternate Contact Name:	
Contract Label/Description:		Contact Phone Number:		Alternate Contact Phone Number:	
Contractor:		Contact Email:		Alternate Contact Email:	
Contractor Address:					

Agency/Org/Unit	Customer Name	Delivery Address	PO Number or Identify as "P-Card"	Order Date	Contract Item Number	Contract Item Description	Quantity	Unit of Measure	Contract Unit Price	Contract Extended Price	Invoice Number

EXHIBIT 4
ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION

(Post-Delivery purchaser's requirement, in compliance with the federal requirements of 49 U.S.C. Section 5323(m))

ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION

(Rolling Stock Procurements for more than 10 vehicles for areas >200,000 in population)

As required by 49 CFR Part 663Subpart C, the

_____
(Recipient's name)

Certifies that a resident inspector,

_____
(Name of inspector)

Was at

_____
(the manufacturer's)

manufacturing site during the period of manufacture of the buses,

_____
(description of buses).

The inspector visually inspecting the buses, the _____ (the recipient) has reviewed the inspection documentation, maintains a copy of this report, and certifies that the buses meet the contract specifications.

ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION

(Rolling Stock Procurements for more than 20 vehicles for areas < 200,000 in population)

As required by 49 CFR Part 663 Subpart C, the

_____
(Recipient's name)

Certifies that a resident inspector,

_____
(Name of inspector)

Was at

_____
(the manufacturer's)

manufacturing site during the period of manufacture of the buses,

_____
(description of buses).

The inspector visually inspecting the buses, the
_____ (the recipient) has reviewed the inspection documentation, maintains a copy of this report, and certifies that the buses meet the contract specifications.

Signature _____ Date _____/ _____/ _____
Title _____

EXHIBIT 5
PRE-AWARD AUDIT AND CERTIFICATION

Subrecipient		Date / Completed By
Description		
Program/Phase/Amounts		
PRE-AWARD AUDIT (before issuing purchase order)		
Pre-award audit requirements. A recipient purchasing revenue service rolling stock with FTA funds must ensure that a pre-award audit under this part is complete before the recipient enters into a formal contract for the purchase of such rolling stock.		Master Agreement; 49 CFR §663.21
49 CFR 661.13 Grantee Responsibility (a) The grantee shall adhere to the Buy America clause set forth in its grant contract with FTA Section 16. Preference for United States Products and Services. a. Buy America. Domestic preference procurement requirements of: (1) 49 U.S.C. § 5323(j), as amended by FAST Act, and (2) FTA regulations, "Buy America Requirements," 49 C.F.R. part 661, to the extent consistent with FAST Act,		49 CFR §663.13
49 CFR §663.23 Description of pre-award audit. A pre-award audit under this part includes— (a) A Buy America certification as described in §663.25 of this part; (b) A purchaser's requirements certification as described in §663.27 of this part; and (c) Where appropriate, a manufacturer's Federal Motor Vehicle Safety certification information as described in §663.41 or §663.43 of this part.		49 CFR §663.23
Met? Y/N (if NO 1b, 1 REQ'D)	(1) A Buy America certification:	49 CFR §663.25
	a) There is a letter from FTA which grants a waive OR	
Met? Y/N (if NO 1a, 2 REQ'D)	b) ADOT reviewed documentation provided by the manufacturer which lists—	
	1) Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and	
	2) The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.	
Met? Y/N (2 REQ'D)	(2) A purchaser's requirements certification:	49 CFR §663.27
	a) The rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and	
	b) The proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's	
Met? Y/N (1 REQ'D)	(3) A manufacturer's Federal Motor Vehicle Safety certification or Certification that Federal motor vehicle standards do not apply.	
	a) If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.	49 CFR §663.41
	a) Except for rolling stock subject to paragraph (b) of this section, if a vehicle purchased under this part is not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, the recipient shall keep on file its certification that it received a statement to that effect from the manufacturer.	49 CFR §663.43

EXHIBIT 6
PURCHASER'S PRE-AWARD REQUIREMENTS CERTIFICATION

Subrecipient	
Description	
Program/Phase/Amounts	

Purchaser's Pre-Award Requirements Certification
49 CFR §663.27

I hereby certify that the rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and

I hereby certify that the proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's

Signature

Date Signed

EXHIBIT 7
PURCHASER'S POST-AWARD REQUIREMENTS CERTIFICATION

Subrecipient		Date / Completed By
Description		
Program/Phase/Amounts		
The Post-Delivery Review Requirements (http://www.fta.dot.gov/legislation_law/12921_5430.html)		
The Post-Delivery Buy America Certification Requirement		
Select basis' (1 REQ'D)	Buy America-Compliant Buses	49 CFR 663(b)
	§663.33 Description of post-delivery audit. A post-delivery audit under this part includes—	
	(a) A post-delivery Buy America certification as described in §663.35 of this part;	
	§663.35 Post-delivery Buy America certification. For purposes of this part, a post-delivery Buy America certification is a certification that the recipient keeps on file that—	
	(a) There is a letter from FTA which grants a waiver to the rolling stock received from the Buy America requirements under sections 165 (b)(1), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; **or**	
	(b) The recipient is satisfied that the rolling stock received meets the requirements of section 165 (a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or by means of an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists— (1) Components and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin and costs; and (2) The actual location of the final assembly point for the rolling stock including a description of the activities which took place at the final assembly point and the cost of the final assembly.	
Met? Y/N (3 REQ'D)	(b) A post-delivery purchaser's requirements certification as described in §663.37 of this part; **and**	
	§663.37 Post-delivery purchaser's requirements certification. For purposes of this part, a post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that—	
	(a) Except for procurements covered under paragraph (c) in this section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum, shall— (1) Provide accurate records of all vehicle construction activities; and (2) Address how the construction and operation of the vehicles fulfills the contract specifications.	
	(b) After reviewing the report required under paragraph (a) of this section, and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications.	
	(c) For procurements of: (1) Ten or fewer buses; or (2) Procurements of twenty vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or (3) Any number of primary manufacturer standard production and unmodified vans, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.	
Met? Y/N (1 REQ'D)	(c) When appropriate, a manufacturer's Federal Motor Vehicle Safety Standard self-certification information as described in §663.41 **or** §663.43 of this part.	
	§663.41 Certification of compliance with Federal motor vehicle safety standards. If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.	
	§663.43 Certification that Federal motor vehicle standards do not apply. (a) Except for rolling stock subject to paragraph (b) of this section, if a vehicle purchased under this part is not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, the recipient shall keep on file its certification that it received a statement to that effect from the manufacturer. (b) This subpart shall not apply to rolling stock that is not a motor vehicle.	

EXHIBIT 7
PURCHASER'S POST-AWARD REQUIREMENTS CERTIFICATION

Subrecipient		Date / Completed By
Description		
Program/Phase/Amounts		
The Post-Delivery Review Requirements (http://www.fta.dot.gov/legislation_law/12921_5430.html)		
The Post-Delivery Buy America Certification Requirement		
Select basis' (1 REQ'D)	Buy America-Compliant Buses	49 CFR 663(b)
	§663.33 Description of post-delivery audit. A post-delivery audit under this part includes—	
	(a) A post-delivery Buy America certification as described in §663.35 of this part;	
	§663.35 Post-delivery Buy America certification. For purposes of this part, a post-delivery Buy America certification is a certification that the recipient keeps on file that—	
	(a) There is a letter from FTA which grants a waiver to the rolling stock received from the Buy America requirements under sections 165 (b)(1), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; **or**	
	(b) The recipient is satisfied that the rolling stock received meets the requirements of section 165 (a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or by means of an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists— (1) Components and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin and costs; and (2) The actual location of the final assembly point for the rolling stock including a description of the activities which took place at the final assembly point and the cost of the final assembly.	
Met? Y/N (3 REQ'D)	(b) A post-delivery purchaser's requirements certification as described in §663.37 of this part; **and**	
	§663.37 Post-delivery purchaser's requirements certification. For purposes of this part, a post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that—	
	(a) Except for procurements covered under paragraph (c) in this section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum, shall— (1) Provide accurate records of all vehicle construction activities; and (2) Address how the construction and operation of the vehicles fulfills the contract specifications.	
	(b) After reviewing the report required under paragraph (a) of this section, and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications.	
	(c) For procurements of: (1) Ten or fewer buses; or (2) Procurements of twenty vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or (3) Any number of primary manufacturer standard production and unmodified vans, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.	
Met? Y/N (1 REQ'D)	(c) When appropriate, a manufacturer's Federal Motor Vehicle Safety Standard self-certification information as described in §663.41 **or** §663.43 of this part.	
	§663.41 Certification of compliance with Federal motor vehicle safety standards. If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.	
	§663.43 Certification that Federal motor vehicle standards do not apply. (a) Except for rolling stock subject to paragraph (b) of this section, if a vehicle purchased under this part is not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, the recipient shall keep on file its certification that it received a statement to that effect from the manufacturer. (b) This subpart shall not apply to rolling stock that is not a motor vehicle.	

EXHIBIT 8
PURCHASER'S POST-AWARD REQUIREMENTS CERTIFICATION

Subrecipient	
Description	
Program/Phase/Amounts	

Purchaser's Post-Award Requirements Certification
49 CFR §663.37

I hereby certify that the rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and

I hereby certify that the proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's

Signature

Date Signed

Procurement

ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	**AMENDMENT NO.: One (1)**
DESCRIPTION: New Vehicles Purchase	

Pursuant to the Uniform Instructions to Offerors, Item B.6, Solicitation Amendments, the above referenced solicitation shall be amended as follows:

1. The solicitation due date has been changed from January 17, 2022 at 3:00 PM MST to January 19, 2022 at 3:00 PM MST.

2. All other terms, conditions and provisions of this solicitation remain unchanged.

Procurement

ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	**AMENDMENT NO.: Two (2)**
DESCRIPTION: New Vehicles Purchases	

Pursuant to the Uniform Instructions to Offerors, Item B.6, Solicitation Amendments, the above referenced solicitation shall be amended as follows:

1. **Specifications**
   The following sections are hereby modified to read:

   a. **Paragraph 2.1** "The State of Arizona Department of Transportation (Department) is seeking to contract with a qualified vendor(s) who can provide new vehicles (all fuel types, hybrid, and full electric) including but not limited to: Sedans, Trucks up to 19,500 GVWR, Vans, Sport Utility Vehicles (SUVs), and Crossovers for the State of Arizona and participating Eligible Agencies. These vehicles will be used to support official organizational goals. These vehicles will be used on highways, city/county roads and shall be designed to operate under typical Arizona ambient temperatures."
   b. **Paragraph 3.3.1, 3.5.1 and 3.5.2** is hereby removed.
   c. **Paragraph 4.1**: "The Contractors are encouraged to provide a full line of new vehicles (gasoline, hybrid, full electric) including but not limited to the following categories: Sedans, Trucks up to 19,500 GVWR, Vans (cargo, passenger, transit, etc.), Sport Utility Vehicles (SUVs), and Crossovers. Eligible Agencies throughout the State will have varying vehicle needs. Contractors are to provide a full line of manufactured new vehicles and all subsequent variants of each vehicle; including but not be limited to: models and manufacturer options, trim package, etc. to meet each need of an Eligible Agency."
   d. **Paragraph 4.1.1** is hereby removed.
   e. **Paragraph 4.4.1:"** The Eligible Agency may request the awarded Contractor(s) to up-fit/modify any vehicle for specific organizational needs. For example, the cab and chassis of ½ ton, ¾ ton, and/or up to 19,500 GVW trucks may require a specialized body (i.e.: dump body, landscape body, etc.). Other vehicles may require interior and/or exterior modifications per the individual Eligible Agency. "
   f. **Paragraph 4.6.1**: " Anti-slip differential for two-wheel drive pickup trucks, ¾ ton, up to 19,500 GVW."

2. **Special Terms and Conditions**

   The following sections are hereby modified to read:

   a. Paragraph 11.1, (a-g): "Phase 1 and 2 pricing for vehicles shall be a minimum Percentage off MSRP, less the manufacturer's rebates and any additional discounts available for that model/power-train combination.
      a. Contractor shall provide a copy of manufacturer's invoice to the ordering agency upon request. The manufacturer's invoice shall be unaltered to include original pricing from the manufacturer.

Procurement

ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	**AMENDMENT NO.: Three (3)**
DESCRIPTION: New Vehicles Purchases	

Pursuant to the Uniform Instructions to Offerors, Item B.6, Solicitation Amendments, the above referenced solicitation shall be amended as follows:

1. **Specifications**
   The following sections are hereby modified to read:

   a. **Paragraph 3.5** "For Phase Two (2) vehicles, the Contractor shall supply a quote within five (5) calendar days after receiving a request from the Eligible Agency. The quotation shall include but not be limited to the following information: State contract number, vehicle availability and delivery lead-time, Vehicle Identification Number (VIN), dealer stock number, vehicle base bid price, itemized options, applicable tax, delivery cost, total price, and point of contact. For vehicles requiring up-fit/modifications, all applicable cost may be included in quotation or as a separate quotation."

   b. **Paragraph 3.10**: "For Phase One (1) the Contractor shall provide the Eligible Agency copies of the manufacturer's vehicle identification numbers (VIN#) to confirm vehicles have been ordered unless impossible due to manufacture delay within ninety (90) calendar days after receipt of a purchase order. If confirmation of manufacturer's VIN #(s) is not received within this timeframe the Eligible Agency has the option to award to the second lowest bidder meeting specifications. This shall be considered a mandatory requirement and the timeframe must be met unless there is a manufacture delay. Failure to provide this document for each vehicle ordered may be cause for determination of default of contract."

2. All other terms, conditions and provisions of this solicitation remain unchanged.

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	**AMENDMENT NO.: Two (2)**
DESCRIPTION: New Vehicles Purchases	

b. Transportation costs to transfer a vehicle from another dealer for a Phase 2 or purchase from stock may be added to the cost of the vehicle. The justification for this cost is at the discretion of the Eligible Agency.
c. Any reference to Phase 1 pricing shall be in reference to vehicles ordered prior to the factory cut-off date.
d. Any reference to Phase 2 pricing shall be in reference to vehicles purchased from stock or "on the lot".
e. Phase 2 pricing shall receive the same cost considerations as Phase 1 pricing, all discounts and rebates should be passed onto the Eligible Agency.

f. All vehicles are to be billed at prices in effect at the time of order, not the date of shipment.

g. Pricing for vehicles shall include all discounts and deductions, less Federal and State taxes. Pricing shall be firm for life of contract unless amended by way of contract change order. "

b. Paragraph 22 is hereby replaced with the following: "The Contractor shall furnish Two (2) Usage reports, the first to the Department on a quarterly basis showing purchasing activity under this contract. This usage report shall be provided in a form substantially equivalent to Exhibit 03. Usage reports shall be submitted to the Procurement Officer no later than 30 days after the end of each quarter.

Usage report quarters shall be defined as follows:

- January through March – Report due April 30
- April through June – Report due July 30
- July through September – Report due October 30
- October through December – Report due January 30

Contractor shall submit the second to the State documenting all Contract sales to both Eligible Agencies and Co-Op Buyers, itemized separately. A *Quarterly Usage Report* shall still be submitted; even if there have been no sales to either Eligible Agencies and/or Co-Op Buyers. Contractor shall further itemize divisions, groups or areas within a given Eligible Agency if they place Orders independently of each other. Failure to submit the report is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Contractor shall submit the report using the forms and following the instructions on the State Procurement Office website:

https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee"

c. Paragraph 25: Co-op administrative fee has hereby been removed.

Procurement

ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	**AMENDMENT NO.: Two (2)**
DESCRIPTION: New Vehicles Purchases	

3. **Offer Response Form** is hereby replaced with Revision Two (2) attachment.

4. All other terms, conditions and provisions of this solicitation remain unchanged.

Procurement

ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	**AMENDMENT NO.: Three (3)**
DESCRIPTION: New Vehicles Purchases	

Pursuant to the Uniform Instructions to Offerors, Item B.6, Solicitation Amendments, the above referenced solicitation shall be amended as follows:

1. **Specifications**
   The following sections are hereby modified to read:

   a. **Paragraph 3.5** "For Phase Two (2) vehicles, the Contractor shall supply a quote within five (5) calendar days after receiving a request from the Eligible Agency. The quotation shall include but not be limited to the following information: State contract number, vehicle availability and delivery lead-time, Vehicle Identification Number (VIN), dealer stock number, vehicle base bid price, itemized options, applicable tax, delivery cost, total price, and point of contact. For vehicles requiring up-fit/modifications, all applicable cost may be included in quotation or as a separate quotation."

   b. **Paragraph 3.10**: "For Phase One (1) the Contractor shall provide the Eligible Agency copies of the manufacturer's vehicle identification numbers (VIN#) to confirm vehicles have been ordered unless impossible due to manufacture delay within ninety (90) calendar days after receipt of a purchase order. If confirmation of manufacturer's VIN #(s) is not received within this timeframe the Eligible Agency has the option to award to the second lowest bidder meeting specifications. This shall be considered a mandatory requirement and the timeframe must be met unless there is a manufacture delay. Failure to provide this document for each vehicle ordered may be cause for determination of default of contract."

2. All other terms, conditions and provisions of this solicitation remain unchanged.

CITY OF BUCKEYE
Regular Council Meeting
COUNCIL ACTION REPORT

MEETING DATE: 09/03/24	**AGENDA ITEM:** 4.C. PW - Cooperative Contract Purchase Addendum with Don Sanderson Ford to purchase light and medium duty vehicles.
DATE PREPARED: 08/29/24	**DISTRICT NO.:**
STAFF LIAISON: Bret Hodne, Public Works Director, bhodne@buckeyeaz.gov, (623) 349-6801	
DEPARTMENT: Public Works	**AGENDA ITEM TYPE:** Consent Agenda Items / New Business

ACTION/MOTION: (This language identifies the formal motion to be made by the Council)
Council to take action on the Cooperative Contract Purchase Addendum (CCPA No. 2025028) between the City of Buckeye, an Arizona municipal corporation, and Don Sanderson Ford, Inc., an Arizona municipal corporation, for the purchase of light and medium duty vehicles, and authorizing the City Manager to execute and deliver said CCPA on behalf of the City of Buckeye.

SUMMARY

PROJECT DESCRIPTION:
Fleet Management is seeking Council's authorization to enter into the Cooperative Contract Purchase Addendum with Don Sanderson Ford to purchase various light and medium vehicles.

BENEFITS:
The approval of this Cooperative Contract Purchase Addendum will ensure City staff have mechanically sound vehicles to perform daily work assignments for the benefit of the residents of the City of Buckeye. Vehicles that have reached or exceeded their life expectancy cost more to maintain and frequently experience higher downtime to staff which results in a lack of timely services.

FUTURE ACTION:
No further action contemplated.

FINANCIAL IMPACT STATEMENT:
The total amount is not to exceed $500,000.00.

CURRENT FISCAL YEAR TOTAL COST:
$500,000.00 from vehicle replacement and department budgets that have been approved to purchase supplemental vehicles during the FY25 budget process.

BUDGETED:
Yes

FISCAL YEAR:
FY25

FUND/DEPARTMENT:
Various

Items related to a project or facility location must include an attached vicinity map for Council

Review.
ATTACHMENTS:
CCPA No. 2025028 With Sanderson Ford.pdf

COOPERATIVE CONTRACT PURCHASE ADDENDUM (CCPA)
BETWEEN THE CITY OF BUCKEYE
AND
DON SANDERSON FORD, INC.

NEW VEHICLE PURCHASES
CONTRACT NO. 2025028

THIS COOPERATIVE CONTRACT PURCHASE ADDENDUM (this "Addendum") is entered into as of _____ between the City of Buckeye, an Arizona municipal corporation (the "City"), and Don Sanderson Ford., Inc., an Arizona corporation (the "Contractor").

WHEREAS, after a competitive procurement process, which is documented in the Award attached hereto as **Exhibit A** and incorporated herein by reference, State of Arizona Contract entered into Contract No. CTR059316, dated March 17, 2022 with the Contractor (such contract and subsequent amendments thereto here referred to as the "State of Arizona Contract"), which is attached hereto as **Exhibit A** and incorporated herein by reference; and

WHEREAS, the City is permitted by Section 24-3-16 of the City Procurement Code to make purchases via cooperative purchasing pursuant to a cooperative purchasing contract; and

WHEREAS, the Contractor has made a proposal to the City, which is attached hereto as **Exhibit A** and incorporated herein by reference (the "Contract"); and

WHEREAS, the City desires to accept the Proposal and enter into contract with the Contractor under the terms and conditions of the State of Arizona Contract, by issuing this Addendum to said contract.

THEREFORE, the City now enters into this Addendum with Contractor, for the goods and services set forth in State of Arizona Contract, which is attached hereto as **Exhibit A** and incorporated herein by reference. This Addendum incorporates the terms and conditions of the State of Arizona Contract, save that references therein to State of Arizona shall be read to refer to the City of Buckeye. This Addendum shall be effective as of the date set forth below for approval and remain in effect for the remainder of the State of Arizona Contract CTR059316, unless such term is modified or extended pursuant to the terms of the State of Arizona Contract. The Contractor shall provide all goods and services in accordance with the State of Arizona Contract, which is attached hereto as part of **Exhibit A**, in a total amount not to exceed $500,000.00.

FURTHER, this Addendum is subject to cancellation pursuant to ARS §38-511.

FURTHER, to the extent applicable, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. § 23-214(A). The Contractor's or its subcontractors' failure to comply with such warranty shall be deemed a material breach of this Addendum and may result in the termination of this Addendum by the City. The City retains the

right to inspect the papers of the Contractor's or its subcontractors' employees who perform any work or services pursuant to this Addendum to ensure compliance with these warranties.

FURTHER, to the extent applicable, the Contractor warrants that it is not participating and will not participate in prohibited activity in contravention of A.R.S. § 35-393.01.

FURTHER, to the extent applicable under ARIZ. REV. STAT. § 35-394, Contractor certifies that it does not currently, and agrees for the duration of this Agreement that it will not use (i) the forced labor of ethnic Uyghurs in the Peoples Republic of China ("ethnic Uyghurs"), (ii) any goods or services produced by the forced labor of ethnic Uyghurs, or (iii) any Contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs. If Contractor becomes aware that it is not in compliance with this paragraph, Contractor shall notify the City of the noncompliance within five (5) business days of becoming aware of it. If Contractor fails to provide a written certification that Contractor has remedied the noncompliance within one hundred eighty (180) days after that, this Agreement shall terminate unless the termination date of this Agreement occurs before the end of the remedy period, in which case this Agreement terminates on the Agreement termination date.

FURTHER, the Parties agree that the Addendum and Exhibits thereto shall be governed by State of Arizona law and suits pertaining to the Addendum and Exhibits thereto may only be brought in courts located in Maricopa County, Arizona.

FURTHER, all modifications, including but not limited to service additions and deletions, will be made in writing and with the written agreement of both parties.

FURTHER, in the event of any inconsistency between this Addendum and **Exhibit A**, the documents shall govern in that order.

CLICKWRAP TERMS EXCLUDED, in the event the Consultant's terms of sale or service were provided to the City only upon "acceptance" of a "clickwrap" or "clickthrough" agreement, such terms of sale or service shall not be binding upon the City. No oral agreement, "clickwrap" or "clickthrough" agreement or other understanding shall in any way modify a City issued or approved contract or the terms of this Cooperative Contract Purchase Addendum (CCPA).

THEREFORE, the Parties have executed this Addendum as of the date first set forth above.

CITY

THE CITY OF BUCKEYE,
an Arizona Municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR

DON SANDERSON FORD, INC.,
an Arizona corporation

By: David Harris

Its: Government Sales Mgr

ATTEST:

Lucinda Aja, City Clerk

RECOMMENDED:

William Kauppi

William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

K. Scott McCoy, City Attorney

EXHIBIT A
TO
COOPERATIVE CONTRACT PURCHASE ADDENDUM
CONTRACT NO. 2025028

[State of Arizona Contract]

See following page(s).

Procurement

ARIZONA DEPARTMENT OF TRANSPORTATION
1655 W. Jackson Street, MD 100P
Phoenix, AZ 85007

Contract Amendment Summary

CONTRACTOR: Don Sanderson Ford	**AMENDMENT NO.: Two (2)**
DESCRIPTION: CTR059316 - New Vehicles Purchases	

Pursuant to the Uniform Terms and Conditions, Section 5, Contract Changes, the above referenced contract is amended. Summary of changes is as follows:

1. Amendment Two (2) to mutually extend this contract from March 17, 2024 through March 16, 2025 unless terminated, canceled or extended as otherwise provided in the contract.

2. The executed SPO205 Forced Labor of Ethnic Uyghurs Ban form is hereby included with this amendment.

3. All other terms, conditions and provisions of this contract remain unchanged.

ADOT
Procurement

FORCED LABOR OF ETHNIC UYGHURS BAN

Forced Labor of Ethnic Uyghurs Ban

Please note that if any of the following apply to the Contractor, then the Offeror shall select the "Exempt Contractor" option below:

- Contractor is a sole proprietorship;
- Contractor has fewer than ten (10) employees; OR
- Contractor is a non-profit organization.

Pursuant to A.R.S. § 35-394, the State of Arizona prohibits a public entity from entering into or renewing a contract with a company unless the contract includes written certification that the company does not use the forced labor, or any goods or services produced by the forced labor, of ethnic Uyghurs in the People's Republic of China.

Under A.R.S. §35-394:

1. "Company" means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company or other entity or business association, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate, that engages in for-profit activity and that has ten or more full-time employees.

2. "Public entity" means this State, a political subdivision of this State or an agency, board, commission or department of this State or a political subdivision of this State.

In compliance with A.R.S. §§ 35-394 et seq., all offerors must select one of the following:

☒	The Company submitting this Offer does not use, and agrees not to use during the term of the contract, any of the following: • Forced labor of ethnic Uyghurs in the People's Republic of China; • Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or • Any Contractors, Subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
☐	The Company submitting this Offer **does** participate in use of Forced Uyghurs Labor as described in A.R.S. § 35-394.
☐	**Exempt Contractor.** Indicate which of the following statements applies to this Contractor (may be more than one): ☐ Contractor is a sole proprietorship; ☐ Contractor has fewer than ten (10) employees; and/or ☐ Contractor is a non-profit organization.

DON Sanderson Ford, INC.
Company Name

6400 N. 51ST Ave
Address

Glendale, AZ 85301
City State Zip

Dave Harris
Signature of Person Authorized to Sign

DAVE HARRIS
Printed Name

Government Sales Manager
Title

11-2-2023
Date

DocuSign Envelope ID: 7AE6D603-F496-4243-9920-A7948B4C771C

ADOT
Procurement

OFFER AND ACCEPTANCE

OFFER

TO THE STATE OF ARIZONA:

The undersigned hereby offers and agrees to perform in compliance with all terms, conditions, specifications and amendments of this solicitation and any written exceptions in the offer. Signature also acknowledges receipt of all pages indicated in the Table of Contents.

DON SANDERSON FORD, INC.	
Offeror (Company) Name	Signature of Person Authorized to Sign Offer
6400 N 51ST AVE	DAVE HARRIS 1-19-2022
Address	Printed Name Date
GLENDALE ARIZONA 85301	GOVERNMENT SALES MANAGER
City State Zip	Title
DHARRIS@SANDERSONFORD.COM	623-930-5961
Email Address	Phone Number
SAME	623-930-5966
Company Email Address	Fax Number

By signature in the Offer section above, the Offeror certifies that the submission of the Offer did not involve collusion or other anticompetitive practices.

ACCEPTANCE OF OFFER (FOR DEPARTMENT USE ONLY)

The Contractor is now bound to perform based upon Contract Number CTR059316 including all terms, conditions, specifications, amendments, etc., and the Contractor's offer as accepted by the state.

The Contractor is hereby cautioned not to commence any billable work or provide any material, service or construction under this contract until contractor receives a purchase order document.

State of Arizona

Effective this 17th day of March 2022

DocuSigned by:
69C61CE38A6E4BB...

3/10/2022
Awarded Date

Procurement

STATE OF ARIZONA
ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson St., Ste. A
Phoenix, AZ 85007

REQUEST FOR PROPOSAL

SOLICITATION NUMBER: BPM004157

DESCRIPTION: New Vehicle Purchases

QUESTIONS: Inquiries regarding the solicitation are to be submitted online through the State's e-Procurement system, Arizona Procurement Portal (APP) (https://app.az.gov/) using the Discussion Forum tab.

OFFERORS ARE STRONGLY ENCOURAGED TO READ THE ENTIRE SOLICITATION.

Thomas Kornell
Procurement Officer
Phone: 602-712-8520
Email: Tkornell@azdot.gov

This solicitation is issued in accordance with A.R.S. §41-2534 and A.A.C. R2-7-C301 et seq., Competitive Sealed Proposals.

"An Equal Opportunity Agency"

The Arizona Department of Transportation, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252.42 U.S.C. §§ 2000d-4) and the Americans with Disabilities Act (ADA), hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin in consideration for an award.

Persons that require a reasonable accommodation based on language or disability should contact ADOT's Procurement Office by phone (602) 712-2089. Requests should be made as early as possible to ensure the State has an opportunity to address the accommodation.

Las personas que requieran asistencia (dentro de lo razonable) ya sea por el idioma o discapacidad deben ponerse en contacto con ADOT (602) 712-2089.

TABLE OF CONTENTS

SECTION	PAGE
Notice	1
Table of Contents	2
Scope of Work	3
Special Terms and Conditions	7
Uniform Terms and Conditions	19
Federal Provisions	29

EXHIBITS

1 - Title VI/Non-Discrimination Assurances Appendix A	73
2 - Title VI/Non-Discrimination Assurances Appendix E	74
3- Usage Report Exhibit 3	75
4- On-site Manufacturer inspection Compliance Certification Exhibit 4	76
5- Pre-Award Audit and Certification Exhibit 5	77
6- Purchaser's Pre-Award Requirements Certification Exhibit 6	78
7- Post-Award Certification and Requirements Exhibit 7	79
8- Purchaser's Post-Award Requirements Certification Exhibit 8	81

1. Statement of Need

1.1. Pursuant to the Arizona Procurement Code, A.R.S. §41-2501 et seq., the State of Arizona Department of Transportation (Department), has a requirement for New Vehicle Purchase.

2. Introduction and Background

2.1 The State of Arizona Department of Transportation (Department) is seeking to contract with a qualified vendor(s) who can provide new vehicles (all fuel types, hybrid, and full electric) including but not limited to: Sedans, Trucks up to 19,500 GVWR, Vans, Sport Utility Vehicles (SUVs), and Crossovers for the State of Arizona and participating Eligible Agencies. These vehicles will be used to support official organizational goals. These vehicles will be used on highways, city/county roads and shall be designed to operate under typical Arizona ambient temperatures.

2.2 Background: The State and its Eligible Agencies currently spend an estimated twenty-one million dollars in the purchase of new vehicles annually.

2.3 The following are the Three Categories covered in this Scope of Work:

- **Category One: Phase One (1) Vehicle Purchases**
- **Category Two: Phase Two (2) Vehicle Purchases**
- **Category Three: FTA Funded Vehicles**

3 General Requirements

3.1 Vehicles shall be new and supplied with all equipment and accessories indicated as standard equipment in the manufacturer's published literature (or website). Optional equipment necessary to meet the minimum requirements shall be included.

3.2 All vehicles ordered through Phase 1 (off the line) shall be Manufacturer's current year models in production throughout the term of this contract and shall be serviced completely by the vendor before delivery and ready in all respects for use. For the initial contract period; vehicles shall be new model year 2022 or greater.

3.3 Vehicles ordered through Phase 2 (on the lot) shall have less than 100 original odometer miles and be new (have never been previously owned) unless pre-approved in writing by the Eligible Agency.

3.4 All vehicles shall meet requirements of applicable Arizona Motor Vehicle laws and all other applicable Federal Motor Vehicle Safety Standards (including the Federal Bridge Formula), whether or not such requirements are specified in detail.

3.5 For Phase Two (2) vehicles, the Contractor shall supply a quote within five (5) calendar days after receiving a request from the Eligible Agency. The quotation shall include but not be limited to the following information: State contract number, vehicle availability and delivery lead-time, Vehicle Identification Number (VIN), dealer stock number, vehicle base bid price, itemized options, applicable tax, delivery cost, total price, and point of contact. For vehicles requiring up-fit/modifications, all applicable cost may be included in quotation or as a separate quotation.

3.6 Delivery location shall be identified on the issuing agency purchase order. Deliveries shall be made within 120 days of receipt of purchase orders, unless factory delays make this impossible. Dealer shall notify the ordering agency of such delays along with a revised delivery estimate from the factory immediately after it becomes known. If the manufacturer has a website available to check order status, this information will be shown in space provided on Offer Response Form.

3.7 All deliveries shall be made Monday through Friday from 8:00 A.M. to 2:00 P.M. The Contractor shall be required to give the using agency a minimum of 24-hour notification prior to delivery with the anticipated time of delivery and number of units to be delivered.

3.8 All vehicles shall be delivered with four (4) entrance tools and a full tank(s) of fuel, less delivery fuel.

3.9 The following documents shall be provided upon delivery of the vehicle(s):

3.9.1 M.S.O. (Manufacturer Statement of Origin) that includes the odometer statement
3.9.2 Warranty Document
3.9.3 Manufacturers unaltered invoice
3.9.4 Delayed warranty / in service start request form (if requested by ordering entity)
3.9.5 Level 1 Inspection if applicable, completed before delivery

3.10 For Phase One (1) the Contractor shall provide the Eligible Agency copies of the manufacturer's vehicle identification numbers (VIN#) to confirm vehicles have been ordered unless impossible due to manufacture delay within ninety (90) calendar days after receipt of a purchase order. If confirmation of manufacturer's VIN #(s) is not received within this timeframe the Eligible Agency has the option to award to the second lowest bidder meeting specifications. This shall be considered a mandatory requirement and the timeframe must be met unless there is a manufacture delay. Failure to provide this document for each vehicle ordered may be cause for determination of default of contract.

4 Specific Requirements

4.1 The Contractors are encouraged to provide a full line of new vehicles (gasoline, hybrid, full electric) including but not limited to the following categories: Sedans, Trucks up to 19,500 GVWR, Vans (cargo, passenger, transit, etc.), Sport Utility Vehicles (SUVs), and Crossovers. Eligible Agencies throughout the State will have varying vehicle needs. Contractors are to provide a full line of manufactured new vehicles and all subsequent variants of each vehicle; including but not be limited to: models and manufacturer options, trim package, etc. to meet each need of an Eligible Agency.

4.2 As new model year vehicles become available, vendor shall submit pricing at either the same rate as the previous model, or submit a request for an increase or decrease based only on the manufacturer's increase or decrease. Documentation must be submitted to the Procurement Officer within 30 days of the effective date of change. New model year vehicles cannot be offered without approval from the Procurement Officer.

4.3 The following fuel types are allowable under this contract are to include but are not limited too.

4.3.1 Flexible Fuel Vehicles (FFV) also called Ethanol or E85
4.3.2 Diesel

4.3.3 Gasoline
4.3.4 Compressed Natural Gas (CNG): CNG systems must be O.E.M. or O.E.M. approved
4.3.5 Hybrid-Electric Vehicles (HEV)
4.3.6 Plug-in Hybrid Electric Vehicles (PHEV)
4.3.7 Electric Vehicles (EV) also called Battery Electric Vehicles (BEV)
4.3.8 Fuel Cell Vehicles (FCV)

4.4 Vehicle Up-fit / Modifications

4.4.1 The Eligible Agency may request the awarded Contractor(s) to up-fit/modify any vehicle for specific organizational needs. For example, the cab and chassis of ½ ton, ¾ ton, and/or up to 19,500 GVW trucks may require a specialized body (i.e.: dump body, landscape body, etc.). Other vehicles may require interior and/or exterior modifications per the individual Eligible Agency.

4.4.2 The Eligible Agency will supply all up-fit/modification requests to the Contractor. The Contractor shall identify any conditions that apply to the up-fit/modification on a quotation to the Eligible Agency for review before any work commences.

4.5 Minimum Vehicle Requirements: All prices shall include the following equipment:

4.5.1 All standard factory equipment

4.5.2 Automatic transmission [maximum towing/payload capacity shall be provided upon request)

4.5.3 Bluetooth capabilities

4.5.4 AM/FM radio

4.5.5 Cruise Control

4.5.6 Power Door Locks/Power Windows
4.5.7 Power Mirrors when available

4.5.8 Four (4) entrance tools (in any combination allowed; keyless entry remotes, integrated or smart keys, standard cut keys) per vehicle.
a. Type of keys to be provided shall be indicated on quote.

4.5.9 Air conditioning
a. Rear air conditioning on all vehicles, when available

4.5.10 Cloth seats

4.5.11 Rear view mirrors including on driver and passenger doors
a. FOR TRUCKS: Rear view mirrors on driver front and passenger front doors, largest available without upgrading vehicle options package.
b. Back up Camera

4.5.12 Spare tire
a. Full size standard steel wheel with matching Original Equipment Manufacturer spare tire identical to standard equipment with the trim level of the delivered vehicle.
b. If full spare is not available due to space or manufacturer standards, an alternative shall be provided and noted on quote provided.

4.5.13 Floor Mats

a. O.E.M. floor mat sets installed in all seating rows where the vehicle comes with carpeted floors.

b. Fixed driver floor mat

4.5.14 Arizona legal tinted glass

4.5.15 Minimum of 2 USB charging Ports

4.6 Specific Requirements for Trucks (when available)

4.6.1 Anti-slip differential for two-wheel drive pickup trucks, ¾ ton, up to 19,500 GVW.

4.6.2 Skid plate package and anti-slip differential for four-wheel drive vehicles

4.6.3 Front tow hooks

5 Contractor's Responsibilities

Contractor shall be responsible for processing the registration, licensing, title and plating of all new vehicles ordered only if requested by the Eligible Agency.

6 Department's Responsibilities

The Eligible Agencies will provide final acceptance and approval of any equipment and services delivered

1. CONTRACT TERM

The term of any resultant contract shall commence on the effective day of award and shall continue for a period of twelve months (12) thereafter, unless terminated, cancelled or extended as otherwise provided herein.

2. CONTRACT EXTENSION

By mutual written contract amendment, any resultant contract may be extended for supplemental periods of up to a maximum of forty-eight (48) months.

3. ELIGIBLE AGENCIES

This contract shall be for the use of all State of Arizona departments, agencies and boards. In addition, eligible universities, political subdivisions and nonprofit educational or public health institutions may participate at their discretion. In order to participate in any resultant contract, a university, political subdivision or nonprofit educational or public health institution must have entered into a cooperative purchasing agreement with the State Procurement Office as required by Arizona Revised Statutes §41-2632.

4. NON-EXCLUSIVE CONTRACT

This contract shall be for the sole convenience of the Department. The Department reserves the right to obtain like goods or services from another source when necessary. The Off-Contract Purchase Authorization and subsequent procurement shall be consistent with the Arizona Procurement Code.

5. ORDERING PROCESS

The Department shall issue a purchase order to the Contractor. Each purchase order must cite the contract number. This purchase order shall be the only document required for the Department to order and the Contractor to deliver the material and/or service.

Any attempts to represent any material and/or service not specifically awarded as being under contract is a breach of the contract and a violation of the Arizona Procurement Code. Any such action is subject to the legal and contractual remedies available to the State inclusive of but not limited to contract cancellation, suspension and/or debarment of the Contractor.

6. SHIPPING TERMS

Delivery shall be F.O.B. Destination to the location designated herein. Contractor shall retain title and control of all goods until they are delivered. All risk of transportation and related charges shall be the responsibility of the Contractor. All claims for visible or concealed damage shall be filed by the Contractor. The Department will notify the Contractor promptly of any damaged goods and shall assist the Contractor in arranging for inspection.

7. DELIVERY

Contract prices shown for each vehicle include delivery cost within a sixty (60) mile radius of Phoenix.

For the purpose of this contract, the address used for mapping the radius within Phoenix will be as follows:

Equipment services shop/ADOT
2225 S 22nd Ave, Phoenix, AZ 85009

Delivery costs for each county outside of the Phoenix area shall be indicated on Offer Response form.

This will be an added cost to the contract price.

Deliveries shall be completed In accordance with the requirements of the contract.
Delivery of the product does not constitute acceptance.

8. INSPECTION AND ACCEPTANCE

Each item delivered shall be subject to a complete inspection by the Department within 10 days after delivery. Inspection criteria shall include, but not be limited to, conformity to the specifications, workmanship, quality and materials.

If the delivered product is not accepted and returned for corrective action, an additional fifteen (15) calendar days shall be allowed for inspection of the corrected or replacement product.

The Contractor shall be responsible for the transport of the material to and from the Department for the correction of items or workmanship not in compliance with the specifications.

Product returned for corrective action may delay payment. Invoices will be processed for payment only after the product is accepted.

9. INVOICING and PAYMENT

Contractor shall submit all billing notices or invoices to the Eligible Agency or Co-Op Buyer at the address Indicated on the applicable Order document.

Separate invoices are required for each shipment of product or delivery of service and shall include at a minimum:

- Department Location's Name and Address
- Vendor Name, Remit to Address and Contact Information
- Contract Number
- Purchase Order Number
- Invoice Number and Date
- Date the items were shipped to the Department
- Applicable payment terms
- Contract Line Item Number
- Line Item Description or Item or Service
- Quantity Purchased

- Line Item Unit of Measure
- Price per Unit and Total per Unit
- Catalog or Other Discount (if applicable)
- Net Unit Price and Total per Unit (if applicable)
- Applicable taxes (as a separate invoice line item)
- Applicable Shipping/Freight Charges etc. (as a separate invoice line item) Materials only.
- Total Invoice Amount Due

Invoices not sent to the proper address, or not containing the necessary and required information may delay payment. A Contractor whose payments are delayed due to improper invoicing shall make no claim against the Department or the State for late or finance charges.

The Department will make every effort to process payment for the purchase of product within thirty (30) calendar days after the Department has conducted the necessary reviews, inspections and acceptance as described herein.

The department acceptance date will be the valid date for starting the thirty (30) calendar day payment period.

Payment due dates, including discount periods, will be computed from the date of acceptance or date of correct invoice (whichever is later) to the date the Department's warrant is mailed.

10. ESTIMATED USAGE

The Department anticipates considerable usage under this contract. The Department reserves the right to increase or decrease actual quantities ordered as circumstances may require. No guarantees are made concerning actual purchases under this contract.

11. PRICING

1 Phase 1 and 2 pricing for vehicles shall be a minimum Percentage off MSRP, less the manufacturer's rebates and any additional discounts available for that model/power-train combination.

a. Contractor shall provide a copy of manufacturer's invoice to the ordering agency upon request. The manufacturer's invoice shall be unaltered to include original pricing from the manufacturer.
b. Transportation costs to transfer a vehicle from another dealer for a Phase 2 or purchase from stock may be added to the cost of the vehicle. The justification for this cost is at the discretion of the Eligible Agency.
c. Any reference to Phase 1 pricing shall be in reference to vehicles ordered prior to the factory cut-off date.
d. Any reference to Phase 2 pricing shall be in reference to vehicles purchased from stock or "on the lot".
e. Phase 2 pricing shall receive the same cost considerations as Phase 1 pricing, all discounts and rebates should be passed onto the Eligible Agency.
f. All vehicles are to be billed at prices in effect at the time of order, not the date of shipment.

g. Pricing for vehicles shall include all discounts and deductions, less Federal and State taxes. Pricing shall be firm for life of contract unless amended by way of contract change order.

2 CONTRACTOR'S BEST PRICING: Supplier warrants that, for the term of the Contract, the prices and discounts set out in the Pricing Documents, including any subsequent agreed amendment to it (the "Contract Pricing"), will be equal to or better than the lowest prices and largest discounts, both separately and in combination, at which Contractor sells equivalent items of equipment and materials.

2.1 That price-plus-discount equivalence ("Contractor's Best Pricing") is intended to be irrespective of whether or not those other sales have special purchase terms, conditions, rebates or allowances.

2.2 If Contractor's Best Pricing for equivalent items of equipment and materials is better than the Contract Pricing, then Contractor agrees to adjust the Contract Pricing to match the Contractor's Best Pricing for all sales related to the Contractor made after the date when the Contractor's Best Pricing was first better than the Contract Pricing.

2.3 For clarification of intent, that date is intended to be the date when the difference first occurred, which might have been before the difference was first identified. If it was before, then Supplier agrees to charge at less than the Contract Pricing until the extended difference that would have been realized (i.e., if the Contractor's Best Pricing had been applied when it should have been) has been settled.

3 PRICING-ALL-INCLUSIVE: Pricing is all-inclusive, including any ancillary fees and costs required to accomplish the Scope of Work and all aspects of Contractor's offer as accepted by State. Details of service not explicitly stated in the Scope of Work or in Contractor's Offer, but necessarily a part of, are deemed to be understood by Contractor and included herein. All administrative, reporting, or other requirements, all overhead costs and profit and any other costs toward the accomplishment of the requirements in the Contract are included in the pricing provided.

4 LARGE VOLUME DISCOUNT PRICING: An Eligible Agency may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible Agency for large volume purchases.

5 A price reduction adjustment may be offered at any time during the term of a contract and shall become effective upon notice through a written contract amendment.

12. PRICE INCREASE

The Department will review **fully documented** requests for price increases for any contract which will or has been in effect for twelve (12) months. The request shall be submitted no less than 60 days prior to the contract renewal date. The Contractor shall provide fully documented information which supports the price increase request. Fully documented means that the request shall present detailed information and calculations that make it clear how the claimed increase has an impact on the contract unit prices. All assumptions regarding cost factors that have an impact on the requested increase shall also be

clearly identified and justified. The requested price increase must be based upon a cost increase that was clearly unpredictable at the time of the offer and can be shown to directly affect the price of the item concerned. Any price increase adjustment request prior to the time of contract extension will be a factor in the extension review process. The Department will determine whether the requested price increase or an alternate option, is in the best interest of the State. All pricing should reflect the minimum percentage of MSRP.

13. SAFETY STANDARDS

Items supplied under this contract shall comply with all current applicable safety standards and regulations including the Occupational Safety and Health Standards of the State of Arizona Industrial Commission, the National Electric Code and the National Fire Protection Association Standards.

14. WARRANTY

The Contractor warrants:

1. That all services performed hereunder shall conform to the requirements of this contract and shall be performed by qualified personnel in accordance with the highest professional standards.

2 At a minimum all equipment supplied under these specifications shall be fully warranted by the vehicle manufacturer against mechanical and electrical defects for a minimum period of thirty-six (36) months from the date vehicle is placed in service.

3 This warranty shall cover such items as actual repair labor, parts, and shipping charges to and from the nearest service facility or other designated repair depot.

4 Any defects of design, workmanship or material, shall be fully corrected by the vendor without cost to the state agency or political subdivision.

5 The written warranty shall be included with the delivered vehicles to the Eligible Agency. The warranty terms shall be stated on Attachment 3-A, where indicated. Failure to provide this general information may result in the offer being rejected.

6 Hybrid / Electric Vehicle Warranty: Hybrid-related components including catalytic convertor, electronic control unit, onboard emissions diagnostic device, high voltage battery, transmission, DC/DC convertor for hybrid vehicles shall be covered for 8 years/100,000 miles, battery for electric vehicles shall be 8/years/100,000 miles and bidder shall indicate limitation of warranty due to voltage and amps. The warranty terms shall be stated where indicated on Attachment 3-A. Failure to provide this general information may result in the bid being rejected.

15. CURRENT PRODUCTS

All products supplied under this contract shall be in current and ongoing production; shall have been formally announced for general marketing purposes; shall be a model or type currently functioning in a user (paying customer) environment and capable of meeting or exceeding all specifications and requirements set forth in the contract.

16. PRODUCT DISCONTINUANCE

In the event that a product or model is discontinued by the manufacturer, the Department at its sole discretion may allow the Contractor to provide a substitute for the discontinued item. The Contractor shall request authorization to substitute a new product or model and provide the following:

1. A formal announcement from the manufacturer that the product or model has been discontinued.

2. Documentation from the manufacturer that names the replacement product or model.

3. Documentation that provides clear and convincing evidence that the replacement meets or exceeds all specifications required by the original solicitation.

4. Documentation that provides clear and convincing evidence that the replacement will be compatible with all the functions or uses of the discontinued product or model.

5. Documentation confirming that the price for the replacement is the same as or less than the discontinued product or model.

17. CONTRACT ADMINISTRATION

The Contractor shall contact the assigned Procurement Officer for guidance or direction in matters of contract interpretation or questions regarding the terms, conditions or scope of the contract.

18. NOTICES

All notices, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purposes of this provisions collectively called "Notices"), shall be in writing and shall be sent by certified United States mail, return receipt requested, or by any other method that provides evidence of receipt, addressed to the party or parties to receive such notice as follows:

A. If intended for the State, to:

Arizona Department of Transportation, Procurement Group
1739 W. Jackson Street, MD 100P
Phoenix, Arizona 85007-3276

B. If intended for the Contractor, to the address as identified in the Contractor's electronic vendor profile. Or to such other address as either party may from time to time furnish in writing to the other by notice hereunder. Any notice so mailed shall be deemed to have been given as of the date such notice is received as shown on the return receipt. Furthermore, such notice may be given by delivering personally such notice, if intended for the State, to the Arizona Department of Transportation, Procurement Officer and, if intended for the Contractor, to the person named on the Offer & Contract Award of this contract, or to such other person as either party may from time to time furnish in writing to the other by notice hereunder. Any notice so delivered shall be deemed to have been given as of the date such notice is personally delivered to the other party.

19. CANCELLATION FOR POSSESSION OF WEAPONS ON ADOT PROPERTY

This contract may be cancelled if Contractor or any subcontractors or others in the employ or under the supervision of the Contractor or subcontractors is found to be in possession of weapons.

Possession of weapons (firearms, explosive device, knife or blade of more than three inches, or any other instrument designed for lethal or disabling use) is prohibited on ADOT property.

Further, if the Contractor or any subcontractors or others in the employ or under the supervision of the Contractors or subcontractors are asked by an ADOT official to leave the ADOT property, they are advised that failure to comply with such a request shall result in cancellation of the contract and anyone who refuses, whether armed or not, is subject to prosecution under A.R.S. § 13-1502, "Criminal trespass in the third degree; classification."

20. INDEMNIFICATION CLAUSE

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents, and employees for losses arising from the work performed by the Contractor for the State of Arizona. This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.

21. INSURANCE REQUIREMENTS

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

21.2 The Insurance Requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way

warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that arise out of the performance of the work under this Contract by the Contractor, its agents, representatives, employees or subcontractors, and the Contractor is free to purchase additional insurance.

21.3 Minimum Scope and Limits of Insurance Contractor shall provide coverage with limits of liability not less than those stated below.

21.3.1 Commercial General Liability (CGL) – Occurrence Form

The Contractor shall furnish Certificate(s) of Insurance inclusive of the following requirements to the Department. Certificate(s) shall be received within 10 calendar days of notification of contract award by the Procurement Officer.

Policy shall include bodily injury, property damage, and broad form

contractual liability coverage.

- General Aggregate $2,000,000
- Products – Completed Operations Aggregate $1,000,000
- Personal and Advertising Injury $1,000,000
- Damage to Rented Premises $50,000
- Each Occurrence $1,000,000

a. The policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor.

b. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

21.3.2 Business Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and/or non-owned automobiles used in the performance of this Contract.

- Combined Single Limit (CSL) $1,000,000

a. Policy shall be endorsed, as required by this written agreement, to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by, or on behalf of, the Contractor involving

automobiles owned, hired and/or non-owned by the Contractor.

b. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

21.3.3 Workers' Compensation and Employers' Liability

• Workers' Compensation	Statutory
• Employers' Liability	
o Each Accident	$1,000,000
o Disease – Each Employee	$1,000,000
o Disease – Policy Limit	$1,000,000

a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

b. This requirement shall not apply to each Contractor or subcontractor that is exempt under A.R.S. § 23-901, and when such Contractor or subcontractor executes the appropriate waiver form (Sole Proprietor or Independent Contractor).

21.4 Additional Insurance Requirements The policies shall include, or be endorsed to include, as required by this written agreement, the following provisions:

21.4.1 The Contractor's policies, as applicable, shall stipulate that the insurance afforded the Contractor shall be primary and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by A.R.S. § 41-621 (E).

21.4.2 Insurance provided by the Contractor shall not limit the Contractor's liability assumed under the indemnification provisions of this Contract.

21.5 Notice of Cancellation Applicable to all insurance policies required within the Insurance Requirements of this Contract, Contractor's insurance shall not be permitted to expire, be suspended, be canceled, or be materially changed for any reason without thirty (30) days prior written notice to the State of Arizona. Within two (2) business days of receipt, Contractor must provide notice to the State of Arizona if they receive notice of a policy that has been or will be suspended, canceled, materially changed for any reason, has expired, or will be expiring. Such notice shall be sent directly to the Department and shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State Representative's Name, Address & Fax Number).

21.6 Acceptability of Insurers Contractor's insurance shall be placed with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of

not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

21.7 Verification of Coverage Contractor shall furnish the State of Arizona with certificates of insurance (valid ACORD form or equivalent approved by the State of Arizona) evidencing that Contractor has the insurance as required by this Contract. An authorized representative of the insurer shall sign the certificates.

21.7.1 All such certificates of insurance and policy endorsements must be received by the State before work commences. The State's receipt of any certificates of insurance or policy endorsements that do not comply with this written agreement shall not waive or otherwise affect the requirements of this agreement.

21.7.2 Each insurance policy required by this Contract must be in effect at, or prior to, commencement of work under this Contract. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

21.7.3 All certificates required by this Contract shall be sent directly to the Department. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete copies of all insurance policies required by this Contract at any time.

21.8 Subcontractors Contractor's certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all subcontractors have valid and collectable insurance as evidenced by the certificates of insurance and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum Insurance Requirements identified above. The Department reserves the right to require, at any time throughout the life of the Contract, proof from the Contractor that its subcontractors have the required coverage.

21.9 Approval and Modifications the Contracting Agency, in consultation with State Risk, reserves the right to review or make modifications to the insurance limits, required coverages, or endorsements throughout the life of this contract, as deemed necessary. Such action will not require a formal Contract amendment but may be made by administrative action.

21.10 Exceptions In the event the Contractor or subcontractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a certificate of self-insurance. If the Contractor or subcontractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

22. USAGE REPORT

The Contractor shall furnish Two (2) Usage reports, the first to the Department on a quarterly basis showing purchasing activity under this contract. This usage report shall be provided in a form substantially equivalent to Exhibit 03. Usage reports shall be submitted to the Procurement Officer no later than 30 days after the end of each quarter.

Usage report quarters shall be defined as follows:

- January through March – Report due April 30
- April through June – Report due July 30
- July through September – Report due October 30
- October through December – Report due January 30

Contractor shall submit the second to the State documenting all Contract sales to both Eligible Agencies and Co-Op Buyers, itemized separately. A *Quarterly Usage Report* shall still be submitted; even if there have been no sales to either Eligible Agencies and/or Co-Op Buyers. Contractor shall further itemize divisions, groups or areas within a given Eligible Agency if they place Orders independently of each other. Failure to submit the report is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Contractor shall submit the report using the forms and following the instructions on the State Procurement Office website:

https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee

23. CONTRACT ORDER OF PRECEDENCE

In the event of a conflict in the provisions of the Contract, as accepted by the Department and as they may be amended, the following shall prevail in the order set forth below:

- Federal Provisions
- Special Terms and Conditions
- Uniform Terms and Conditions
- Statement or Scope of Work
- Specifications
- Attachments
- Exhibits
- Special Instructions to Offerors
- Uniform Instructions to Offerors
- Other documents referenced or included in the Solicitation

24. LICENSES, PERMITS, CERTIFICATIONS

Contractor, at their expense, shall maintain in current status without any violations, complaints, or suspensions during the term of this contract all Federal, State and Local licenses, permits and certifications required for the operation of a business conducted by the Contractor.

25. CO-OP USAGE

Contractor shall verify if an ordering entity is a bona fide Co-Op Buyer before selling Materials to or providing Services for them under the Contract. The current list of Co-Op Buyers is available on the State Procurement Office website:

https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee

Contractor shall sell to Co-Op Buyers at the same price, and with the same lead times and other terms and conditions under which it sells to Eligible Agencies. With the sole exception of any legitimate additional costs for extraordinary shipping, or delivery requirements, if the Co-Op Buyer is having Materials delivered or installed or Services performed at locations not contemplated in the contracted pricing (e.g. delivery to a location outside Arizona).

Contractor shall acknowledge each Order from Co-Op Buyers in conformance with each buyer's instructions given at the time of ordering or in any supplemental participating agreement Contractor might have with them. Orders from Co-Op Buyers create no obligation on State's part, since they are entirely between the Co-Op Buyer and Contractor. That notwithstanding, Contractor's obligation under the Contract is to service Co-Op Buyers commercially as though they were with an Eligible Agency, and Contractor's refusal to do so would be a material breach of the Contract.

26. POST AWARD MEETING

At the discretion of the Department, the Contractor, at their expense, shall attend and participate in post award meetings as scheduled by the Procurement Officer.

1. Definition of Terms

As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

1.1. *"Attachment"* means any item the Solicitation requires the Offeror to submit as part of the Offer.

1.2. *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.

1.3. "*Contract Amendment*" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.

1.4. *"Contractor"* means any person who has a Contract with the State.

1.5. *"Days"* means calendar days unless otherwise specified.

1.6. *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.

1.7. *"Gratuity"* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

1.8. "*Materials"* means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.

1.9. *"Procurement Officer"* means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.

1.10. *"Services"* means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.

1.11. *"Subcontract"* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

1.12. *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.

1.13. *"State Fiscal Year"* means the period beginning with July 1 and ending June 30.

2. Contract Interpretation

2.1. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona

Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

2.2. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.

2.3. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:

- Federal Provisions
- Special Terms and Conditions
- Uniform Terms and Conditions
- Statement or Scope of Work
- Specifications
- Attachments
- Exhibits
- Special Instructions to Offerors
- Uniform Instructions to Offerors
- Other documents referenced or included in the Solicitation

2.4. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.

2.5. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.

2.6. No Parole Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

2.7. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3. Contract Administration and Operation

3.1. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.

3.2. Non-Discrimination. The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

3.3. Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.

3.4. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

3.5. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.

3.6. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.

3.7. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

3.8. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the

State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

3.9. Federal Immigration and Nationality Act. The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.

3.10 E-Verify Requirements. In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.

3.11 Offshore Performance of Work Prohibited.
Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

4. Costs and Payments

4.1. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.

4.2. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.

4.3. Applicable Taxes.

4.3.1. Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.

4.3.2. State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.

4.3.3. Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if

applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

4.3.4. IRS W9 Form. In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.

4.4. Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.

4.5. Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:

4.5.1. Accept a decrease in price offered by the contractor;

4.5.2. Cancel the Contract; or

4.5.3. Cancel the contract and re-solicit the requirements.

5. Contract Changes

5.1. Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.

5.2. Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.

5.3. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6. Risk and Liability

6.1. Risk of Loss: The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

6.2. Indemnification

6.2.1. Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

6.2.2. Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."

6.3. Indemnification - Patent and Copyright**.** The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.4. Force Majeure.

6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term *"force majeure"* means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

6.4.2. Force Majeure shall not include the following occurrences:

6.4.2.1. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;

6.4.2.2. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or

6.4.2.3. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

6.4.3. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

6.4.4. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.5. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

7. Warranties

7.1. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.

7.2. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:

7.2.1. Of a quality to pass without objection in the trade under the Contract description;

7.2.2. Fit for the intended purposes for which the materials are used;

7.2.3. Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;

7.2.4. Adequately contained, packaged and marked as the Contract may require; and

7.2.5. Conform to the written promises or affirmations of fact made by the Contractor.

7.3. Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.

7.4. Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.

7.5. Compliance With Applicable Laws. The materials and services supplied under this

Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.

7.6. Survival of Rights and Obligations after Contract Expiration or Termination.

7.6.1. Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.6.2. Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. State's Contractual Remedies

8.1. Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2. Stop Work Order.

8.2.1. The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

8.4. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the

materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.5. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9. Contract Termination

9.1. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.

9.2. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.

9.3. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.

9.4. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time when in the best interest of the State, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The

Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.

9.5. Termination for Default.

9.5.1. In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

9.5.2. Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.

9.5.3. The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.

9.6. Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

10. Contract Claims

All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.

11. Arbitration

The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).

12. Comments Welcome

The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.

1. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The following provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220 available at: https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/third-party-contracting-guidance are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

The Federal Terms and Conditions under this Contract shall be incorporated in any sub-contractor, or lower-tier agreement for any federally-funded task assignment / project awarded under this Contract.

2. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

The Department and Contractor acknowledge and agree that, notwithstanding any concurrence b the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Department, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by Federal Funding Agency. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

3. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 USC 3801 et seq. and USDOT regulations, "Program Fraud Civil Remedies," 49 CFR 31, apply to its actions pertaining to this project.

Upon execution of the underlying contract, contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submittal, or certification, the US Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act (1986) on contractor to the extent the US Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) (5323(I)) on the Contractor, to the extent the Federal Government deems appropriate.

Contractor shall include the above two clauses in each subcontract financed in whole or in part with FTA assistance. The clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

4. ACCESS TO RECORDS AND REPORTS

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor shall - provide the Purchaser, the FTA, the US Comptroller General or their authorized representatives access to any books, documents, papers and contractor records which are pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor shall also , pursuant to 49 C. F. R. 633.15, provide authorized FTA representative including any PMO Contractor access to Contractor's records and construction sites pertaining to a capital project, defined at 49
U.S.C. 5302(a)1, which is receiving assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.15, Contractor shall provide the Purchaser, authorized FTA representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which receives FTA assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at
$250,000.00.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non- profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor shall provide the Purchaser, FTA, the US Comptroller General or their authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where a Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of USDOT and the US Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. Contractor shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor shall retain, and shall require its subcontractors at all tiers, all books, records, accounts and reports required under this contract for a period of not less than five years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

5. TERMS OF THE MASTER AGREEMENT AND COMPLIANCE

Contractor shall at all times comply with all applicable Federal Funding Agency laws, regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement, available at https://www.transit.dot.gov/funding/grantee-resources/sample-fta- agreements/fta-grant-agreements, between the Department and FTA, as they may be amended or promulgated from time to time during the term of this contract. This Master Agreement does not have an Expiration Date. This Master Agreement continues to apply to the Recipient and its Underlying Agreement, until modified or superseded by a more recently enacted or issued applicable federal law, regulation, requirement, or guidance, or amendment to this Master Agreement or the Underlying Agreement. To assure compliance the Recipient must take measures to assure that other participants in its Underlying Agreements (*e.g.*, Third Party Participants) comply. Contractor's failure to so comply shall constitute a material breach of this contract.

All contractual provisions required by the U.S. Department of Transportation are hereby incorporated by reference. In the event of additional funding provided by FHWA, the applicable requirements of the Stewardship Agreement, available at https://www.fhwa.dot.gov/federalaid/stewardship, between the Department and FHWA are incorporated by reference.

6. CIVIL RIGHTS REQUIREMENTS

The AGENCY is an Equal Opportunity Employer. As such, the AGENCY agrees to comply

with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, the AGENCY agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Agreement, the Contractor shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

Equal Employment Opportunity

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex(including sexual orientation and gender identity), age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements Federal Funding Agency may issue.

2. Race, Color, religion, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements Federal Funding Agency may issue.

3. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements Federal Funding Agency may issue.

4. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42
U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements Federal Funding Agency may issue.

The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided, modified only if necessary to identify the affected parties.

7. TERMINATION

Termination of the contract shall be in accordance with the Uniform Terms and Conditions, Section 9., paragraph 9.1 through 9.6.

8. DEBARMENT OR SUSPENSION

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940and 29.945. The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

a) Debarred from participation in any federally assisted Award;

b) Suspended from participation in any federally assisted Award;

c) Proposed for debarment from participation in any federally assisted Award;

d) Declared ineligible to participate in any federally assisted Award;

e) Voluntarily excluded from participation in any federally assisted Award; or

f) Disqualified from participation in ay federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Department. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the Department, the

Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

8.1 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

The Contractor agrees to the following:

(1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following:

(a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note,

(b) It will review the U.S. GSA "System for Award Management," https://www.sam.gov, if required by U.S. DOT regulations, 2 C.F.R. part 1200, and

(c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:

(1) Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at https://www.sam.gov, if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and

If the Department suspends, debars, or takes any similar action against a Third Party Participant or individual, the Department will provide immediate written notice to the:

(a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project,
(b) FTA Project Manager if the Project is

administered by an FTA Headquarters Office, or

(c) FTA Chief Counsel.

9. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER

POLLUTION CONTROL ACT Clean Water

Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient shall, in turn, report each violation as required to FTA and the appropriate EPA Regional Office. Contractor shall include these requirements in each subcontract exceeding $150,000 financed in whole or in part with FTA assistance.

Clean Air

1) Contractor shall comply with all applicable standards, orders or regulations pursuant to the Clean Air Act, 42 USC 7401 et seq. Contractor shall report each violation to the recipient and understands and agrees that the recipient will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

2) Contractor shall include these requirements in each subcontract exceeding $150,000 financed in whole or in part with FTA assistance.

10. BUY AMERICA

In any task assignment / project for construction, acquisition of goods, or rolling stock valued at more than $150,000, the contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661, which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

Contractor shall comply with 49 USC 5323(j) and 49 CFR 661, stating that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include software, microcomputer equipment and small purchases (currently less than $150,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are stated at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be manufactured in the US and have a minimum 65% domestic content for FY2019 and a minimum 70% domestic content for FY2020 and beyond. A bidder or offeror shall submit appropriate Buy America certification to the recipient with all bids on FTA-funded contracts, except those subject to a general waiver. Proposals not accompanied by a completed a certification shall be rejected as

nonresponsive. This requirement does not apply to lower tier subcontractors.

11. BREACHES AND DISPUTE RESOLUTION

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the (Recipient), (Architect) or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the Department. This decision shall be final and conclusive unless within ten days from the date of receipt of its copy, contractor mails or otherwise furnishes a written appeal to the Department. In connection with such appeal, contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Department shall be binding upon contractor and contractor shall abide by the decision. FTA has a vested interest in the settlement of any violation of Federal law including the False Claims Act, 31 U.S.C. § 3729.

Performance During Dispute - Unless otherwise directed by the recipient, contractor shall continue performance under this contract while matters in dispute are being resolved. Claims for Damages - Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefore shall be made in writing to such other party within ten days after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the Department and contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the residing State.

Rights and Remedies - Duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the Department or contractor shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

12. LOBBYING

The Contractor agrees to comply with the provisions of Title 31, U.S. C 1352 as

amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. 1601, et seq.] and (Public Law 101.121) as codified in Title 48, Federal Acquisition Regulations Subpart 3.8 and Subpart 52.203-11. The legislation prohibits Federal funds from being expended by a recipient or any lower tier sub- recipients of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence a Federal agency or Congress in connection with the award of any Federal contract, the making of any Federal grant or loan, or entering into any cooperative agreement, including the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement. All disclosure statements are to be furnished to the Department.

Contractors who apply or propose/bid for an award of $100,000 or more in value shall file the attached Lobbying Certification {01Lobbying Certification document} required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

13. FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government- financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not
available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

14. ENERGY CONSERVATION

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency, stated in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

15. CONFLICTS OF INTEREST / EMPLOYMENT OF FEDERAL PERSONNEL

Contractors will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the Department or the Federal funding agency shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: The employee, officer or agent, any member of his immediate family, His or her partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. Department officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

16. COPYRIGHT AND PATENT

To the extent permitted by A.R.S. § 41-621 and § 35-154, the Contractor shall indemnify and hold harmless ADOT against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of this contract performance or use by ADOT of materials furnished or work performed under this contract. ADOT shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph.

Copyrights pursuant to 23 CFR 420.121 (b): The Department, as a State DOT may copyright any books, publications, or other copyrightable materials developed in the course of the project, and does herein exercise that right. The federal funding agency reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Government purposes.

Patents pursuant to 23 CFR 420.121 (i): The Department, as a State DOT is subject to the provisions of 37 CFR part 401 governing patents and inventions and must include or cite the standard patent rights clause at 37 CFR 401.14, except for §401.14(g), in all subgrants or contracts. In addition, State DOTs must include the following clause, suitably modified to identify the parties, in all subgrants or contracts, regardless of tier, for experimental, developmental or research work: “The subgrantee or contractor will retain all rights provided for the State in this clause, and the State will not, as part of the consideration for awarding the subgrant or contract, obtain rights in the subgrantee's or contractor's subject inventions.”

Standard Patent Rights required pursuant to 37 CFR 401.14:

(a) Definitions

(1) Invention means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C.

2321 et seq.).

(2) Subject invention means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(3) Practical Application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

(4) Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

(5) Small Business Firm means a small business concern as defined at section 2 of Pub. L. 85-536 (15
U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) Nonprofit Organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(7) The term statutory period means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b) as amended by the Leahy-Smith America Invents Act, Public Law 112-29.

(8) The term contractor means any person, small business firm or nonprofit organization, or, as set forth in section 1, paragraph (b)(4) of Executive Order 12591, as amended, any business firm regardless of size, which is a party to a funding agreement.

(b) Allocation of Principal Rights

The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention

throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Application by Contractor

(1) The contractor will disclose each subject invention to the Federal Agency within two months after the inventor discloses it in writing to contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the Contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the contractor.

(2) The contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within two years of disclosure to the Federal agency. However, in any case where a patent, a printed publication, public use, sale, or other availability to the public has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. If the contractor files a provisional application as its initial patent application, it shall file a non-provisional application within 10 months of the filing of the provisional application. The contractor will file patent applications in additional countries or international patent offices within either ten months of the first filed patent application or six months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) For any subject invention with Federal agency and contractor co-inventors, where the Federal agency employing such co-inventor determines that it would be in the interest of the government, pursuant to 35 U.S.C. 207(a)(3), to file an initial patent application on the subject invention, the Federal agency employing such co-inventor, at its discretion and in consultation with the contractor, may file such application at its own expense, provided that the contractor retains the ability to elect title pursuant to 35 U.S.C. 202(a).

(5) Requests for extension of the time for disclosure, election, and filing under

paragraphs (1), (2), and (3) of this clause may, at the discretion of the Federal agency, be granted. When a contractor has requested an extension for filing a non-provisional application after filing a provisional application, a one-year extension will be granted unless the Federal agency notifies the contractor within 60 days of receiving the request.

(d) Conditions When the Government May Obtain Title

The contractor will convey to the Federal agency, upon written request, title to any subject invention—

(1) If the contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title.

(2) In those countries in which the contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the contractor shall continue to retain title in that country.

(3) In any country in which the contractor decides not to continue the prosecution of any non- provisional patent application for, to pay a maintenance, annuity or renewal fee on, or to defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to Contractor and Protection of the Contractor Right to File

(1) The contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the contractor fails to disclose the invention within the times specified in (c), above. The contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the contractor is a party and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency except when transferred to the sucessor of that party of the contractor's business to which the invention pertains.

(2) The contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the contractor, its licensees, or the domestic

subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the contractor a written notice of its intention to revoke or modify the license, and the contractor will be allowed thirty days (or such other time as may be authorized by the funding Federal agency for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

(f) Contractor Action to Protect the Government's Interest

(1) The contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) above and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the contractor each subject invention made under contract in order that the contractor can comply with the disclosure provisions of paragraph (c) of this clause, to assign to the contractor the entire right, title and interest in and to each subject invention made under contract, and to execute all papers necessary to file patent applications on subject inventions and to establish the government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) For each subject invention, the contractor will, no less than 60 days prior to the expiration of the statutory deadline, notify the Federal agency of any decision: Not to continue the prosecution of a non- provisional patent application; not to pay a maintenance, annuity or renewal fee; not to defend in a reexamination or opposition proceeding on a patent, in any country; to request, be a party to, or take action in a trial proceeding before the Patent Trial and Appeals Board of the U.S. Patent and Trademark Office, including but not limited to post-grant review, review of a business method patent, inter partes review, and derivation proceeding; or to request, be a party to, or take action in a non-trial submission of art or information at the U.S. Patent and Trademark Office, including but not limited to a pre-issuance submission, a

post-issuance submission, and supplemental examination.

(4) The contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal agency). The government has certain rights in the invention."

(g) Subcontracts

(1) The contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a subcontractor.. The subcontractor will retain all rights provided for the contractor in this clause, and the contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by (cite section of agency implementing regulations or FAR).

(3) In the case of subcontracts, at any tier, when the prime award with the Federal agency was a contract (but not a grant or cooperative agreement), the agency, subcontractor, and the contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on Utilization of Subject Inventions

The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the contractor, and such other data and information as the agency may reasonably specify. The contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the government without permission of the contractor.

(i) Preference for United States Industry

Notwithstanding any other provision of this clause, the contractor agrees that neither

it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in Rights

The contractor agrees that with respect to any subject invention in which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that:

(1) Such action is necessary because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special Provisions for Contracts with Nonprofit Organizations

If the contractor is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the contractor;

(2) The contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give a preference to a small business firm when licensing a subject invention if the contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the contractor agrees that the Federal agency may review the contractor's licensing program and decisions regarding small business applicants, and the contractor will negotiate changes to its licensing policies, procedures, or practices with the Federal agency when the Federal agency's review discloses that the contractor could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4). In accordance with 37 CFR 401.7, the Federal agency or the contractor may request that the Secretary review the contractor's licensing program and decisions regarding small business applicants.

17. RECOVERED MATERIALS

The Contractor agrees to provide a preference for those products and services that conserve natural resources, protect the environment, and are energy efficient by complying with and facilitating compliance with Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and U.S. Environmental Protection Agency (U.S. EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 C.F.R. part 247.

18. SAFE OPERATION OF MOTOR VEHICLES

a. Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

(1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles, and

(2) Including a "Seat Belt Use" provision in each third party agreement related to the Award.

b. Distracted Driving, Including Text Messaging While Driving. The Recipient agrees to comply with:

(1) Executive Order No. 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225),

(2) U.S. DOT Order 3902.10, "Text Messaging While Driving," December 30, 2009, and

(3) The following U.S. DOT Special Provision pertaining to Distracted Driving:

(a) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the Award, or when performing any work for or on behalf of the Award,

(b) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving, and

(c) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34.b(3)(a) – (b) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

19. CERTIFICATION AND ASSURANCES

The FTA Certifications and Assurances are incorporated herein by reference. Upon award or contract renewal, the Contractor must agree to comply with the most current FTA Certifications and Assurances by signing and submitting the signature page provided by the Department. In the event FTA issues new Certifications and Assurances, the Department reserves the right to require submission of a new signature page agreeing to comply; to be added to the terms and conditions by Amendment. All such requests are a condition of continued award.

20. DISADVANTAGED BUSINESS ENTERPRISES

1.0 Policy:

The Arizona Department of Transportation (hereinafter the Department) has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. The Department has received Federal financial assistance from the U.S. Department of Transportation and as a condition of receiving this assistance, the Department has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Department to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also the policy of the Department:

1. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
3. To ensure that the DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are counted as DBEs;
5. To help remove barriers to the participation of DBEs in USDOT-assisted contracts;
6. To assist in the development of firms that can compete successfully in the market place outside the DBE program; and
7. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities.

It is also the policy of the Department to facilitate and encourage participation of Small Business Concerns (SBCs), as defined herein, in USDOT-assisted contracts. The Department encourages contractors to take reasonable steps to eliminate obstacles to SBCs' participation and to utilize SBCs in performing contracts.

2.0 Assurances of Non-Discrimination:

The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, sex or national origin in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Department deems appropriate, which may include, but are not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;

3. Liquidated damages;
4. Suspension or Debarment per Uniform Terms and Conditions Paragraph 9.3 of the contractor from future bidding; and/or
5. Cancellation, termination, or suspension of the Contract, in whole or in part.

The contractor, subrecipient, or subcontractor shall ensure that all subcontract agreements contain this non-discrimination assurance.

3.0 Definitions:

(A) Commercially Useful Function (CUF): Commercially Useful Function is defined fully in 49 CFR 26.55, which definition is incorporated herein by reference.

(B) Disadvantaged Business Enterprise (DBE): a for-profit small business concern which meets both of the following requirements:

(1) Is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of any publicly owned business, at least 51 percent of the stock is owned by one or more such individuals; and,

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(C) NAICS Code: The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

(D) Non-DBE: any firm that is not a DBE.

(E) Race-Conscious (RC): a measure or program focused specifically on assisting only DBEs, including women-owned DBEs.

(F) Race-Neutral (RN): a measure or program used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

(G) Small Business Concern (SBC): a business that meets all of the following conditions:

(1) Operates as a for-profit business registered to do business in Arizona;

(2) Operates a place of business primarily within the U.S., or makes a significant contribution to the U.S. economy through payment of taxes

or use of American products, materials, or labor;

(3) Is independently owned and operated;

(4) Is not dominant in its field on a national basis; and

(5) Does not have annual gross receipts that exceed the Small Business Administration size standards average annual income criteria for its primary North American Industry Classification System (NAICS) code.

(H) Socially and Economically Disadvantaged Individuals: any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

(1) Any individual who is found to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are enrolled members of federally or State recognized Indian tribe, Alaskan Natives or Native Hawaiians;

(iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Republic of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) "Women;"

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business

Administration (SBA), at such time as the SBA designation becomes effective.

4.0 Working with DBEs:

The Department works with DBEs and assists them in their efforts to participate in the highway construction. All proposers should contact the Department's Business Engagement and Compliance Office (BECO) by phone, through email, or at the address shown below, for assistance in their efforts to use DBEs in the highway construction industry. BECO contact information is as follows:

Arizona Department of Transportation Business Engagement and Compliance Office 1801 W. Jefferson St., Ste. 101, Mail Drop 154A
Phoenix, AZ 85007
Phone (602) 712-7761
FAX (602) 712-8429
Email: contractorcompliance@azdot.gov Website: www.azdot.gov/bec

4.01 Mentor-Protégé Program:

The Department has established a Mentor- Protégé program as an initiative to encourage and develop disadvantaged businesses in the highway construction industry. The program encourages prime contractors to provide certain types of assistance to certified DBE subcontractors. ADOT encourages contractors and certified DBE subcontractors to engage in a Mentor-Protégé agreement under certain conditions. Such an agreement must be mutually beneficial to both parties and to ADOT in fulfilling requirements of 49 CFR Part 23. For guidance regarding this program refer to the Mentor-Protégé Program Guidelines available on the BECO website.

The Mentor-Protégé program is intended to increase legitimate DBE activities. The program does not diminish the DBE rules or regulations, and participants may not circumvent these rules.

5.0 Applicability:

The Department has established an overall annual goal for DBE participation on Federal aid contracts. The Department intends for the goal to be met with a combination of race conscious efforts and race neutral efforts. Race conscious participation occurs when the contractor uses a percentage of DBEs, as defined herein, to meet the contract specified goal. Race neutral efforts are those that are, or can be, used to assist all small businesses or increase opportunities for all small businesses. The regulation, 49 CFR 26, defines race neutral as when a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract

on a prime contract that does not carry a DBE contract goal.

Prime contractors are encouraged to obtain DBE participation even if a DBE goal was not established on a contract.

The DBE provisions are applicable to all contractors including DBE contractors.

6.0 Certification and Registration:

6.1 DBE Certification:

Certification as a DBE shall be predicated on:

(1) The completion and execution of an application for certification as a "Disadvantaged Business Enterprise".

(2) The submission of documents pertaining to the firm(s) as stated in the application(s), including but not limited to a statement of social disadvantage and a personal financial statement.

(3) The submission of any additional information which the Department or the applicable Arizona Unified Certification (UCP) agency may require to determine the firm's eligibility to participate in the DBE program.

(4) The information obtained during the on-site visits to the offices of the firm and to active job-sites.

Applications for certification may be filed online with the Department or the applicable UCP agency at any time through the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) website at http://www.azutracs.com.

DBE firms and firms seeking DBE certification shall cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for denial or removal of certification.

ADOT is a member of the AZ Unified Certification Program (AZUCP). Only DBE firms that are certified by the AZUCP are eligible for credit on ADOT projects. A list of DBE firms certified by AZUCP is available on the internet at http://www.azutracs.com/. The list will indicate contact information and specialty for each DBE firm, and may be sorted in a variety of ways. However, ADOT does not guarantee the accuracy and/or completeness of this information, nor does ADOT represent that any licenses or registrations are appropriate for the work to be done.

The Department's certification of a DBE is not a representation of qualifications and/or abilities nor does it mean that a DBE firm is guaranteed or entitled to receive or be awarded a contract. Being certified simply means that a firm has met the criteria for

DBE certification as outlined in 49 CFR Part 26. The contractor bears all risks of ensuring that DBE firms selected by the contractor are able to perform the work.

6.2 SBC Registration:

To comply with 49 CFR Part 26.39, ADOT's DBE Program incorporates contracting requirements to facilitate participation by Small Business Concerns (SBCs) in federally assisted contracts. SBCs are for- profit businesses authorized to do businesses in Arizona that meet the Small Business Administration (SBA) size standards for average annual revenue criteria for its primary North American Industry Classification System (NAICS) code.

While the SBC component of the DBE program does not require utilization of goals on projects, ADOT strongly encourages contractors to utilize small businesses that are registered in AZ UTRACS on their contracts, in addition to DBEs meeting the certification requirement. The contractor may use the AZ UTRACS website to search for certified DBEs and registered SBCs that can be used on the contract. However, SBCs that are not DBEs will not be counted toward DBE participation.

SBCs can register online at the AZ UTRACS website.

The Department's registration of SBCs is not a representation of qualifications and/or abilities nor does it mean that an SBC firm is guaranteed or entitled to receive or be awarded a contract. Being SBC registered simply means that a firm has met the criteria for SBC registration as outlined in 49 CFR Part
26. The contractor bears all risks of ensuring that SBC firms selected by the contractor are able to perform the work.

7.0 DBE Financial Institutions:

The Department thoroughly investigates the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in its service area and makes reasonable efforts to use these institutions. The Department encourages prime contractors to use such institutions on USDOT assisted contracts. However, use of DBE financial institutions will not be counted toward DBE participation.

The Department encourages prime contractors to research the Federal Reserve Board website at www.federalreserve.gov to identify minority-owned banks in Arizona derived from the Consolidated Reports of Condition and Income filed quarterly by banks (FFIEC 031 and 041) and from other information on the Board's National Information Center database.

8.0 Time is of the Essence:

TIME IS OF THE ESSENCE IN RESPECT TO THE DBE PROVISIONS.

9.0 Computation of Time:

In computing any period of time described in this DBE special provision, such as calendar days, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal or State holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal or State holiday. In circumstances where the Department's offices are closed for all or part of the last day, the period extends to the next day on which the Department's offices are open.

10.0 Contractor and Subcontractor Requirements:

10.1 General:

Each contractor shall establish a program that will ensure nondiscrimination in the award and administration of contracts and subcontracts.

Agreements between the bidder and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders are prohibited.

10.2 DBE Liaison:

The contractor shall designate a DBE Liaison responsible for the administration of the contractor's DBE program. The name of the designated DBE Liaison shall be included in the DBE Intended Participation Affidavit Summary.

11.0 DBE Goals

The Department has not established contract goals for DBE participation in this contract.

Contractors are still encouraged to employ reasonable means to obtain DBE participation. Contractors must retain records in accordance with these DBE specifications. The contractor is notified that this record keeping is important to the Department so that it can track DBE participation where only race neutral efforts are employed.

11.1 Race Neutral Contract (With No DBE Goal)

The Department has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. ADOT has received federal financial assistance from the USDOT and as a condition of receiving this assistance, ADOT has signed an assurance that it shall comply with 49 CFR Part 26.

It is ADOT's policy to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in federally-funded contracts.

NO CONTRACT DBE GOAL HAS BEEN ESTABLISHED FOR DBE PARTICIPATION ON THIS CONTRACT.

Contractors are still encouraged to employ reasonable means to obtain DBE participation. Contractors must retain records in accordance with these DBE specifications. The consultant is notified that this record keeping is important to the Department so that it can track DBE participation where only race neutral efforts are employed.

12.0 Bidders/Proposers List and AZ UTRACS Registration Requirement:

Under Title 49 CFR of the Code of Federal Regulations, Part 26.11, DOTs are required to collect certain information from all contractors and subcontractors who seek to work on federally-assisted contracts in order to set overall and contract DBE goals. ADOT collects this information when firms register their companies on the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) web portal at http://www.azutracs.com/ a centralized database for companies that seek to do business with ADOT. This information will be maintained as confidential to the extent allowed by federal and state law.

Prime contractors and all subcontractors, including DBEs listed in the offer must be registered in AZUTRACS. Proposers may verify that their firm and each subcontractor is registered using the AZUTRACS website.

Proposers may obtain additional information at the AZ UTRACS website or by contacting BECO.

All proposers shall create a Bidders/Proposers list in the AZ UTRACS by selecting all firms, service providers, and vendors that expressed interest or submitted proposals or quotes for this contract. The Bidders/Proposers List form must be complete and must include the names for all subcontractors, service providers, and vendors that submitted proposals or quotes on this project regardless of the proposer's intentions to use the those firms on the project.

All proposers must complete and submit the Bidders/Proposers List online at AZ UTRACS prior to Offer submittal. A confirmation email will be generated by the system. This email confirmation shall be submitted with the Offer.

13.0 Payment Reporting:

The contractor shall report on a monthly basis indicating the amounts paid to all subcontractors, of all tiers, working on the project. Reporting shall be in accordance with below.

Subcontracts:

a. Sub-Contract Terms:

1. The Contractor agrees to execute a written Contract with all Subcontractors for work to be completed under this Contract. The executed Contract shall include Subcontractor's Scope of Work and all the Uniform Terms and Conditions set forth in this Contract.

2. The Contractor shall provide electronic copies of signed subcontract agreements with all Subcontractors to ADOT Business Engagement and Compliance Office (BECO) by uploading them to the BECO's online DBE Contract & Labor Compliance Management System (**DBE System**) at https://adot.dbesystem.com. Subcontract agreements shall include all required assurances and required clauses as outlined in this Contract. Each agreement and required attachment shall be dated and signed by the Subcontractor in order for the subcontract to be considered valid.

3. The Contractor may be in breach of this Contract if the Contractor materially modifies the federal regulations and State statutes in its subcontract agreements terms and conditions with its Subcontractors. Deviations from the terms of this Contract may result in termination of the Contract, or any other such remedy as deemed appropriate by the Department.

b. Sub-Contract Payments

1. Retention: If the prime contract does not provide for retention, the contractor and each subcontractor of any tier shall not withhold retention on any subcontract. If the prime contract provides for retention, the prime contractor and each subcontractor of any tier shall not retain a higher percentage than the Department may retain under the prime contract. Retainage shall be paid to the subcontractor within 7 days of satisfactory completion of the work performed by the subcontractor.

2. No Set-offs Arising from Other Contracts: If a subcontractor is performing work on multiple contracts for the same contractor or subcontractor of any tier, the contractor or subcontractor of any tier shall not withhold or reduce payment from its subcontractors on the contract because of disputes or claims on another contract.

3. Partial Payment: The contractor and each subcontractor of any tier shall make prompt partial payments to its subcontractors within seven days of receipt of payment from the Department. Notwithstanding any provision of Arizona Revised Statutes Section 28-411, the parties may not agree otherwise.

4. Final Payment: The contractor and each subcontractor of any tier shall make prompt final payment to each of its subcontractors. The contractor and each subcontractor of any tier shall pay all monies, including retention, due to its subcontractor within seven days of receipt of payment. Notwithstanding any provision of Arizona Revised Statutes Section 28-411, the parties may not agree otherwise.

5. Payment Reporting: For the purposes of this subsection "Reportable Contracts" means any subcontract, of any tier, DBE or non-DBE, by which work shall be performed on behalf of the contractor and any contract of any

tier with a DBE material or service supplier.

The requirements of this subsection apply to all Reportable Contracts.

Payment Reporting for all Reportable Contracts shall be done through the Department's web- based DBE System. The DBE System can be accessed from the Department's BECO website. No later than fifteen calendar days after the Notice to Proceed is issued, the contractor shall log into the Department's web based DBE System and enter or verify the name, contact information, and subcontract amounts for Reportable Contracts on the project. As Reportable Contracts are approved over the course of the contract, the contractor shall enter them in the system. Reportable contracts shall be entered into the system no later than five calendar days after approval by the Department.

The contractor shall report on a monthly basis indicating the amounts actually paid and the dates of each payment under any Reportable Contract on the project. In addition, the contractor shall require that all participants in any Reportable Contract electronically verify receipt of payment on the contract by the last day of the month and the contractor shall actively monitor the Department's DBE System to ensure that the verifications are input. The contractor shall proactively work to resolve any payment discrepancies in the DBE System between payment amounts it reports and payment confirmation amounts reported by others.

The contractor shall ensure that all Reportable Contract activity is reported to the Department. This includes all lower-tier Reportable Contracts, regardless of whether a DBE is involved or not.

The contractor shall maintain records for each payment explaining the amount requested by the subcontractor, and the amount actually paid pursuant to the request, which may include but are not limited to, estimates, invoices, pay requests, copies of checks or wire transfers, and lien waivers in support of the monthly payments in the DBE System.

The contractor shall provide information for payments made on all Reportable Contracts during the previous month by the 15th day of the current month. In the event that no payments were made during a given month, the contractor shall identify that by entering a dollar value of zero. If the contractor does not pay the full amount of any invoice from a subcontractor, the contractor shall note that and provide the reasons in the comment section of the Monthly Payment Audit of the DBE System.

For each Reportable Contract on which the contractor fails to submit timely payment information the Department will retain $1,000.00 as liquidated damages, from the monies due to the contractor. Liquidated damages will be deducted each month for each Reportable Contract on which the contractor fails to submit payment information until the contractor provides the required information as described herein. After 90 consecutive days of non- reporting, the liquidated damages will increase to $2,000.00 for each subsequent month, for each Reportable Contract on which the contractor fails to report until the information is provided. These liquidated damages

shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

Payment reporting requirements apply to all contracts, federal and non-federal funded.

The contractor shall ensure that a copy of this Subsection is included in every Reportable Contract of every tier.

(a) Sanctions for Inadequate Reporting:

For each Reportable Contract on which the contractor fails to submit timely and complete payment information the Department will retain $1,000.00 as liquidated damages, from the monies due to the contractor. Liquidated damages will be deducted each month for each Reportable Contract on which the contractor fails to submit payment information until the contractor provides the required information as described herein. After 90 consecutive days of non-reporting, the liquidated damages will increase to $2,000.00 for each subsequent month, for each Reportable Contract on which the contractor fails to report until the information is provided. These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

6. Completion of Work: A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted by the Department.

7. Disputes: If disputes arise regarding payment of subcontractors, the contractor shall immediately provide the ADOT Project Manager with a written, verifiable explanation if:

   - The contractor does not pay the full amount of any invoice from a subcontractor within seven days of receipt of a progress payment from the Department, or
   - The monthly estimate does not include all work claimed by a subcontractor to have been performed.

   The Department will determine whether the contractor has acted in good faith concerning any such explanations. The Department reserves the right to request and receive documents from the contractor and all subcontractors of any tier, in order to determine whether termination requirements were met. The contractor shall implement and use the dispute resolution process outlined in the subcontract, as described in Uniform Terms and Conditions Paragraph, to resolve payment disputes.

8. Non-Compliance: Failure to make prompt partial payment or prompt final payment including any retention, within the time frames established in this contract, will result in remedies, as the Department deems appropriate, which may include, but are not limited to:

   - Liquidated Damages: These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the

contract.

(i) The Department will withhold two times the disputed dollar amount not paid to each subcontractor.
(ii) If full payment is made within 30 days of the Department's payment to the contractor, the amount withheld by the Department will be released.
(iii) If full payment is made after 30 days of the Department's payment to the contractor, the Department will release 75 percent of the funds withheld. The Department will retain 25 percent of the monies withheld as liquidated damages.

- Additional Remedies: If the contractor fails to make prompt payment for three consecutive months, or any four months over the course of one project, or if the contractor fails to make prompt payment on two or more contracts within 24 months, the Department may, in addition, invoke the following remedies:

(i) Withhold monthly progress payments until the issue is resolved and full payment has been made to all subcontractors and vendors subject to the requirements outlined under "Liquidated Damages" above,
(ii) Terminate the contract for default in accordance with this Contract, and/or
(iii) Suspension or Debarment per Uniform Terms and Conditions Paragraph 9.3 of the contractor from future bidding temporarily or permanently, depending on the number and severity of violation.
(iv) Reflect the contractor's performance in submitting payment reports and making subcontractor payments utilizing the Department's Vendor Performance Report.

14.0 Crediting DBE Participation:

14.01 General Requirements:

To count toward DBE participation, the DBE firms must be certified at the time of Offer submission in each NAICS code applicable to the kind of work the firm will perform on the contract. NAICS for each DBE can be found on the AZ UTRACS website. General descriptions of all NAICS codes can be found at http://www.naics.com/search/.

Credit is given only after the DBE has been paid for the work performed.

The entire amount of a contract that is performed by the DBE's own forces, including the cost of supplies and materials purchased by the DBE for the work on the contract and equipment leased by the DBE will be credited toward DBE participation. Supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate will not be credited toward DBE participation.

The contractor bears the responsibility to determine whether the DBE possesses the

proper contractor's license(s) to perform the work and, if DBE credit is requested, that the DBE subcontractor is certified for the requested type of work.

The Department's certification is not a representation of a DBE's qualifications and/or abilities. The contractor bears all risks that the DBE may not be able to perform its work for any reason.

A DBE may participate as a prime contractor, subcontractor, or as a vendor of materials or supplies. The dollar amount of work to be accomplished by DBEs, including partial amount of a lump sum or other similar item, shall be on the basis of subcontract, purchase order, hourly rate, rate per ton, etc., as agreed to between parties.

DBE credit may be obtained only for specific work done for the project, supply of equipment specifically for physical work on the project, or supply of materials to be incorporated in the work. DBE credit will not be allowed for costs such as overhead items, capital expenditures (for example, purchase of equipment), and office items.

The contractor may credit second-tier subcontracts issued to DBEs by non-DBE subcontractors. Any second-tier subcontract to a DBE must meet the requirements of a first-tier DBE subcontract.

A prime contractor may credit the entire amount of that portion of a contract that is performed by the DBE's own forces. The cost of supplies and materials obtained by the DBE for the work of the contract can be included so long as that cost is reasonable. Leased equipment may also be included. No credit is permitted for supplies purchased or equipment leased from the prime contractor or its affiliate(s).

When a DBE subcontracts a part of the work of its contract to another firm, the value of the subcontract may be credited towards DBE participation only if the DBE's subcontractor is itself a DBE and performs the work with its own forces. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE participation.

A prime contractor may credit the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consulting, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

14.02 DBE Prime Contractor:

When a certified DBE firm proposes on a contract/Task Assignment all the work that is performed by the DBE contractor or any other DBE subcontractors and DBE suppliers will count toward DBE participation.

14.03 Effect of Loss of DBE Eligibility:

For On-Call Task Assignment contracts, if a DBE is deemed ineligible (decertified) or suspended by ADOT or one of its UCP Partner Agencies in accordance with 49 CFR 26.87 and 26.88, the DBE may not be count toward DBE participation on a new Task Assignment, but may be considered for the contract/Task Assignment DBE participation if a subcontract or contract modification for the work to be completed on the Task Assignment was executed before the DBE suspension or decertification is effective.

A subcontract or contract modification for work on the task assignment means, any subcontract or agreement for the task assignment, which includes a specific ADOT TRACS/Project Number, defined scope, duration and budget for the work to be completed under the Task Assignment that is duly signed by the contractor/contractor and subcontractor/subcontractor.

When the contractor/contractor intents to use an ineligible DBE firm or ADOT made a commitment to use an ineligible DBE prime contractor/contractor, but a subcontract or Contract Modification for the work to be completed on the Task Assignment has not been executed before a decertification notice is issued to the DBE firm by its certifying agency, the ineligible firm does not count toward DBE participation. When a subcontract or contract modification is executed with the DBE firm for the work to be completed on the Task Assignment before ADOT notified the firm of its ineligibility, the DBE's work on the Task Assignment may continue to be credited toward DBE participation for the firm's work.

14.04 Notifying the Contractor of DBE Certification Status:

Each DBE contract at any tier shall require any DBE subcontractor or supplier that is either decertified or certified during the term of the contract to immediately notify the contractor and all parties to the DBE contract in writing, with the date of decertification or certification. The contractor shall require that this provision be incorporated in any contract of any tier in which a DBE is a participant.

14.05 Commercially Useful Function:

A prime contractor can credit expenditures to a DBE subcontractor only if the DBE performs a Commercially Useful Function (CUF).

A DBE performs a CUF when it is responsible for execution of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself that it uses on the project. To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually

performing and the DBE credit claimed for its performance of the work, and other relevant factors.

A DBE will not be considered to perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the Department will examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Department will presume that the DBE is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function as provided above, the DBE may present evidence to rebut this presumption. The Department will determine if the firm is performing a CUF given the type of work involved and normal industry practices.

The Department will notify the contractor, in writing, if it determines that the contractor's DBE subcontractor is not performing a CUF. The contractor will be notified within seven calendar days of the Department's decision.

Decisions on CUF may be appealed to the Chief Procurement Officer (CPO). The appeal must be in writing and personally delivered or sent by certified mail, return receipt requested, to the CPO. The appeal must be received by the CPO no later than seven calendar days after the decision of BECO. BECO's decision remains in place unless and until the CPO reverses or modifies BECO's decision. CPO will promptly consider any appeals under this subsection and notify the contractor of CPO's findings and decisions. Decisions on CUF matters are not administratively appealable to USDOT.

The BECO may conduct project site visits on the contract to confirm that DBEs are performing a CUF. The contractor shall cooperate during the site visits and the BECO's staff will make every effort not to disrupt work on the project.

15.0 Required Provisions for DBE Subcontracts:

All subcontracts of any tier, all supply contracts, and any other contracts in which a DBE is a participant shall include as a physical attachment, DBE Subcontractor Compliance Assurances refer to the Federal Attachments and Exhibits.

Contractors executing agreements with subcontractors, DBE or non-DBE, that materially modify federal regulation and state statutes such as, prompt payment and retention requirements, through subcontract terms and conditions will be found in breach of contract which may result in termination of the contract, or any other such

remedy as the deemed appropriate as outlined in DBE Subsection 2.0 of these DBE provisions.

The Department reserves the right to conduct random reviews of DBE and non-DBE subcontract documentation to ensure compliance with federal requirements.

The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials require that the subcontract and all lower tier subcontracts be performed in accordance with 49 CFR Part 26 provisions.

The Contractor shall provide electronic copies of subcontract agreements with all Subcontractors by uploading them within 15 calendar days of an executed contract to the ADOT DBE System. Subcontract agreements shall include all required assurances and clauses as outlined in DBE Subcontractor Compliance Assurances refer to the Federal Attachments and Exhibits of the Contract. Each agreement and required attachment shall be dated and signed by the Subcontractor in order for the subcontract to be considered valid.

The Contractor shall be in breach of this Contract if the Contractor materially modifies the federal regulations and State statutes in its subcontract agreements terms and conditions with its Subcontractors. Deviations from the terms of this Contract may result in termination of the Contract, or any other such remedy as deemed appropriate by the Department

16.0 Certification of Final DBE Payments:

DBE participation on the contract is measured by actual payments made to the DBEs. The contractor shall submit the “Certification of Final DBE Payments” form for each DBE firm working on the contract. This form shall be signed by the contractor and the relevant DBE, and submitted to the Engineer no later than 30 days after the DBE completes its work.

The contractor will not be released from the obligations of the contract until the ”Certification of Final DBE Payments” forms are received and deemed acceptable by the Engineer and BECO.

17.0 False, Fraudulent, or Dishonest Conduct:

In addition to any other remedies or actions, the Department will bring to the attention of the US Department of Transportation any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take steps such as referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General for possible initiation of suspension and debarment proceedings against the offending parties or application of “Program Fraud and Civil Penalties” rules provided in 49 CFR Part 31.

21. NONDISCRIMINATION

1. During the performance of this Contract, the Consultant, for itself, its Subconsultants, assignees and successors shall:

   a. Not discriminate on the basis of race, color, national origin, or sex and shall carry out applicable requirements of 49 CFR Part 26 in the performance of this Contract. Failure by the Consultant to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract, disqualification from proposing on other Contracts or other remedy as the State deems appropriate.

   b. Comply with Executive Order 2009-09, "Prohibition of Discrimination in Employment by Government Contractors and Subcontractors," which is hereby included in its entirety by reference and considered a part of this Contract.

   c. Comply with the provisions of Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (41 CFR Part 60). Said provisions are made applicable by reference and are hereinafter considered a part of this Contract.

   d. Post in conspicuous places available to employees and applicants for employment, the following notice:

      "It is the policy of this company not to discriminate against any employee, or applicant for employment, because of race, color, religion, creed, national origin, sex, age, handicapped, or disabled veterans and Vietnam era veterans. Such actions shall include, but are not limited to: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising; laying- off or termination; rates of pay or other compensation; and selection for training, and on-the- job training. Also, it is the policy to ensure and maintain a working environment free of harassment, intimidation and coercion."

   e. Comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the
      U.S. Department of Transportation (hereinafter USDOT), 49 CFR Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

   f. Not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of Subconsultants, including procurement of materials and leases of equipment. The Consultant shall not participate either directly or

indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices.

g. In all solicitations either by competitive bidding or negotiations made by the Consultant for work to be performed under a subcontract, including procurement of materials or leases of equipment, notify each potential Subconsultant or supplier of the Consultant's obligations under this Contract and the Regulations relative to nondiscrimination on the ground of race, color, or national origin.

h. Provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to the State as appropriate, and shall set forth what efforts it has made to obtain the information.

2. In the event of the Consultant's noncompliance with the NONDISCRIMININATION provision (Section A) of this Contract, the State shall impose such Contract sanctions as the State or FHWA may determine to be appropriate, including but not limited to:

   a. Withholding of payments to the Consultant under the Contract until the Consultant complies,

   and/or;

   b. Cancellation, termination, or suspension of the Contract, in whole or in part.

3. The Consultant shall include the provisions of paragraph 1.a. through 1.h. in every subcontract with Subconsultants, DBEs and non-DBEs, including procurement of materials and equipment leases, unless exempt by the Regulations or directives issued pursuant thereto.

4. The Consultant shall take such action with respect to any Subconsultants or procurement as the State or the Federal Aviation Administration (FAA), FHWA and the Federal Transit Administration (FTA) may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Consultant becomes involved in or is threatened with litigation with a Subconsultant or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interests of the State, and in addition, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.

22. AFFIRMATIVE ACTION

Contractor shall take the following affirmative action steps with respect to securing supplies, equipment, or services under the terms of this contract:

a. Include qualified firms owned by socially and economically disadvantaged individuals on solicitation lists.

b. Assure that firms owned by socially and economically disadvantaged individuals are solicited whenever they are potential sources.

c. When economically feasible, divide total requirements into smaller tasks or quantities so as to permit maximum participation by firms owned by socially and economically disadvantaged individuals.

d. Where the requirement permits, establish delivery schedules which will encourage participation by firms owned by socially and economically disadvantaged individuals.

e. Use the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce, and the Community Services Administration, as required.

23. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed

with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

24. FEDERAL CHANGES

The Contactor and its sub-contractors shall comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the Department and FTA, as they be amended or promulgated from time to time during the term of the contract. Contractor's failure to comply shall constitute a material breach of the contract.

25. PROMPT PAY

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from the Recipient. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Recipient. This clause applies to both DBE and non-DBE subcontracts.

26. FULL AND OPEN COMPETITION

In accordance with 49 U.S.C. § 5325(h) all procurement transactions shall be

conducted in a manner that provides full and open competition.

27. PROHIBITION AGAINST EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS

Apart from inconsistent requirements imposed by Federal statute or regulations, the contractor shall comply with the requirements of 49 USC 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

28. CONFORMANCE WITH ITS NATIONAL ARCHITECTURE

Contractor shall conform, to the extent applicable, to the National Intelligent Transportation Standards architecture as required by SAFETEA-LU Section 5307(c), 23 U.S.C. Section 512 note and follow the provisions of FTA Notice, "FTA National Architecture Policy on Transit Projects," 66 Fed. Reg.1455 et seq., January 8, 2001, and any other implementing directives FTA may issue at a later date, except to the extent FTA determines otherwise in writing.

29. ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES

Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy.

Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

30. NOTIFICATION OF FEDERAL PARTICIPATION

To the extent required by law, in the announcement of any third party contract award for goods and services (including construction services) having an aggregate value of $500,000 or more, contractor shall specify the amount of Federal assistance to be used in financing that acquisition of goods and services and to express that amount of Federal assistance as a percentage of the total cost of the third party contract.

31. INTEREST OF MEMBERS OR DELEGATES TO CONGRESS

No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.

32. INELIGIBLE CONTRACTORS AND SUBCONTRACTORS

Any name appearing upon the Comptroller General's list of ineligible contractors for federally-assisted contracts shall be ineligible to act as a subcontractor for contractor pursuant to this contract. If contractor is on the Comptroller General's list of ineligible contractors (https://www.sam.gov/SAM/) for federally financed or assisted construction, the recipient shall cancel, terminate or suspend this contract.

33. OTHER CONTRACT REQUIREMENTS

To the extent not inconsistent with the foregoing Federal requirements, this contract shall also include those standard clauses attached hereto, and shall comply with the recipient's Procurement Guidelines, available upon request from the Department.

34. COMPLIANCE WITH FEDERAL REGULATIONS

Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT- required contractual provisions, as set forth in FTA Circular 4220, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the recipient to be in violation of FTA terms and conditions. Contractor shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the recipient and FTA, as may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

35. REAL PROPERTY

Any contract entered into shall contain the following provisions: Contractor shall at all times comply with all applicable statutes and USDOT regulations, policies, procedures and directives governing the acquisition, use and disposal of real property, including, but not limited to, 49 CFR 18.31-18.34, 49 CFR 19.30-19.37, 49 CFR Part 24, 49 CFR 5326 as amended by Map-21, 49 CFR part 18 or 19, 49 USC 5334, applicable FTA Circular 5010, and FTA Master Agreement, as they may be amended or promulgated during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

36. ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

To the extent applicable and except to the extent that FTA determines otherwise in writing, the Recipient agrees to comply with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d 1 note, and with the provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP)

Beneficiaries," 70 Fed. Reg. 74087, December 14, 2005.

37. ENVIROMENTAL JUSTICE

Except as the Federal Government determines otherwise in writing, the Recipient agrees to promote environmental justice by following: (1) Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994, 42
U.S.C. § 4321 note, as well as facilitating compliance with that Executive Order, and (2) DOT Order 5610.2, "Department of Transportation Actions To Address Environmental Justice in Minority Populations and Low-Income Populations," 62 Fed. Reg. 18377, April 15, 1997, and (3) The most recent and applicable edition of FTA Circular 4703.1, "Environmental Justice Policy Guidance for Federal Transit Administration Recipients," August 15, 2012, to the extent consistent with applicable Federal laws, regulations, and guidance,

38. ENVIRONMENTAL PROTECTIONS

Compliance is required with any applicable Federal laws imposing environmental and resource conservation requirements for the project. Some, but not all, of the major Federal laws that may affect the project include: the National Environmental Policy Act of 1969; the Clean Air Act; the Resource Conservation and Recovery Act; the comprehensive Environmental response, Compensation and Liability Act; as well as environmental provisions with Title 23 U.S.C., and 49 U.C. chapter 53. The U.S. EPA, FHWA and other federal agencies may issue other federal regulations and directives that may affect the project. Compliance is required with any applicable Federal laws and regulations in effect now or that become effective in the future.

39. GEORGRAPHIC INFORMATION RELATED TO SPATIAL DATA

Any project activities involving spatial data or geographic information systems activities financed with Federal assistance are required to be consistent with the National Spatial Data Infrastructure promulgated by the Federal Geographic Data Committee, except to the extent that FTA determines otherwise in writing.

40. GEOGRAPHIC PREFERENCE

Pursuant to 2 CFR 200.319(b), all procurements must be conducted in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract).

41. ORGANIZATIONAL CONFLICTS OF INTEREST

The Recipient agrees that it will not enter into a procurement that involves a real or apparent organizational conflict of interest described as follows:

(1) When It Occurs. An organizational conflict of interest occurs when the Project work, without appropriate restrictions on certain future activities, results in an unfair competitive advantage:

(a) To that Third Party Participant or another Third Party Participant performing the Project work, and
(b) That impairs that Third Party Participant's objectivity in performing the Project work, or

(2) Other. An organizational conflict of interest may involve other situations resulting in fundamentally unfair competitive conditions,

(3) Disclosure Requirements. Consistent with FTA policies, the Recipient must disclose to FTA, and each of its Subrecipients must disclose to the Recipient:

(a) Any instances of organizational conflict of interest, or
(b) Violations of federal criminal law, involving fraud, bribery, or gratuity violations potentially affecting the federal award, and

(4) Failure to Disclose. Failure to make required disclosures can result in remedies for noncompliance, including debarment or suspension.

42. VETRANS PREFERENCE

As provided by 49 U.S.C. § 5325(k), to the extent practicable, the Recipient agrees and assures that each of its Subrecipients:

(1) Will give a hiring preference to veterans, as defined in 5 U.S.C. § 2108, who have the skills and abilities required to perform construction work required under a third party contract in connection with a Capital Project supported with federal assistance appropriated or made available for 49 U.S.C. chapter 53, and
(2) Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

43. CATALOG OF FEDERAL DOMESTIC ASSISTANCE (CFDA) IDENTIFICATION NUMBER

The municipal project sponsor is required to identify in its accounts all Federal awards received and expended, and the Federal programs under which they were received. Federal program and award identification shall include, as applicable, the CFDA title and number, award number and year, name of the Federal agency, and name of the pass-through entity.

44. AMERICANS WITH DISABILITIES ACT (ADA)

The contractor agrees to comply with the requirements of 49 U.S.C. § 5301 (d), which states the Federal policy that the elderly and persons with disabilities have the same right as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement that policy. The contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the contractor agrees to comply with any and all applicable requirements issued by the FTA, DOT, DOJ, U.S. GSA, U.S. EEOC, U.S. FCC, any subsequent amendments thereto and any other nondiscrimination statute(s) that may apply to the Project.

45. BYRD ANTI-LOBBYING AMENDMENT

Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with nonfederal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Agency."

46. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

The Agency and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Agency, Contractor or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

44. BUS TESTING

The operator of the bust testing facility is required to provide the resulting test report to the entity that submits the bus for testing. The manufacturer or dealer of a new bus

model or a bus produced with a major change in component or configuration is required to provide a copy of the corresponding full bus testing report and any applicable partial testing report(s) to the Agency during the point in the procurement process specified by the Agency, but in all cases before final acceptance of the first bus by the Agency. The complete bus testing report requirements are provide in 49 C.F.R. § 665.11.

45. CARGO PREFERENCE REQUIREMENTS

The contractor agrees:

a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "onboard" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA Recipient (through the contractor in the case of a subcontractor's bill-of-lading.); and

c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

46. E-AWARD AND POST-DELIVERY AUDITS OF ROLLING STOCK PURCHASES

The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663. The Contractor shall comply with the Buy America certification(s) submitted with its proposal/bid. The Contractor agrees to participate and cooperate in any pre-award and post-delivery audits performed pursuant to 49 C.F.R. part 663 and related FTA guidance.

EXHIBIT 1
Title VI/Non-Discrimination Assurances
Appendix A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the *Federal Highway Administration,* as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** The contractor, with regard to the work performance by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the *Federal Highway Administration* to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the *Federal Highway Administration,* as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the *Federal Highway Administration* ,may determine to be appropriate, including, but not limited to:

    a. withholding payments to the contractor under the contract until the contractor complies; and/or
    b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with request to any subcontract or procurement as the Recipient or the *Federal Highway Administration* may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that **if** the contractor becomes involved in, or is threatened with litigation by a subcontractor or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

EXHIBIT 2
Title VI/Non-Discrimination Assurances
Appendix E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.,* 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin): and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *etseq.),* (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.),* as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.),* (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1687 et. seq).

ADOT
Procurement

EXHIBIT 3
ADOT Procurement Quarterly Usage Report

This exhibit outlines the content required for the quarterly usage report. Usage reports will be submitted to the appropriate Procurement Officer in accordance with the requirements specified in Special Terms and Conditions. The Department reserves the right to make additions, deletions and changes as deemed necessary.

Reporting Period:

Contract ID/Code:		Contact Name:		Alternate Contact Name:	
Contract Label/Description:		Contact Phone Number:		Alternate Contact Phone Number:	
Contractor:		Contact Email:		Alternate Contact Email:	
Contractor Address:					

Agency/Org/Unit	Customer Name	Delivery Address	PO Number or Identify as "P-Card"	Order Date	Contract Item Number	Contract Item Description	Quantity	Unit of Measure	Contract Unit Price	Contract Extended Price	Invoice Number

EXHIBIT 4
ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION

(Post-Delivery purchaser's requirement, in compliance with the federal requirements of 49 U.S.C. Section 5323(m))

ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION

(Rolling Stock Procurements for more than 10 vehicles for areas >200,000 in population)

As required by 49 CFR Part 663Subpart C, the

_____
(Recipient's name)

Certifies that a resident inspector,

_____
(Name of inspector)

Was at

_____
(the manufacturer's)

manufacturing site during the period of manufacture of the buses,

_____
(description of buses).

The inspector visually inspecting the buses, the _____ (the recipient) has reviewed the inspection documentation, maintains a copy of this report, and certifies that the buses meet the contract specifications.

ON-SITE MANUFACTURER INSPECTION COMPLIANCE CERTIFICATION

(Rolling Stock Procurements for more than 20 vehicles for areas < 200,000 in population)

As required by 49 CFR Part 663 Subpart C, the

_____
(Recipient's name)

Certifies that a resident inspector,

_____
(Name of inspector)

Was at

_____
(the manufacturer's)

manufacturing site during the period of manufacture of the buses,

_____
(description of buses).

The inspector visually inspecting the buses, the
_____ (the recipient) has reviewed the inspection documentation, maintains a copy of this report, and certifies that the buses meet the contract specifications.

Signature _____ Date _____/ _____/ _____
Title _____

EXHIBIT 5
PRE-AWARD AUDIT AND CERTIFICATION

Subrecipient		Date / Completed By
Description		
Program/Phase/Amounts		
PRE-AWARD AUDIT (before issuing purchase order)		
Pre-award audit requirements. A recipient purchasing revenue service rolling stock with FTA funds must ensure that a pre-award audit under this part is complete before the recipient enters into a formal contract for the purchase of such rolling stock.		Master Agreement; 49 CFR §663.21
49 CFR 661.13 Grantee Responsibility (a) The grantee shall adhere to the Buy America clause set forth in its grant contract with FTA Section 16. Preference for United States Products and Services. a. Buy America. Domestic preference procurement requirements of: (1) 49 U.S.C. § 5323(j), as amended by FAST Act, and (2) FTA regulations, "Buy America Requirements," 49 C.F.R. part 661, to the extent consistent with FAST Act,		49 CFR §663.13
49 CFR §663.23 Description of pre-award audit. A pre-award audit under this part includes— (a) A Buy America certification as described in §663.25 of this part; (b) A purchaser's requirements certification as described in §663.27 of this part; and (c) Where appropriate, a manufacturer's Federal Motor Vehicle Safety certification information as described in §663.41 or §663.43 of this part.		49 CFR §663.23
Met? Y/N (if NO 1b, 1 REQ'D)	(1) A Buy America certification:	49 CFR §663.25
	a) There is a letter from FTA which grants a waive OR	
Met? Y/N (if NO 1a, 2 REQ'D)	b) ADOT reviewed documentation provided by the manufacturer which lists—	
	1) Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and	
	2) The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.	
Met? Y/N (2 REQ'D)	(2) A purchaser's requirements certification:	49 CFR §663.27
	a) The rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and	
	b) The proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's	
Met? Y/N (1 REQ'D)	(3) A manufacturer's Federal Motor Vehicle Safety certification or Certification that Federal motor vehicle standards do not apply.	
	a) If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.	49 CFR §663.41
	a) Except for rolling stock subject to paragraph (b) of this section, if a vehicle purchased under this part is not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, the recipient shall keep on file its certification that it received a statement to that effect from the manufacturer.	49 CFR §663.43

EXHIBIT 6
PURCHASER'S PRE-AWARD REQUIREMENTS CERTIFICATION

Subrecipient	
Description	
Program/Phase/Amounts	

Purchaser's Pre-Award Requirements Certification
49 CFR §663.27

I hereby certify that the rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and

I hereby certify that the proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's

Signature

Date Signed

EXHIBIT 7
PURCHASER'S POST-AWARD REQUIREMENTS CERTIFICATION

Subrecipient		Date / Completed By
Description		
Program/Phase/Amounts		
The Post-Delivery Review Requirements (http://www.fta.dot.gov/legislation_law/12921_5430.html)		
The Post-Delivery Buy America Certification Requirement		
Select basis' (1 REQ'D)	Buy America-Compliant Buses	49 CFR 663(b)
	§663.33 Description of post-delivery audit. A post-delivery audit under this part includes—	
	(a) A post-delivery Buy America certification as described in §663.35 of this part;	
	§663.35 Post-delivery Buy America certification. For purposes of this part, a post-delivery Buy America certification is a certification that the recipient keeps on file that—	
	(a) There is a letter from FTA which grants a waiver to the rolling stock received from the Buy America requirements under sections 165 (b)(1), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; **or**	
	(b) The recipient is satisfied that the rolling stock received meets the requirements of section 165 (a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or by means of an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists— (1) Components and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin and costs; and (2) The actual location of the final assembly point for the rolling stock including a description of the activities which took place at the final assembly point and the cost of the final assembly.	
Met? Y/N (3 REQ'D)	(b) A post-delivery purchaser's requirements certification as described in §663.37 of this part; **and**	
	§663.37 Post-delivery purchaser's requirements certification. For purposes of this part, a post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that—	
	(a) Except for procurements covered under paragraph (c) in this section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum, shall— (1) Provide accurate records of all vehicle construction activities; and (2) Address how the construction and operation of the vehicles fulfills the contract specifications.	
	(b) After reviewing the report required under paragraph (a) of this section, and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications.	
	(c) For procurements of: (1) Ten or fewer buses; or (2) Procurements of twenty vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or (3) Any number of primary manufacturer standard production and unmodified vans, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.	
Met? Y/N (1 REQ'D)	(c) When appropriate, a manufacturer's Federal Motor Vehicle Safety Standard self-certification information as described in §663.41 or §663.43 of this part.	
	§663.41 Certification of compliance with Federal motor vehicle safety standards. If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.	
	§663.43 Certification that Federal motor vehicle standards do not apply. (a) Except for rolling stock subject to paragraph (b) of this section, if a vehicle purchased under this part is not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, the recipient shall keep on file its certification that it received a statement to that effect from the manufacturer. (b) This subpart shall not apply to rolling stock that is not a motor vehicle.	

EXHIBIT 7
PURCHASER'S POST-AWARD REQUIREMENTS CERTIFICATION

Subrecipient		Date / Completed By
Description		
Program/Phase/Amounts		
The Post-Delivery Review Requirements (http://www.fta.dot.gov/legislation_law/12921_5430.html)		
The Post-Delivery Buy America Certification Requirement		
Select basis' (1 REQ'D)	Buy America-Compliant Buses	49 CFR 663(b)
	§663.33 Description of post-delivery audit. A post-delivery audit under this part includes—	
	(a) A post-delivery Buy America certification as described in §663.35 of this part;	
	§663.35 Post-delivery Buy America certification. For purposes of this part, a post-delivery Buy America certification is a certification that the recipient keeps on file that—	
	(a) There is a letter from FTA which grants a waiver to the rolling stock received from the Buy America requirements under sections 165 (b)(1), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; **or**	
	(b) The recipient is satisfied that the rolling stock received meets the requirements of section 165 (a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or by means of an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists— (1) Components and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin and costs; and (2) The actual location of the final assembly point for the rolling stock including a description of the activities which took place at the final assembly point and the cost of the final assembly.	
Met? Y/N (3 REQ'D)	(b) A post-delivery purchaser's requirements certification as described in §663.37 of this part; **and**	
	§663.37 Post-delivery purchaser's requirements certification. For purposes of this part, a post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that—	
	(a) Except for procurements covered under paragraph (c) in this section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum, shall— (1) Provide accurate records of all vehicle construction activities; and (2) Address how the construction and operation of the vehicles fulfills the contract specifications.	
	(b) After reviewing the report required under paragraph (a) of this section, and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications.	
	(c) For procurements of: (1) Ten or fewer buses; or (2) Procurements of twenty vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or (3) Any number of primary manufacturer standard production and unmodified vans, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.	
Met? Y/N (1 REQ'D)	(c) When appropriate, a manufacturer's Federal Motor Vehicle Safety Standard self-certification information as described in §663.41 **or** §663.43 of this part.	
	§663.41 Certification of compliance with Federal motor vehicle safety standards. If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.	
	§663.43 Certification that Federal motor vehicle standards do not apply. (a) Except for rolling stock subject to paragraph (b) of this section, if a vehicle purchased under this part is not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, the recipient shall keep on file its certification that it received a statement to that effect from the manufacturer. (b) This subpart shall not apply to rolling stock that is not a motor vehicle.	

EXHIBIT 8
PURCHASER'S POST-AWARD REQUIREMENTS CERTIFICATION

Subrecipient	
Description	
Program/Phase/Amounts	

Purchaser's Post-Award Requirements Certification
49 CFR §663.37

I hereby certify that the rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and

I hereby certify that the proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's

Signature

Date Signed

Procurement

ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	**AMENDMENT NO.: One (1)**
DESCRIPTION: New Vehicles Purchase	

Pursuant to the Uniform Instructions to Offerors, Item B.6, Solicitation Amendments, the above referenced solicitation shall be amended as follows:

1. The solicitation due date has been changed from January 17, 2022 at 3:00 PM MST to January 19, 2022 at 3:00 PM MST.

2. All other terms, conditions and provisions of this solicitation remain unchanged.

Procurement

ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	**AMENDMENT NO.: Two (2)**
DESCRIPTION: New Vehicles Purchases	

Pursuant to the Uniform Instructions to Offerors, Item B.6, Solicitation Amendments, the above referenced solicitation shall be amended as follows:

1. **Specifications**
   The following sections are hereby modified to read:

   a. **Paragraph 2.1** "The State of Arizona Department of Transportation (Department) is seeking to contract with a qualified vendor(s) who can provide new vehicles (all fuel types, hybrid, and full electric) including but not limited to: Sedans, Trucks up to 19,500 GVWR, Vans, Sport Utility Vehicles (SUVs), and Crossovers for the State of Arizona and participating Eligible Agencies. These vehicles will be used to support official organizational goals. These vehicles will be used on highways, city/county roads and shall be designed to operate under typical Arizona ambient temperatures."
   b. **Paragraph 3.3.1, 3.5.1 and 3.5.2** is hereby removed.
   c. **Paragraph 4.1**: "The Contractors are encouraged to provide a full line of new vehicles (gasoline, hybrid, full electric) including but not limited to the following categories: Sedans, Trucks up to 19,500 GVWR, Vans (cargo, passenger, transit, etc.), Sport Utility Vehicles (SUVs), and Crossovers. Eligible Agencies throughout the State will have varying vehicle needs. Contractors are to provide a full line of manufactured new vehicles and all subsequent variants of each vehicle; including but not be limited to: models and manufacturer options, trim package, etc. to meet each need of an Eligible Agency."
   d. **Paragraph 4.1.1** is hereby removed.
   e. **Paragraph 4.4.1:"** The Eligible Agency may request the awarded Contractor(s) to up-fit/modify any vehicle for specific organizational needs. For example, the cab and chassis of ½ ton, ¾ ton, and/or up to 19,500 GVW trucks may require a specialized body (i.e.: dump body, landscape body, etc.). Other vehicles may require interior and/or exterior modifications per the individual Eligible Agency. "
   f. **Paragraph 4.6.1**: " Anti-slip differential for two-wheel drive pickup trucks, ¾ ton, up to 19,500 GVW."

2. **Special Terms and Conditions**

   The following sections are hereby modified to read:

   a. Paragraph 11.1, (a-g): "Phase 1 and 2 pricing for vehicles shall be a minimum Percentage off MSRP, less the manufacturer's rebates and any additional discounts available for that model/power-train combination.
      a. Contractor shall provide a copy of manufacturer's invoice to the ordering agency upon request. The manufacturer's invoice shall be unaltered to include original pricing from the manufacturer.

Procurement

ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	**AMENDMENT NO.: Three (3)**
DESCRIPTION: New Vehicles Purchases	

Pursuant to the Uniform Instructions to Offerors, Item B.6, Solicitation Amendments, the above referenced solicitation shall be amended as follows:

1. **Specifications**
   The following sections are hereby modified to read:

   a. **Paragraph 3.5** "For Phase Two (2) vehicles, the Contractor shall supply a quote within five (5) calendar days after receiving a request from the Eligible Agency. The quotation shall include but not be limited to the following information: State contract number, vehicle availability and delivery lead-time, Vehicle Identification Number (VIN), dealer stock number, vehicle base bid price, itemized options, applicable tax, delivery cost, total price, and point of contact. For vehicles requiring up-fit/modifications, all applicable cost may be included in quotation or as a separate quotation."

   b. **Paragraph 3.10**: "For Phase One (1) the Contractor shall provide the Eligible Agency copies of the manufacturer's vehicle identification numbers (VIN#) to confirm vehicles have been ordered unless impossible due to manufacture delay within ninety (90) calendar days after receipt of a purchase order. If confirmation of manufacturer's VIN #(s) is not received within this timeframe the Eligible Agency has the option to award to the second lowest bidder meeting specifications. This shall be considered a mandatory requirement and the timeframe must be met unless there is a manufacture delay. Failure to provide this document for each vehicle ordered may be cause for determination of default of contract."

2. All other terms, conditions and provisions of this solicitation remain unchanged.

ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	**AMENDMENT NO.: Two (2)**
DESCRIPTION: New Vehicles Purchases	

b. Transportation costs to transfer a vehicle from another dealer for a Phase 2 or purchase from stock may be added to the cost of the vehicle. The justification for this cost is at the discretion of the Eligible Agency.
c. Any reference to Phase 1 pricing shall be in reference to vehicles ordered prior to the factory cut-off date.
d. Any reference to Phase 2 pricing shall be in reference to vehicles purchased from stock or "on the lot".
e. Phase 2 pricing shall receive the same cost considerations as Phase 1 pricing, all discounts and rebates should be passed onto the Eligible Agency.

f. All vehicles are to be billed at prices in effect at the time of order, not the date of shipment.

g. Pricing for vehicles shall include all discounts and deductions, less Federal and State taxes. Pricing shall be firm for life of contract unless amended by way of contract change order. "

b. Paragraph 22 is hereby replaced with the following: "The Contractor shall furnish Two (2) Usage reports, the first to the Department on a quarterly basis showing purchasing activity under this contract. This usage report shall be provided in a form substantially equivalent to Exhibit 03. Usage reports shall be submitted to the Procurement Officer no later than 30 days after the end of each quarter.

Usage report quarters shall be defined as follows:

- January through March – Report due April 30
- April through June – Report due July 30
- July through September – Report due October 30
- October through December – Report due January 30

Contractor shall submit the second to the State documenting all Contract sales to both Eligible Agencies and Co-Op Buyers, itemized separately. A *Quarterly Usage Report* shall still be submitted; even if there have been no sales to either Eligible Agencies and/or Co-Op Buyers. Contractor shall further itemize divisions, groups or areas within a given Eligible Agency if they place Orders independently of each other. Failure to submit the report is a material breach of contract, and will entitle State to its remedies under Article 8 and its right to terminate for default under Article 9. Contractor shall submit the report using the forms and following the instructions on the State Procurement Office website:

https://spo.az.gov/contractor-resources/statewide-contracts-administrative-fee"

c. Paragraph 25: Co-op administrative fee has hereby been removed.

Procurement

ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	**AMENDMENT NO.: Two (2)**
DESCRIPTION: New Vehicles Purchases	

3. **Offer Response Form** is hereby replaced with Revision Two (2) attachment.

4. All other terms, conditions and provisions of this solicitation remain unchanged.

Procurement

ARIZONA DEPARTMENT OF TRANSPORTATION
1739 W. Jackson Street, MD 100P
Phoenix, AZ 85007
602.712.7211

Solicitation Amendment Summary

SOLICITATION NO.: BPM004157	**AMENDMENT NO.: Three (3)**
DESCRIPTION: New Vehicles Purchases	

Pursuant to the Uniform Instructions to Offerors, Item B.6, Solicitation Amendments, the above referenced solicitation shall be amended as follows:

1. **Specifications**
   The following sections are hereby modified to read:

   a. **Paragraph 3.5** "For Phase Two (2) vehicles, the Contractor shall supply a quote within five (5) calendar days after receiving a request from the Eligible Agency. The quotation shall include but not be limited to the following information: State contract number, vehicle availability and delivery lead-time, Vehicle Identification Number (VIN), dealer stock number, vehicle base bid price, itemized options, applicable tax, delivery cost, total price, and point of contact. For vehicles requiring up-fit/modifications, all applicable cost may be included in quotation or as a separate quotation."

   b. **Paragraph 3.10**: "For Phase One (1) the Contractor shall provide the Eligible Agency copies of the manufacturer's vehicle identification numbers (VIN#) to confirm vehicles have been ordered unless impossible due to manufacture delay within ninety (90) calendar days after receipt of a purchase order. If confirmation of manufacturer's VIN #(s) is not received within this timeframe the Eligible Agency has the option to award to the second lowest bidder meeting specifications. This shall be considered a mandatory requirement and the timeframe must be met unless there is a manufacture delay. Failure to provide this document for each vehicle ordered may be cause for determination of default of contract."

2. All other terms, conditions and provisions of this solicitation remain unchanged.

CITY OF BUCKEYE
Regular Council Meeting
COUNCIL ACTION REPORT

MEETING DATE: 09/03/24	**AGENDA ITEM:** 4.D. PW - Cooperative Contract Purchase Addendum with Sewer Equipment Co. of America to purchase a new 9-Yard Hydro-Excavator Truck.
DATE PREPARED: 08/29/24	**DISTRICT NO.:**
STAFF LIAISON: Bret Hodne, Public Works Director, bhodne@buckeyeaz.gov, (623) 349-6801	
DEPARTMENT: Public Works	**AGENDA ITEM TYPE:** Consent Agenda Items / New Business

ACTION/MOTION: (This language identifies the formal motion to be made by the Council)
Council to take action on the Cooperative Contract Purchase Addendum (CCPA No. 2025127) between the City of Buckeye, an Arizona municipal corporation, and Sewer Equipment Co. of America, an Illinois corporation, to purchase a Hydo-Excavator Truck along with authorization for the City Manager to execute and deliver the Cooperative Contract Purchase Addendum on behalf of the City of Buckeye.

SUMMARY

PROJECT DESCRIPTION:
Fleet Management is seeking Council's authorization to enter into the Cooperative Contract Purchase Addendum with Sewer Equipment Co. of America, to purchase a new 9-Yard Hydro-Excavator truck to replace a failing unit that has experienced extensive repairs in the past 12 months of over $60,000 and currently needs a motor replaced at an additional $25,000 cost.

BENEFITS:
The approval of this Cooperative Contract Purchase Addendum will ensure City staff have mechanically sound equipment to perform daily work assignments for the benefit of the residents of the City of Buckeye. Equipment that has reached or exceeded their life expectancy cost more to maintain and frequently experience higher downtime to staff which results in a lack of timely services.

FUTURE ACTION:
No further action contemplated.

FINANCIAL IMPACT STATEMENT:
The total amount is not to exceed $ 543,000.

CURRENT FISCAL YEAR TOTAL COST:
$543,000 from Water Resources vehicle budget that was approved to purchase supplemental vehicles during the FY25 budget process.

BUDGETED:
Yes

FISCAL YEAR:
FY25

FUND/DEPARTMENT:

40003229-541210

Items related to a project or facility location must include an attached vicinity map for Council Review.
ATTACHMENTS:
Quote# 23223 with Specs.pdf
CCPA No. 2025127 with Sewer Equipment Co.pdf

AZ Wastewater Industries, Inc.
Phone: 800 778-9359 **Fax: 480 425-3321**
www.usa-awi.com

ARIZONA LOCATION:
3201 W. Virginia Ave, Suite 3
Phoenix, AZ 85009

NEVADA LOCATION:
61 Spectrum Blvd
Las Vegas, NV 89101

QUOTE

Quote No.	**23223**
Quote Date	7/8/2024
Sales Rep.	SH
Payment Terms	Net 30 Days
F.O.B.	Fatory
Prices Good For	120 Days

Customer:

City of Buckeye
530 East Monroe Ave
Buckeye, AZ 85326
Attn: Accounts Payable

Item	Item Description	Qty	Unit Cost	Total
HX-9	Truck Mounted 9 Yard Hydro-Excavator (per the attached specifications)	1	368,764.00	368,764.00T
Discount-Sales	Sourcewell Discount (Per Contract # 101221-SCA)		-3.00%	-11,062.92
Warranty	1 Year Extended Warranty $7,375	1	0.00	0.00T
Option	Front Spray Bar $3,500		0.00	0.00T
Chassis	Chassis Model: 114SD, 370hp (Per Attached Specifications)	1	135,377.00	135,377.00T
Freight Charge	Freight Charges to Apply	1	7,500.00	7,500.00

Subtotal	$500,578.08
Sales Tax (8.6%)	$42,404.72
Total	**$542,982.80**

3.5% credit card processing fee will be applied to all invoices paid with credit card

Quote# 23223 for City of Buckeye, AZ

RAMVAC HX-9 Truck Mounted Hydro Excavator

Water System:
- 1300 gal Duraprolene tank capacity
- Hydraulic Powered Water Pump Via Transmission PTO Drive (0 - 10 gpm @ 2500 psi)
- Alum Toolbox 18"x18"x30"
- Water Pressure Display
- 400,000 BTU Water Heater
- 2.5" Hydrant Fill system w/ 25' hose
- Air Purge Valve, Recirculation System and Wash Station
- 75' of 3/8" Hose w/ retractable reel

Electrical:
- NEMA 4 Control Panel
- Wireless Remote Control
- Hour Meter

Debris Tank:
- 9 cubic yards (1800 gl) Debris Tank
- Debris Level Indicator
- Hydraulic Dump, 50° Dump Angle (Cylinder)
- Fold Down Pipe Rack
- Debris Tank Flush
- Hydraulic Powered Open/Close Rear Door

Vacuum System:
- 4400 CFM Blower
- 8" Vacuum Hose system
- 18" HG vacuum rating
- Cyclone Separator
- Heavy Duty Final Filter Box
- Vacuum Enhancer
- Directional Discharge System
- Hydrostatic Blower Drive via rear mount chassis engine pump drive

Boom:
- Powered boom
- 330° Working Radius
- Boom Reach - 16' extendable to 21'

Compartment:
- Steel shroud encloses all water components
- 80,000 BTU Compartment Heater
- Roll Up Doors
- Heated Equipment Locker

Truck:
- Mounting to approved chassis
- Alum Toolbox 18"x18"x30"
- Alum Toolbox 18"x18"x36" driver
- Alum Toolbox 18"x18"x74" passenger
- Mud flaps, Bumper
- LED D.O.T. approved lighting

Accessories:
- (4) 8" x 6' Extension Tubes
- (5) Quick Clamps 8"
- (1) 8" x 6' Digging Tube
- Kit, Wand,Digging,Hydro-Ex Truck Wand,Digging,Hydro-Ex Truck
- Washdown Gun Kit & Nozzle
- (1) Hydrant Wrench
- 25' Fill Hose
- (1) Paper Owner's Manual

BASE UNIT AS OUTLINED ABOVE

STANDARD OPTIONS:

ENCLOSURE AND TOOL TRAYS:	QTY
Deduct for No Water Heater	1
Deduct for No Compartment Heater	1
EXCAVATION SYSTEM(S) ATTACHMENTS:	
2" Water Fill 'Y' Strainer	1
VACUUM OPTIONS:	
Vacuum Breaker Option (4400 CFM Blower Only)	1
DEBRIS BOX & BOOM:	
Central Lubrication System	1
Boom out of Rest Alarm (Triggers alarm in Cab to Indicate Boom is not Properly Stored)	1
ELECTRICAL & LIGHTING:	
LED Strobe Light (Factory Standard)	1
LED Arrow Stick (Factory Standard)	1
Boom Mounted Work Lights (2)	1
Body Mounted Work Lights (2) on Shroud	1
Rear Door Work Lights (2)	1
(12 Light) Premium Strobe Package	1
Wireless Remote Water Pressure Control	1
CHASSIS:	
Rear Back Up Camera System with Blind Spot Cameras (includes color monitor in cab)	1
Six (6) 28" D.O.T. Safety Cones and Holder	1
PAINT (SHROUD & DEBRIS TANK):	
SHROUD: • STERLING WHITE (FDG91327)	STANDARD
DEBRIS TANK: • STERLING WHITE (FDG91327)	STANDARD

BOOM: • STD BLACK (FDG-9000)	STANDARD		
SPECIAL PAINT: Solid Colors			
SPECIAL PAINT: Metallic, Base Coat / Clear Coat			

MANUALS & TRAINING:	
USB Operator's Manual	1

SIGNATURE DATE

COOPERATIVE CONTRACT PURCHASE ADDENDUM (CCPA)
BETWEEN THE CITY OF BUCKEYE
AND
SEWER EQUIPMENT CO. OF AMERICA

SEWER VACUUM, HYDRO-EXCAVATION, AND MUNICIPAL PUMPING EQUIPMENT WITH RELATED ACCESSORIES AND SUPPLIES
CONTRACT NO. 2025127

THIS COOPERATIVE CONTRACT PURCHASE ADDENDUM (this "Addendum") is entered into as of_____between the City of Buckeye, an Arizona municipal corporation (the "City"), and Sewer Equipment Co. of America, an Illinois corporation (the "Contractor")

WHEREAS, after a competitive procurement process, which is documented in the Award attached hereto as **Exhibit A** and incorporated herein by reference, Sourcewell and Contractor entered into Contract No. 101221-SCA, dated November 23, 2021 with the Contractor (such contract and subsequent amendments thereto here referred to as the "Sourcewell Contract"), which is attached hereto as **Exhibit A** and incorporated herein by reference; and

WHEREAS, the City is permitted by Section 24-3-16 of the City Procurement Code to make purchases via cooperative purchasing pursuant to a cooperative purchasing contract; and

WHEREAS, the Contractor has made a proposal to the City, which is attached hereto as **Exhibit B** and incorporated herein by reference (the "Contract"); and

WHEREAS, the City desires to accept the Proposal and enter into contract with the Contractor under the terms and conditions of the Sourcewell Contract, by issuing this Addendum to said contract.

THEREFORE, the City now enters into this Addendum with Contractor for the goods and services set forth in the Proposal. This Addendum incorporates the terms and conditions of the Sourcewell Contract, except to the extent superseded herein. All references in the Sourcewell Contract shall be read to refer to the City of Buckeye. This Addendum shall be effective as of the date set forth below for approval and remain in effect for the remainder of the Sourcewell Contract 101221-SCA, unless such term is modified or extended pursuant to the terms of the Sourcewell Contract. Payments to the Contractor shall be calculated in accordance with the Fee Schedule, which is attached hereto as part of **Exhibit B**, in a total amount not to exceed $543,000.00.

FURTHER, this Addendum is subject to cancellation pursuant to ARS §38-511.

FURTHER, to the extent applicable, the Contractor and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under A.R.S. § 23-214(A). The Contractor's or its subcontractors' failure to comply with such warranty shall be deemed a material breach of this Addendum and may result in the termination of this Addendum by the City. The City retains the

right to inspect the papers of the Contractor's or its subcontractors' employees who perform any work or services pursuant to this Addendum to ensure compliance with these warranties.

FURTHER, to the extent applicable, the Contractor warrants that it is not participating and will not participate in prohibited activity in contravention of A.R.S. § 35-393.01.

FURTHER, to the extent applicable under ARIZ. REV. STAT. § 35-394, Contractor certifies that it does not currently, and agrees for the duration of this Agreement that it will not use (i) the forced labor of ethnic Uyghurs in the Peoples Republic of China ("ethnic Uyghurs"), (ii) any goods or services produced by the forced labor of ethnic Uyghurs, or (iii) any Contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs. If Contractor becomes aware that it is not in compliance with this paragraph, Contractor shall notify the City of the noncompliance within five (5) business days of becoming aware of it. If Contractor fails to provide a written certification that Contractor has remedied the noncompliance within one hundred eighty (180) days after that, this Agreement shall terminate unless the termination date of this Agreement occurs before the end of the remedy period, in which case this Agreement terminates on the Agreement termination date.

FURTHER, the Parties agree that the Addendum and Exhibits thereto shall be governed by State of Arizona law and suits pertaining to the Addendum and Exhibits thereto may only be brought in courts located in Maricopa County, Arizona.

FURTHER, all modifications, including but not limited to service additions and deletions, will be made in writing and with the written agreement of both parties.

FURTHER, in the event of any inconsistency between this Addendum, the Sourcewell Contract, and **Exhibit B**, the documents shall govern in that order.

CLICKWRAP TERMS EXCLUDED, in the event the Consultant's terms of sale or service were provided to the City only upon "acceptance" of a "clickwrap" or "clickthrough" agreement, such terms of sale or service shall not be binding upon the City. No oral agreement, "clickwrap" or "clickthrough" agreement or other understanding shall in any way modify a City issued or approved contract or the terms of this Cooperative Contract Purchase Addendum (CCPA).

THEREFORE, the Parties have executed this Addendum as of the date first set forth above.

CITY

THE CITY OF BUCKEYE,
an Arizona Municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR

SEWER EQUIPMENT CO. OF AMERICA,
an Illinois corporation

By: Scott Hall

Its: President

ATTEST:

Lucinda Aja, City Clerk

RECOMMENDED:

William Kauppi

William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

K. Scott McCoy, City Attorney

EXHIBIT A
TO
COOPERATIVE CONTRACT PURCHASE ADDENDUM
CONTRACT NO. 2025127

[Sourcewell Contract]

See following page(s).

DocuSign Envelope ID: 9D50ACBA-95DC-4439-9F3D-09EB66C12FA3

Sourcewell

Solicitation Number: RFP #101221

CONTRACT

This Contract is between Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 (Sourcewell) and Sewer Equipment Co. of America, 1590 Dutch Rd., Dixon, IL 61021 (Supplier).

Sourcewell is a State of Minnesota local government unit and service cooperative created under the laws of the State of Minnesota (Minnesota Statutes Section 123A.21) that offers cooperative procurement solutions to government entities. Participation is open to eligible federal, state/province, and municipal governmental entities, higher education, K-12 education, nonprofit, tribal government, and other public entities located in the United States and Canada. Sourcewell issued a public solicitation for Sewer Vacuum, Hydro-Excavation, and Municipal Pumping Equipment with Related Accessories and Supplies from which Supplier was awarded a contract.

Supplier desires to contract with Sourcewell to provide equipment, products, or services to Sourcewell and the entities that access Sourcewell's cooperative purchasing contracts (Participating Entities).

1. TERM OF CONTRACT

A. EFFECTIVE DATE. This Contract is effective upon the date of the final signature below.

B. EXPIRATION DATE AND EXTENSION. This Contract expires November 29, 2025, unless it is cancelled sooner pursuant to Article 22. This Contract may be extended one additional year upon the request of Sourcewell and written agreement by Supplier.

C. SURVIVAL OF TERMS. Notwithstanding any expiration or termination of this Contract, all payment obligations incurred prior to expiration or termination will survive, as will the following: Articles 11 through 14 survive the expiration or cancellation of this Contract. All rights will cease upon expiration or termination of this Contract.

2. EQUIPMENT, PRODUCTS, OR SERVICES

A. EQUIPMENT, PRODUCTS, OR SERVICES. Supplier will provide the Equipment, Products, or Services as stated in its Proposal submitted under the Solicitation Number listed above.

DocuSign Envelope ID: 9D50ACBA-95DC-4439-9F3D-09EB66C12FA3

Supplier's Equipment, Products, or Services Proposal (Proposal) is attached and incorporated into this Contract.

All Equipment and Products provided under this Contract must be new and the current model. Supplier may offer close-out or refurbished Equipment or Products if they are clearly indicated in Supplier's product and pricing list. Unless agreed to by the Participating Entities in advance, Equipment or Products must be delivered as operational to the Participating Entity's site.

This Contract offers an indefinite quantity of sales, and while substantial volume is anticipated, sales and sales volume are not guaranteed.

B. WARRANTY. Supplier warrants that all Equipment, Products, and Services furnished are free from liens and encumbrances, and are free from defects in design, materials, and workmanship. In addition, Supplier warrants the Equipment, Products, and Services are suitable for and will perform in accordance with the ordinary use for which they are intended. Supplier's dealers and distributors must agree to assist the Participating Entity in reaching a resolution in any dispute over warranty terms with the manufacturer. Any manufacturer's warranty that extends beyond the expiration of the Supplier's warranty will be passed on to the Participating Entity.

C. DEALERS, DISTRIBUTORS, AND/OR RESELLERS. Upon Contract execution and throughout the Contract term, Supplier must provide to Sourcewell a current means to validate or authenticate Supplier's authorized dealers, distributors, or resellers relative to the Equipment, Products, and Services offered under this Contract, which will be incorporated into this Contract by reference. It is the Supplier's responsibility to ensure Sourcewell receives the most current information.

3. PRICING

All Equipment, Products, or Services under this Contract will be priced at or below the price stated in Supplier's Proposal.

When providing pricing quotes to Participating Entities, all pricing quoted must reflect a Participating Entity's total cost of acquisition. This means that the quoted cost is for delivered Equipment, Products, and Services that are operational for their intended purpose, and includes all costs to the Participating Entity's requested delivery location.

Regardless of the payment method chosen by the Participating Entity, the total cost associated with any purchase option of the Equipment, Products, or Services must always be disclosed in the pricing quote to the applicable Participating Entity at the time of purchase.

A. SHIPPING AND SHIPPING COSTS. All delivered Equipment and Products must be properly packaged. Damaged Equipment and Products may be rejected. If the damage is not readily apparent at the time of delivery, Supplier must permit the Equipment and Products to be

DocuSign Envelope ID: 9D50ACBA-95DC-4439-9F3D-09EB66C12FA3

returned within a reasonable time at no cost to Sourcewell or its Participating Entities. Participating Entities reserve the right to inspect the Equipment and Products at a reasonable time after delivery where circumstances or conditions prevent effective inspection of the Equipment and Products at the time of delivery. In the event of the delivery of nonconforming Equipment and Products, the Participating Entity will notify the Supplier as soon as possible and the Supplier will replace nonconforming Equipment and Products with conforming Equipment and Products that are acceptable to the Participating Entity.

Supplier must arrange for and pay for the return shipment on Equipment and Products that arrive in a defective or inoperable condition.

Sourcewell may declare the Supplier in breach of this Contract if the Supplier intentionally delivers substandard or inferior Equipment or Products.

B. SALES TAX. Each Participating Entity is responsible for supplying the Supplier with valid tax-exemption certification(s). When ordering, a Participating Entity must indicate if it is a tax-exempt entity.

C. HOT LIST PRICING. At any time during this Contract, Supplier may offer a specific selection of Equipment, Products, or Services at discounts greater than those listed in the Contract. When Supplier determines it will offer Hot List Pricing, it must be submitted electronically to Sourcewell in a line-item format. Equipment, Products, or Services may be added or removed from the Hot List at any time through a Sourcewell Price and Product Change Form as defined in Article 4 below.

Hot List program and pricing may also be used to discount and liquidate close-out and discontinued Equipment and Products as long as those close-out and discontinued items are clearly identified as such. Current ordering process and administrative fees apply. Hot List Pricing must be published and made available to all Participating Entities.

4. PRODUCT AND PRICING CHANGE REQUESTS

Supplier may request Equipment, Product, or Service changes, additions, or deletions at any time. All requests must be made in writing by submitting a signed Sourcewell Price and Product Change Request Form to the assigned Sourcewell Supplier Development Administrator. This approved form is available from the assigned Sourcewell Supplier Development Administrator. At a minimum, the request must:

- Identify the applicable Sourcewell contract number;
- Clearly specify the requested change;
- Provide sufficient detail to justify the requested change;

DocuSign Envelope ID: 9D50ACBA-95DC-4439-9F3D-09EB66C12FA3

- Individually list all Equipment, Products, or Services affected by the requested change, along with the requested change (e.g., addition, deletion, price change); and
- Include a complete restatement of pricing documentation in Microsoft Excel with the effective date of the modified pricing, or product addition or deletion. The new pricing restatement must include all Equipment, Products, and Services offered, even for those items where pricing remains unchanged.

A fully executed Sourcewell Price and Product Change Request Form will become an amendment to this Contract and will be incorporated by reference.

5. PARTICIPATION, CONTRACT ACCESS, AND PARTICIPATING ENTITY REQUIREMENTS

A. PARTICIPATION. Sourcewell's cooperative contracts are available and open to public and nonprofit entities across the United States and Canada; such as federal, state/province, municipal, K-12 and higher education, tribal government, and other public entities.

The benefits of this Contract should be available to all Participating Entities that can legally access the Equipment, Products, or Services under this Contract. A Participating Entity's authority to access this Contract is determined through its cooperative purchasing, interlocal, or joint powers laws. Any entity accessing benefits of this Contract will be considered a Service Member of Sourcewell during such time of access. Supplier understands that a Participating Entity's use of this Contract is at the Participating Entity's sole convenience and Participating Entities reserve the right to obtain like Equipment, Products, or Services from any other source.

Supplier is responsible for familiarizing its sales and service forces with Sourcewell contract use eligibility requirements and documentation and will encourage potential participating entities to join Sourcewell. Sourcewell reserves the right to add and remove Participating Entities to its roster during the term of this Contract.

B. PUBLIC FACILITIES. Supplier's employees may be required to perform work at government-owned facilities, including schools. Supplier's employees and agents must conduct themselves in a professional manner while on the premises, and in accordance with Participating Entity policies and procedures, and all applicable laws.

6. PARTICIPATING ENTITY USE AND PURCHASING

A. ORDERS AND PAYMENT. To access the contracted Equipment, Products, or Services under this Contract, a Participating Entity must clearly indicate to Supplier that it intends to access this Contract; however, order flow and procedure will be developed jointly between Sourcewell and Supplier. Typically, a Participating Entity will issue an order directly to Supplier or its authorized subsidiary, distributor, dealer, or reseller. If a Participating Entity issues a purchase order, it may use its own forms, but the purchase order should clearly note the applicable Sourcewell

DocuSign Envelope ID: 9D50ACBA-95DC-4439-9F3D-09EB66C12FA3

contract number. All Participating Entity orders under this Contract must be issued prior to expiration or cancellation of this Contract; however, Supplier performance, Participating Entity payment obligations, and any applicable warranty periods or other Supplier or Participating Entity obligations may extend beyond the term of this Contract.

Supplier's acceptable forms of payment are included in its attached Proposal. Participating Entities will be solely responsible for payment and Sourcewell will have no liability for any unpaid invoice of any Participating Entity.

B. ADDITIONAL TERMS AND CONDITIONS/PARTICIPATING ADDENDUM. Additional terms and conditions to a purchase order, or other required transaction documentation, may be negotiated between a Participating Entity and Supplier, such as job or industry-specific requirements, legal requirements (e.g., affirmative action or immigration status requirements), or specific local policy requirements. Some Participating Entities may require the use of a Participating Addendum; the terms of which will be negotiated directly between the Participating Entity and the Supplier. Any negotiated additional terms and conditions must never be less favorable to the Participating Entity than what is contained in this Contract.

C. SPECIALIZED SERVICE REQUIREMENTS. In the event that the Participating Entity requires service or specialized performance requirements not addressed in this Contract (such as e-commerce specifications, specialized delivery requirements, or other specifications and requirements), the Participating Entity and the Supplier may enter into a separate, standalone agreement, apart from this Contract. Sourcewell, including its agents and employees, will not be made a party to a claim for breach of such agreement.

D. TERMINATION OF ORDERS. Participating Entities may terminate an order, in whole or in part, immediately upon notice to Supplier in the event of any of the following events:

1. The Participating Entity fails to receive funding or appropriation from its governing body at levels sufficient to pay for the equipment, products, or services to be purchased; or
2. Federal, state, or provincial laws or regulations prohibit the purchase or change the Participating Entity's requirements.

E. GOVERNING LAW AND VENUE. The governing law and venue for any action related to a Participating Entity's order will be determined by the Participating Entity making the purchase.

7. CUSTOMER SERVICE

A. PRIMARY ACCOUNT REPRESENTATIVE. Supplier will assign an Account Representative to Sourcewell for this Contract and must provide prompt notice to Sourcewell if that person is changed. The Account Representative will be responsible for:

DocuSign Envelope ID: 9D50ACBA-95DC-4439-9F3D-09EB66C12FA3

- Maintenance and management of this Contract;
- Timely response to all Sourcewell and Participating Entity inquiries; and
- Business reviews to Sourcewell and Participating Entities, if applicable.

B. BUSINESS REVIEWS. Supplier must perform a minimum of one business review with Sourcewell per contract year. The business review will cover sales to Participating Entities, pricing and contract terms, administrative fees, sales data reports, supply issues, customer issues, and any other necessary information.

8. REPORT ON CONTRACT SALES ACTIVITY AND ADMINISTRATIVE FEE PAYMENT

A. CONTRACT SALES ACTIVITY REPORT. Each calendar quarter, Supplier must provide a contract sales activity report (Report) to the Sourcewell Supplier Development Administrator assigned to this Contract. Reports are due no later than 45 days after the end of each calendar quarter. A Report must be provided regardless of the number or amount of sales during that quarter (i.e., if there are no sales, Supplier must submit a report indicating no sales were made).

The Report must contain the following fields:

- Participating Entity Name (e.g., City of Staples Highway Department);
- Participating Entity Physical Street Address;
- Participating Entity City;
- Participating Entity State/Province;
- Participating Entity Zip/Postal Code;
- Participating Entity Contact Name;
- Participating Entity Contact Email Address;
- Participating Entity Contact Telephone Number;
- Sourcewell Assigned Entity/Participating Entity Number;
- Item Purchased Description;
- Item Purchased Price;
- Sourcewell Administrative Fee Applied; and
- Date Purchase was invoiced/sale was recognized as revenue by Supplier.

B. ADMINISTRATIVE FEE. In consideration for the support and services provided by Sourcewell, the Supplier will pay an administrative fee to Sourcewell on all Equipment, Products, and Services provided to Participating Entities. The Administrative Fee must be included in, and not added to, the pricing. Supplier may not charge Participating Entities more than the contracted price to offset the Administrative Fee.

The Supplier will submit payment to Sourcewell for the percentage of administrative fee stated in the Proposal multiplied by the total sales of all Equipment, Products, and Services purchased

DocuSign Envelope ID: 9D50ACBA-95DC-4439-9F3D-09EB66C12FA3

by Participating Entities under this Contract during each calendar quarter. Payments should note the Supplier's name and Sourcewell-assigned contract number in the memo; and must be mailed to the address above "Attn: Accounts Receivable" or remitted electronically to Sourcewell's banking institution per Sourcewell's Finance department instructions. Payments must be received no later than 45 calendar days after the end of each calendar quarter.

Supplier agrees to cooperate with Sourcewell in auditing transactions under this Contract to ensure that the administrative fee is paid on all items purchased under this Contract.

In the event the Supplier is delinquent in any undisputed administrative fees, Sourcewell reserves the right to cancel this Contract and reject any proposal submitted by the Supplier in any subsequent solicitation. In the event this Contract is cancelled by either party prior to the Contract's expiration date, the administrative fee payment will be due no more than 30 days from the cancellation date.

9. AUTHORIZED REPRESENTATIVE

Sourcewell's Authorized Representative is its Chief Procurement Officer.

Supplier's Authorized Representative is the person named in the Supplier's Proposal. If Supplier's Authorized Representative changes at any time during this Contract, Supplier must promptly notify Sourcewell in writing.

10. AUDIT, ASSIGNMENT, AMENDMENTS, WAIVER, AND CONTRACT COMPLETE

A. AUDIT. Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents, and accounting procedures and practices relevant to this Agreement are subject to examination by Sourcewell or the Minnesota State Auditor for a minimum of six years from the end of this Contract. This clause extends to Participating Entities as it relates to business conducted by that Participating Entity under this Contract.

B. ASSIGNMENT. Neither party may assign or otherwise transfer its rights or obligations under this Contract without the prior written consent of the other party and a fully executed assignment agreement. Such consent will not be unreasonably withheld. Any prohibited assignment will be invalid.

C. AMENDMENTS. Any amendment to this Contract must be in writing and will not be effective until it has been duly executed by the parties.

D. WAIVER. Failure by either party to take action or assert any right under this Contract will not be deemed a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right. Any such waiver must be in writing and signed by the parties.

DocuSign Envelope ID: 9D50ACBA-95DC-4439-9F3D-09EB66C12FA3

E. CONTRACT COMPLETE. This Contract represents the complete agreement between the parties. No other understanding regarding this Contract, whether written or oral, may be used to bind either party.For any conflict between the attached Proposal and the terms set out in Articles 1-22 of this Contract, the terms of Articles 1-22 will govern.

F. RELATIONSHIP OF THE PARTIES. The relationship of the parties is one of independent contractors, each free to exercise judgment and discretion with regard to the conduct of their respective businesses. This Contract does not create a partnership, joint venture, or any other relationship such as master-servant, or principal-agent.

11. INDEMNITY AND HOLD HARMLESS

Supplier must indemnify, defend, save, and hold Sourcewell and its Participating Entities, including their agents and employees, harmless from any claims or causes of action, including attorneys' fees incurred by Sourcewell or its Participating Entities, arising out of any act or omission in the performance of this Contract by the Supplier or its agents or employees; this indemnification includes injury or death to person(s) or property alleged to have been caused by some defect in the Equipment, Products, or Services under this Contract to the extent the Equipment, Product, or Service has been used according to its specifications. Sourcewell's responsibility will be governed by the State of Minnesota's Tort Liability Act (Minnesota Statutes Chapter 466) and other applicable law.

12. GOVERNMENT DATA PRACTICES

Supplier and Sourcewell must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by or provided to Sourcewell under this Contract and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Supplier under this Contract.

13. INTELLECTUAL PROPERTY, PUBLICITY, MARKETING, AND ENDORSEMENT

A. INTELLECTUAL PROPERTY

1. *Grant of License.* During the term of this Contract:

   a. Sourcewell grants to Supplier a royalty-free, worldwide, non-exclusive right and license to use thetrademark(s) provided to Supplier by Sourcewell in advertising and promotional materials for the purpose of marketing Sourcewell's relationship with Supplier.

   b. Supplier grants to Sourcewell a royalty-free, worldwide, non-exclusive right and license to use Supplier's trademarks in advertising and promotional materials for the purpose of marketing Supplier's relationship with Sourcewell.

2. *Limited Right of Sublicense*. The right and license granted herein includes a limited right of each party to grant sublicenses to their respective subsidiaries, distributors, dealers,

DocuSign Envelope ID: 9D50ACBA-95DC-4439-9F3D-09EB66C12FA3

resellers, marketing representatives, and agents (collectively "Permitted Sublicensees") in advertising and promotional materials for the purpose of marketing the Parties' relationship to Participating Entities. Any sublicense granted will be subject to the terms and conditions of this Article. Each party will be responsible for any breach of this Article by any of their respective sublicensees.

3. *Use; Quality Control.*

a. Neither party may alter the other party's trademarks from the form provided and must comply with removal requests as to specific uses of its trademarks or logos.

b. Each party agrees to use, and to cause its Permitted Sublicensees to use, the other party's trademarks only in good faith and in a dignified manner consistent with such party's use of the trademarks. Upon written notice to the breaching party, the breaching party has 30 days of the date of the written notice to cure the breach or the license will be terminated.

4. As applicable, Supplier agrees to indemnify and hold harmless Sourcewell and its Participating Entities against any and all suits, claims, judgments, and costs instituted or recovered against Sourcewell or Participating Entities by any person on account of the use of any Equipment or Products by Sourcewell or its Participating Entities supplied by Supplier in violation of applicable patent or copyright laws.

5. Termination. Upon the termination of this Contract for any reason, each party, including Permitted Sublicensees, will have 30 days to remove all Trademarks from signage, websites, and the like bearing the other party's name or logo (excepting Sourcewell's pre-printed catalog of suppliers which may be used until the next printing). Supplier must return all marketing and promotional materials, including signage, provided by Sourcewell, or dispose of it according to Sourcewell's written directions.

B. PUBLICITY. Any publicity regarding the subject matter of this Contract must not be released without prior written approval from the Authorized Representatives. Publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Supplier individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this Contract.

C. MARKETING. Any direct advertising, marketing, or offers with Participating Entities must be approved by Sourcewell. Send all approval requests to the Sourcewell Supplier Development Administrator assigned to this Contract.

D. ENDORSEMENT. The Supplier must not claim that Sourcewell endorses its Equipment, Products, or Services.

DocuSign Envelope ID: 9D50ACBA-95DC-4439-9F3D-09EB66C12FA3

14. GOVERNING LAW, JURISDICTION, AND VENUE

The substantive and procedural laws of the State of Minnesota will govern this Contract. Venue for all legal proceedings arising out of this Contract, or its breach, must be in the appropriate state court in Todd County, Minnesota or federal court in Fergus Falls, Minnesota.

15. FORCE MAJEURE

Neither party to this Contract will be held responsible for delay or default caused by acts of God or other conditions that are beyond that party's reasonable control. A party defaulting under this provision must provide the other party prompt written notice of the default.

16. SEVERABILITY

If any provision of this Contract is found by a court of competent jurisdiction to be illegal, unenforceable, or void then both parties will be relieved from all obligations arising from that provision. If the remainder of this Contract is capable of being performed, it will not be affected by such determination or finding and must be fully performed.

17. PERFORMANCE, DEFAULT, AND REMEDIES

A. PERFORMANCE. During the term of this Contract, the parties will monitor performance and address unresolved contract issues as follows:

1. *Notification.* The parties must promptly notify each other of any known dispute and work in good faith to resolve such dispute within a reasonable period of time. If necessary, Sourcewell and the Supplier will jointly develop a short briefing document that describes the issue(s), relevant impact, and positions of both parties.
2. *Escalation.* If parties are unable to resolve the issue in a timely manner, as specified above, either Sourcewell or Supplier may escalate the resolution of the issue to a higher level of management. The Supplier will have 30 calendar days to cure an outstanding issue.
3. *Performance while Dispute is Pending*. Notwithstanding the existence of a dispute, the Supplier must continue without delay to carry out all of its responsibilities under the Contract that are not affected by the dispute. If the Supplier fails to continue without delay to perform its responsibilities under the Contract, in the accomplishment of all undisputed work, the Supplier will bear any additional costs incurred by Sourcewell and/or its Participating Entities as a result of such failure to proceed.

B. DEFAULT AND REMEDIES. Either of the following constitutes cause to declare this Contract, or any Participating Entity order under this Contract, in default:

1. Nonperformance of contractual requirements, or
2. A material breach of any term or condition of this Contract.

DocuSign Envelope ID: 9D50ACBA-95DC-4439-9F3D-09EB66C12FA3

The party claiming default must provide written notice of the default, with 30 calendar days to cure the default. Time allowed for cure will not diminish or eliminate any liability for liquidated or other damages. If the default remains after the opportunity for cure, the non-defaulting party may:

- Exercise any remedy provided by law or equity, or
- Terminate the Contract or any portion thereof, including any orders issued against the Contract.

18. INSURANCE

A. REQUIREMENTS. At its own expense, Supplier must maintain insurance policy(ies) in effect at all times during the performance of this Contract with insurance company(ies) licensed or authorized to do business in the State of Minnesota having an "AM BEST" rating of A- or better, with coverage and limits of insurance not less than the following:

1. *Workers' Compensation and Employer's Liability.*
Workers' Compensation: As required by any applicable law or regulation.
Employer's Liability Insurance: must be provided in amounts not less than listed below:
Minimum limits:
$500,000 each accident for bodily injury by accident
$500,000 policy limit for bodily injury by disease
$500,000 each employee for bodily injury by disease

2. *Commercial General Liability Insurance.* Supplier will maintain insurance covering its operations, with coverage on an occurrence basis, and must be subject to terms no less broad than the Insurance Services Office ("ISO") Commercial General Liability Form CG0001 (2001 or newer edition), or equivalent. At a minimum, coverage must include liability arising from premises, operations, bodily injury and property damage, independent contractors, products-completed operations including construction defect, contractual liability, blanket contractual liability, and personal injury and advertising injury. All required limits, terms and conditions of coverage must be maintained during the term of this Contract.
Minimum Limits:
$1,000,000 each occurrence Bodily Injury and Property Damage
$1,000,000 Personal and Advertising Injury
$2,000,000 aggregate for Products-Completed operations
$2,000,000 general aggregate

3. *Commercial Automobile Liability Insurance.* During the term of this Contract, Supplier will maintain insurance covering all owned, hired, and non-owned automobiles in limits of liability not less than indicated below. The coverage must be subject to terms

DocuSign Envelope ID: 9D50ACBA-95DC-4439-9F3D-09EB66C12FA3

no less broad than ISO Business Auto Coverage Form CA 0001 (2010 edition or newer), or equivalent.

Minimum Limits:
$1,000,000 each accident, combined single limit

4. *Umbrella Insurance*. During the term of this Contract, Supplier will maintain umbrella coverage over Employer's Liability, Commercial General Liability, and Commercial Automobile.

Minimum Limits:
$2,000,000

5. *Network Security and Privacy Liability Insurance*. During the term of this Contract, Supplier will maintain coverage for network security and privacy liability. The coverage may be endorsed on another form of liability coverage or written on a standalone policy. The insurance must cover claims which may arise from failure of Supplier's security resulting in, but not limited to, computer attacks, unauthorized access, disclosure of not public data – including but not limited to, confidential or private information, transmission of a computer virus, or denial of service.

Minimum limits:
$2,000,000 per occurrence
$2,000,000 annual aggregate

Failure of Supplier to maintain the required insurance will constitute a material breach entitling Sourcewell to immediately terminate this Contract for default.

B. CERTIFICATES OF INSURANCE. Prior to commencing under this Contract, Supplier must furnish to Sourcewell a certificate of insurance, as evidence of the insurance required under this Contract. Prior to expiration of the policy(ies), renewal certificates must be mailed to Sourcewell, 202 12th Street Northeast, P.O. Box 219, Staples, MN 56479 or sent to the Sourcewell Supplier Development Administrator assigned to this Contract. The certificates must be signed by a person authorized by the insurer(s) to bind coverage on their behalf.

Failure to request certificates of insurance by Sourcewell, or failure of Supplier to provide certificates of insurance, in no way limits or relieves Supplier of its duties and responsibilities in this Contract.

C. ADDITIONAL INSURED ENDORSEMENT AND PRIMARY AND NON-CONTRIBUTORY INSURANCE CLAUSE. Supplier agrees to list Sourcewell and its Participating Entities, including their officers, agents, and employees, as an additional insured under the Supplier's commercial general liability insurance policy with respect to liability arising out of activities, "operations," or "work" performed by or on behalf of Supplier, and products and completed operations of Supplier. The policy provision(s) or endorsement(s) must further provide that coverage is

DocuSign Envelope ID: 9D50ACBA-95DC-4439-9F3D-09EB66C12FA3

primary and not excess over or contributory with any other valid, applicable, and collectible insurance or self-insurance in force for the additional insureds.

D. WAIVER OF SUBROGATION. Supplier waives and must require (by endorsement or otherwise) all its insurers to waive subrogation rights against Sourcewell and other additional insureds for losses paid under the insurance policies required by this Contract or other insurance applicable to the Supplier or its subcontractors. The waiver must apply to all deductibles and/or self-insured retentions applicable to the required or any other insurance maintained by the Supplier or its subcontractors. Where permitted by law, Supplier must require similar written express waivers of subrogation and insurance clauses from each of its subcontractors.

E. UMBRELLA/EXCESS LIABILITY/SELF-INSURED RETENTION. The limits required by this Contract can be met by either providing a primary policy or in combination with umbrella/excess liability policy(ies), or self-insured retention.

19. COMPLIANCE

A. LAWS AND REGULATIONS. All Equipment, Products, or Services provided under this Contract must comply fully with applicable federal laws and regulations, and with the laws in the states and provinces in which the Equipment, Products, or Services are sold.

B. LICENSES. Supplier must maintain a valid and current status on all required federal, state/provincial, and local licenses, bonds, and permits required for the operation of the business that the Supplier conducts with Sourcewell and Participating Entities.

20. BANKRUPTCY, DEBARMENT, OR SUSPENSION CERTIFICATION

Supplier certifies and warrants that it is not in bankruptcy or that it has previously disclosed in writing certain information to Sourcewell related to bankruptcy actions. If at any time during this Contract Supplier declares bankruptcy, Supplier must immediately notify Sourcewell in writing.

Supplier certifies and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Supplier certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this Contract. Supplier further warrants that it will provide immediate written notice to Sourcewell if this certification changes at any time.

DocuSign Envelope ID: 9D50ACBA-95DC-4439-9F3D-09EB66C12FA3

21. PROVISIONS FOR NON-UNITED STATES FEDERAL ENTITY PROCUREMENTS UNDER UNITED STATES FEDERAL AWARDS OR OTHER AWARDS

Participating Entities that use United States federal grant or FEMA funds to purchase goods or services from this Contract may be subject to additional requirements including the procurement standards of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. § 200. Participating Entities may have additional requirements based on specific funding source terms or conditions. Within this Article, all references to "federal" should be interpreted to mean the United States federal government. The following list only applies when a Participating Entity accesses Supplier's Equipment, Products, or Services with United States federal funds.

A. EQUAL EMPLOYMENT OPPORTUNITY. Except as otherwise provided under 41 C.F.R. § 60, all contracts that meet the definition of "federally assisted construction contract" in 41 C.F.R. § 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. §60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 C.F.R. §, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 C.F.R. § 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." The equal opportunity clause is incorporated herein by reference.

B. DAVIS-BACON ACT, AS AMENDED (40 U.S.C. § 3141-3148). When required by federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. § 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. § 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. § 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency. Supplier must be in compliance with all applicable Davis-Bacon Act provisions.

DocuSign Envelope ID: 9D50ACBA-95DC-4439-9F3D-09EB66C12FA3

C. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. § 3701-3708). Where applicable, all contracts awarded by the non-federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. § 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. This provision is hereby incorporated by reference into this Contract. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

D. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT. If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 C.F.R. § 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency. Supplier certifies that during the term of an award for all contracts by Sourcewell resulting from this procurement process, Supplier must comply with applicable requirements as referenced above.

E. CLEAN AIR ACT (42 U.S.C. § 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. § 1251-1387). Contracts and subgrants of amounts in excess of $150,000 require the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). Supplier certifies that during the term of this Contract will comply with applicable requirements as referenced above.

F. DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689). A contract award (see 2 C.F.R. § 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. §180 that implement Executive Orders 12549 (3 C.F.R. § 1986 Comp., p. 189) and 12689 (3 C.F.R. § 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names

DocuSign Envelope ID: 9D50ACBA-95DC-4439-9F3D-09EB66C12FA3

of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Supplier certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

G. BYRD ANTI-LOBBYING AMENDMENT, AS AMENDED (31 U.S.C. § 1352). Suppliers must file any required certifications. Suppliers must not have used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Suppliers must disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the non-federal award. Suppliers must file all certifications and disclosures required by, and otherwise comply with, the Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352).

H. RECORD RETENTION REQUIREMENTS. To the extent applicable, Supplier must comply with the record retention requirements detailed in 2 C.F.R. § 200.333. The Supplier further certifies that it will retain all records as required by 2 C.F.R. § 200.333 for a period of 3 years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

I. ENERGY POLICY AND CONSERVATION ACT COMPLIANCE. To the extent applicable, Supplier must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

J. BUY AMERICAN PROVISIONS COMPLIANCE. To the extent applicable, Supplier must comply with all applicable provisions of the Buy American Act. Purchases made in accordance with the Buy American Act must follow the applicable procurement rules calling for free and open competition.

K. ACCESS TO RECORDS (2 C.F.R. § 200.336). Supplier agrees that duly authorized representatives of a federal agency must have access to any books, documents, papers and records of Supplier that are directly pertinent to Supplier's discharge of its obligations under this Contract for the purpose of making audits, examinations, excerpts, and transcriptions. The right also includes timely and reasonable access to Supplier's personnel for the purpose of interview and discussion relating to such documents.

L. PROCUREMENT OF RECOVERED MATERIALS (2 C.F.R. § 200.322). A non-federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation

DocuSign Envelope ID: 9D50ACBA-95DC-4439-9F3D-09EB66C12FA3

and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. § 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

M. FEDERAL SEAL(S), LOGOS, AND FLAGS. The Supplier not use the seal(s), logos, crests, or reproductions of flags or likenesses of Federal agency officials without specific pre-approval.

N. NO OBLIGATION BY FEDERAL GOVERNMENT. The U.S. federal government is not a party to this Contract or any purchase by an Participating Entity and is not subject to any obligations or liabilities to the Participating Entity, Supplier, or any other party pertaining to any matter resulting from the Contract or any purchase by an authorized user.

O. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS. The Contractor acknowledges that 31 U.S.C. 38 (Administrative Remedies for False Claims and Statements) applies to the Supplier's actions pertaining to this Contract or any purchase by a Participating Entity.

P. FEDERAL DEBT. The Supplier certifies that it is non-delinquent in its repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowance, and benefit overpayments.

Q. CONFLICTS OF INTEREST. The Supplier must notify the U.S. Office of General Services, Sourcewell, and Participating Entity as soon as possible if this Contract or any aspect related to the anticipated work under this Contract raises an actual or potential conflict of interest (as described in 2 C.F.R. Part 200). The Supplier must explain the actual or potential conflict in writing in sufficient detail so that the U.S. Office of General Services, Sourcewell, and Participating Entity are able to assess the actual or potential conflict; and provide any additional information as necessary or requested.

R. U.S. EXECUTIVE ORDER 13224. The Supplier, and its subcontractors, must comply with U.S. Executive Order 13224 and U.S. Laws that prohibit transactions with and provision of resources and support to individuals and organizations associated with terrorism.

S. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT. To the extent applicable, Supplier certifies that during the term of this Contract it will comply with applicable requirements of 2 C.F.R. § 200.216.

DocuSign Envelope ID: 9D50ACBA-95DC-4439-9F3D-09EB66C12FA3

T. DOMESTIC PREFERENCES FOR PROCUREMENTS. To the extent applicable, Supplier certifies that during the term of this Contract will comply with applicable requirements of 2 C.F.R. § 200.322.

22. CANCELLATION

Sourcewell or Supplier may cancel this Contract at any time, with or without cause, upon 60 days' written notice to the other party. However, Sourcewell may cancel this Contract immediately upon discovery of a material defect in any certification made in Supplier's Proposal. Cancellation of this Contract does not relieve either party of financial, product, or service obligations incurred or accrued prior to cancellation.

Sourcewell

DocuSigned by:
By: Jeremy Schwartz
C0FD2A139D06489...
Jeremy Schwartz
Title: Chief Procurement Officer
Date: 11/23/2021 | 8:44 PM CST

Sewer Equipment Co. of America

DocuSigned by:
By: Shawn Bondele
B5011C400B714B6...
Shawn Bondele
Title: Inside Sales Manager
Date: 11/23/2021 | 4:13 PM EST

Approved:

DocuSigned by:
By: Chad Coauette
7E42B8F817A64CC...
Chad Coauette
Title: Executive Director/CEO
Date: 11/24/2021 | 6:48 PM CST

RFP 101221 - Sewer Vacuum, Hydro-Excavation, and Municipal Pumping Equipment with Related Accessories and Supplies

Vendor Details

Company Name:	Sewer Equipment Co. of America
Does your company conduct business under any other name? If yes, please state:	IL
Address:	1590 Dutch Road DIXON, IL 61021
Contact:	Shawn Bondele
Email:	shawnbondele@sewerequipment.com
Phone:	815-835-5623
Fax:	815-284-0452
HST#:	36-2786536

Submission Details

Created On:	Wednesday August 25, 2021 07:50:30
Submitted On:	Monday October 11, 2021 15:11:12
Submitted By:	Shawn Bondele
Email:	shawnbondele@sewerequipment.com
Transaction #:	44e1e7e4-e719-4802-a155-e76c8332dafc
Submitter's IP Address:	98.142.194.242

Specifications

Table 1: Proposer Identity & Authorized Representatives

General Instructions (applies to all Tables) Sourcewell prefers a brief but thorough response to each question. Do not merely attach additional documents to your response without also providing a substantive response. Do not leave answers blank; respond "N/A" if the question does not apply to you (preferably with an explanation).

Line Item	Question	Response *	
1	Proposer Legal Name (one legal entity only): (In the event of award, will execute the resulting contract as "Supplier")	Sewer Equipment Co. of America	*
2	Identify all subsidiary entities of the Proposer whose equipment, products, or services are included in the Proposal.	Rock Rentals	*
3	Identify all applicable assumed names or DBA names of the Proposer or Proposer's subsidiaries in Line 1 or Line 2 above.	Sewer Equipment	*
4	Proposer Physical Address:	1590 Dutch Rd., Dixon, IL 61021	*
5	Proposer website address (or addresses):	www.sewerequipment.com, www.rock-rental.com, www.sewershop.com	*
6	Proposer's Authorized Representative (name, title, address, email address & phone) (The representative must have authority to sign the "Proposer's Assurance of Compliance" on behalf of the Proposer and, in the event of award, will be expected to execute the resulting contract):	Shawn Bondele Inside Sales Manager 1590 Dutch Rd. Dixon, IL 61021 shawnbondele@sewerequipment.com 815-835-5566	*
7	Proposer's primary contact for this proposal (name, title, address, email address & phone):	Shawn Bondele Inside Sales Manager 1590 Dutch Rd. Dixon, IL 61021 shawnbondele@sewerequipment.com 815-835-5566	*
8	Proposer's other contacts for this proposal, if any (name, title, address, email address & phone):	Tom Hochmuth Regional Sales Manager 1590 Dutch Rd. Dixon, IL 61021 tomhochmuth@sewerequipment.com 815-342-1700 Vanessa Gomez Inside Sales Coordinator 1590 Dutch Rd. Dixon, IL 61021 vanessagomez@sewerequipment.com 815-835-5566	

Table 2: Company Information and Financial Strength

Line Item	Question	Response *	
9	Provide a brief history of your company, including your company's core values, business philosophy, and industry longevity related to the requested equipment, products or services.	"Best Product, Best Local Support" is a promise to our customers and is also a tagline that acts as a guiding principle to us each day. We have long been known for robust and innovative products that focus on simplicity, an increasingly rare characteristic in our marketplace. Sewer Equipment is also unique among manufacturers for our breadth of product, which ultimately allows our salespeople and distributors to sell in a consultative fashion. No other manufacture provides full size combination (jet/vacuum) trucks, mini combo trucks, water recycling combo trucks, truck and trailer jets both large and small, rodders, easement machines, and accessories for sewer cleaning applications as well as purpose built hydro excavation and air excavation trucks of all sizes. Our 76-year history has been one of growth and meaningful innovation. In 1941, our founder, H.T. O'Brien, developed the idea of using a rotating, spring tipped rod for cleaning drains in buildings, and a company was born. Throughout the 1940's and into the 1960's, O'Brien Manufacturing refined and expanded this principle to include trailer mounted rodders for cleaning mainline sewer pipes – these rodders were the predecessors of today's sewer jetters. The late 1960's saw the advent of modern-day sewer jet trucks and water powered rotating root cutters by O'Brien. O'Brien Manufacturing was sold in the early 70's and Sewer Equipment Company of America was opened by Jim O'Brien, son of the founder. The company grew from accessory sales to the manufacture of rodders, bucket machines, vacuum trailers, and truck and trailer jetters. In the mid 2000's we began manufacturing an extensive line of hydro excavating trucks and trailers. In 2012, the company was moved from a 37,000 sq/ft manufacturing facility in Chadwick Il to a 122,000 sq/ft plant in Dixon IL to accommodate our growth. This move allowed us to begin producing the 900-ECO combination sewer cleaner 2015. In the 6 years since its release, the 900-ECO has achieved approximately a 13% share of this hotly contested segment, measured in annual new truck sales in the US. In the last 4 years, we have also released the 400-ECO mini combo truck, the Genesis water recycling combo, and the AX-4000 air excavator truck. May of 2021 marked the completion of our 9000th piece of "big equipment" in company history.	*
10	What are your company's expectations in the event of an award?	We would immediately schedule a video conference meeting with all distributor sales personnel, reiterating the terms of the contract and calling attention to any changes. This would be followed up with in person reviews as well as e-mail / social media blasts to dealers and end users. We would remain the sole source of responsibility for this contract and would handle all order entry and reporting tasks required by the contract as we currently do.	*
11	Demonstrate your financial strength and stability with meaningful data. This could include such items as financial statements, SEC filings, credit and bond ratings, letters of credit, and detailed reference letters. Upload supporting documents (as applicable) in the document upload section of your response.	Sewer Equipment has a consistent track record of growth and profitability. The company's past performance assures ample resources to enhance our product offerings for the markets we serve. Sewer Equipment maintains insurance coverage that is customary for the business being conducted. (Attachment – 11-2020 Sewer Equipment Co……., 11 – Huntington National Bank……., 11 – 2021-2022 Sewer Equipment COI)	*
12	What is your US market share for the solutions that you are proposing?	Our US Market Share data listed here for combination trucks, truck jets, and hydro excavation trucks is based on data reporting through the American Association of Equipment Manufacturers. Combination Sewer Cleaners (2018) 6.4% (2019) 7.1% (2020) 14% (2021y.t.d.) 13.3% Truck Jets (2018) 58.5% (2019) 8% (2020) 44.6% (2021y.t.d.) 31.7% Hydro-Excavation Trucks (2018) 5.9% (2019) 9.3% (2020) 6.9% (2021y.t.d.) 8.1%	*
13	What is your Canadian market share for the solutions that you are proposing?	Our Canadian Market Share data listed here for combination trucks, truck jets, and hydro-excavation trucks is based on data reporting through the American Association of Equipment Manufacturers. Combination Sewer Cleaners (2018) 1.7% (2019) 2.0% (2020) 7.7% (2021y.t.d.)7.5% Truck Jets (2018) 66.7% (2019) 42.9% (2020) 75% (2021y.t.d.) 75% Hydro-Excavation Trucks (2018) 2.1% (2019) 2.0% (2020) 0% (2021y.t.d.) 7.8%	*
14	Has your business ever petitioned for bankruptcy protection? If so, explain in detail.	Since its formation, Sewer Equipment has never petitioned for bankruptcy protection.	*
15	How is your organization best described: is it a manufacturer, a distributor/dealer/reseller, or a service provider? Answer whichever question (either a) or b) just below) best applies to your organization. a) If your company is best described as a distributor/dealer/reseller (or similar entity), provide your written authorization to act as a distributor/dealer/reseller for the manufacturer of the products proposed in this RFP. If applicable, is your dealer network independent or company owned? b) If your company is best described as a manufacturer or service provider, describe your relationship with your sales and service force and with your dealer network in delivering the products and services proposed in this RFP. Are these individuals your employees, or the employees of a third party?	As a manufacturer, our primary means of going to market is via exclusive distributors that are typically responsible for covering the municipal entities in an entire state/states, multiple provinces, or multiple countries. We have distributors in 46 States and 2 Providences in Canada, as well as 5 overseas countries. The only exception is in some states/provinces that are in a transitional phase. Distributors act on our behalf as local sales, service, training, and warranty providers. These distributor sales and service people are 3rd party employees and are looked after by regional sales managers from Sewer Equipment. Distributor service personnel work closely with, and have direct access to Sewer Equipment's warranty department, technical service department and engineering group.	*
16	If applicable, provide a detailed explanation outlining the licenses and certifications that are both required to be held, and actually held, by your organization (including third parties and subcontractors that you use) in pursuit of the business contemplated by this RFP.	As a United States based company, we are an Illinois corporation registered with the Illinois Secretary of State (File No. 50370119). Our Federal Employer Identification Number is 36-2786536. Our Illinois Certificate of Resale Number is 0252-2705. As a manufacturing making mobile products operating on US highways, we have two dealer licenses. DL1582 for trucks and DLT1419 for trailers. Each of our Dealers also hold Dealer Licenses in their respective territories. Where required, Sewer Equipment is licensed as a Manufacturer or Motor Vehicle Converter including Iowa Manufacturer License No. M241, Texas Motor Vehicle Converter License No. 105517, Louisiana Motor Vehicle Converter License No. CV-2021-00122, Washington Vehicle Manufacturer License No. 08152 and Montana New Motor Vehicle Manufacturer License No. 139. Sewer Equipment is also a member of the National Association of Trailer Manufacturers. This assures our trailers are manufactured in accordance with all DOT and NATM guidelines.	*
17	Provide all "Suspension or Debarment" information that has applied to your organization during the past ten years.	Sewer Equipment has not within the ten-year period preceding this bid been debarred or suspended from any public transactions (Federal, State, or local).	*

Table 3: Industry Recognition & Marketplace Success

Line Item	Question	Response *	
18	Describe any relevant industry awards or recognition that your company has received in the past five years	Sewer Equipment was awarded patent number "US 9,863,135 B2" for our Hydro-Drive system on January 9th, 2018. This Hydro-Drive System is the heart of our 900-ECO Combination Sewer Cleaner and has been a major contributor to the continued growth and success of our company. In the July 2021 issue of THE MUNICIPAL, Sewer Equipment was featured in an article "Moving Beyond Transactional Relationships Toward Partnerships." referencing a sale to King County, WA, where they utilized the Sourcewell Contract for the purchase and National Cooperative Lease for the financing. Sewer Equipment's products are in focus on almost a monthly basis in Industry Trade Publications such as CLEANER, DIG DIFFERENT, and MUNICIPAL WATER & SEWER.	*
19	What percentage of your sales are to the governmental sector in the past three years	(2018) 47%, (2019) 52%, (2020) 53%, (2021) 54%	*
20	What percentage of your sales are to the education sector in the past three years	(2018) .032%, (2019) .058%, (2020) 0%, (2021) 0%	*
21	List any state, provincial, or cooperative purchasing contracts that you hold. What is the annual sales volume for each of these contracts over the past three years?	The figures below do not include state and other local contracts that are manages by our distributors. These are only contract held directly by Sewer Equipment. HGAC (2018) $361,491.00, (2019) $496,502.00, (2020) $0.00, (2021) $0.00, State of Ohio (2018) $66,914.00, (2019) $337,639.00, (2020) $569,970.00, (2021) $248,523.00 Florida Sheriffs (2018) $0.00, (2019) $0.00, (2020) $0.00, (2021) $87,886.00 BuyBoard (2018) $0.00, (2019) $0.00, (2020) $0.00 (2021) $52,325.00	*
22	List any GSA contracts or Standing Offers and Supply Arrangements (SOSA) that you hold. What is the annual sales volume for each of these contracts over the past three years?	Sewer Equipment partners with Fedharmony on a GSA contract. We also directly hold a DLA contract. GSA (2018) $0.00, (2019) $250,619.00, (2020) $263,271.00, (2021) $58,479.00 DLA (2018) $0.00, (2019) $256,309.83, (2020) $274,847.00, (2021) $0.00	*

Table 4: References/Testimonials

Line Item 23. Supply reference information from three customers who are eligible to be Sourcewell participating entities.

Entity Name *	Contact Name *	Phone Number *	
City of Reno, NV	Zac Haffner	775-399-8692	*
City of Salem, OR	Jerry Smith	503-385-7560	*
City of Atlanta, GA	Robert Horton	404-982-1426	*

Table 5: Top Five Government or Education Customers

Line Item 24. Provide a list of your top five government, education, or non-profit customers (entity name is optional), including entity type, the state or province the entity is located in, scope of the project(s), size of transaction(s), and dollar volumes from the past three years.

Entity Name	Entity Type *	State / Province *	Scope of Work *	Size of Transactions *	Dollar Volume Past Three Years *	
City of Atlanta, GA	Government	Georgia - GA	Combination Sewer Cleaners	8 - 900-ECO's	$2,171,740.00	*
City of Reno, NV	Government	Nevada - NV	Combination Sewer Cleaners, Truck Jets, Easement Machines	3 - 800-HPRs, 3 - 900-ECO's, 1 - JAJ-600WH	$1,141,776.00	*
Snohomish County	Government	Washington - WA	Combination Sewer Cleaners	3 - 900-ECO's	$812,988.00	*
City of Salem, OR	Government	Oregon - OR	Combination Sewer Cleaners	3 - 900-ECO's	$755,912.00	*
City of Hamilton, ON	Government	ON - Ontario	Hydro Excavators	2 - Ramvac HX-12's	$705,804.00	*

Table 6: Ability to Sell and Deliver Service

Describe your company's capability to meet the needs of Sourcewell participating entities across the US and Canada, as applicable. Your response should address in detail at least the following areas: locations of your network of sales and service providers, the number of workers (full-time equivalents) involved in each sector, whether these workers are your direct employees (or employees of a third party), and any overlap between the sales and service functions.

Line Item	Question	Response *	
25	Sales force.	We directly employ a national sales manager as well as an eastern, central, and western regional sales manager that are responsible for our distributor network. We employ 3 inside salespeople as well as 7 direct salespeople that serve markets that are not fully covered by distribution (primarily contractors, but also some federal agencies and education to a very small degree). Three full time demonstration specialists work with our regional sales managers and distributor salespeople to allow our customers to "try it before they buy it", which is a very important aspect of our sales program.	*

26	Dealer network or other distribution methods.	In total, our distributor network employs approximately 140 salespeople. As a premium specialty product, our distributors are quite focused on the Sewer Equipment line, typically spending 50% or more of their efforts on our offerings. A new focus moving forward will be an intensive product and presentation technique training (SEAL - Sewer Equipment Advanced Learning) program for our distributors, with the goal being the most educated and knowledgeable sales staff in the industry. This has already begun with a dealer "walkaround" event (live product presentation), in which dealer salespeople presented several products to their peers and factory personnel and were graded for certification purposes. This program will be expanded with more events and more content in the coming years.	*
27	Service force.	(See attachment: 27 Service Distributor Map – US) As the Sewer Equipment distributor network evolves, our service presence has improved in recent years. With more professional organizations in our ranks, our number of service techs at the dealer in the US and Canada is approximately 170. Each of our distributors is required to have at least two technicians certified at Sewer University, a multi-day class that is regularly held at our Dixon IL headquarters. 99% of our customer's service needs are accommodated at the distributor level. Sewer Equipment also employs 3 mobile service technicians equipped with service trucks that fill in any gaps in service coverage and cover special projects. A relatively unique offering for customers in remote regions is our willingness to provide warranty coverage via a 3rd party repair shop of their choice or to reimburse the customer to perform simple warranty repairs themselves. This is very popular among customers in the rural western US, and is largely made possible by our simple products and factory tech support.	*
28	Describe the ordering process. If orders will be handled by distributors, dealers or others, explain the respective roles of the Proposer and others.	As in the past, Sewer Equipment distributors will provide Sourcewell quotations to customers and will accept purchase orders from customers following Sourcewell guidelines as called out in our Quick start guide for distributors which will be updated (Attachment - 28 Quick Start Guide for dealers- Sourcewell INTERNAL - rev6 4-6-2020). Upon securing the order from the end user, the distributor will in turn place their order with Sewer Equipment and must include a copy of their customer's purchase order complete with Sourcewell discount information, customer Sourcewell number, and our Sourcewell contract number. Said in a simpler way, customers will order from their authorized distributor, and the distributor will order from Sewer Equipment as they normally would, with the exception that Sourcewell quote and order protocols will be followed.	*
29	Describe in detail the process and procedure of your customer service program, if applicable. Include your response-time capabilities and commitments, as well as any incentives that help your providers meet your stated service goals or promises.	The first and likely most important aspect of our service program is building equipment that can be worked on by the customer or a local shop. Because Sewer Equipment has consciously avoided the use of computers, circuit boards, and CANbus communication protocols in our products, a mechanic with traditional skills and a knowledge of 12-volt wiring systems can often help themselves. If the customer does not possess the skills or cannot resolve the issue on their own, they should make a call to their local distributor to schedule a service visit, or to our corporate service technicians for assistance via the phone. Our corporate, in-house customer service department is comprised of both parts sales specialists and technical support specialists that provide toll-free service and tech support 24-7 & 365 days a year to end users and distributor service groups. Depending upon the issue, many can be handled over the phone with minor adjustments to either the operator's use of the equipment or to the machine itself. Our support specialists have extensive experience in troubleshooting issues and offering solutions. If repair service and parts are required, our specialists will work with the customer and/or dealer to most quickly and easily remedy the situation. To assist in this process, each unit we build is assigned a 4 digit serial number that allows us to retrieve electronic copies of every document related to the system from the sales order to product manuals that contain as built wiring diagrams and hydraulic schematics. We stock an extensive inventory of repair parts and accessories to give expedited service to our customers. Due to our stock levels and standardization on most buy out components, we have a track record of consistently shipping 95+% parts the same day ordered. For those remaining parts, we go to our vendor suppliers for support to meet our customer and dealer network needs. In regard to response time, most customers can expect a personal visit from a dealer technician within 24 hours with some exceptions due to geographic challenges. As detailed above, technical phone support is available all day, every day.	*
30	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in the United States.	All personnel, physical assets. and procedures are already in place to provide our products and product support nationwide.	*
31	Describe your ability and willingness to provide your products and services to Sourcewell participating entities in Canada.	We are prepared and have already utilized the Sourcewell contract in Canada for a substantial transaction with Hamilton, Ontario (2 Hydro-Excavator trucks)	*
32	Identify any geographic areas of the United States or Canada that you will NOT be fully serving through the proposed contract.	Hawaii is the only geography not covered by an exclusive distributor, but we do utilize a non-exclusive reseller to facilitate service issues and the few sales that we see there.	*
33	Identify any Sourcewell participating entity sectors (i.e., government, education, not-for-profit) that you will NOT be fully serving through the proposed contract. Explain in detail. For example, does your company have only a regional presence, or do other cooperative purchasing contracts limit your ability to promote another contract?	Although we are willing and able to serve all sectors, 98-99% of our customers fall in the government segment with some tribal entities and an occasional school district or university mixed in.	*
34	Define any specific contract requirements or restrictions that would apply to our participating entities in Hawaii and Alaska and in US Territories.	We do not have any restrictions in regards to the contract for the States of Alaska and Hawaii.	*

Table 7: Marketing Plan

Line Item	Question	Response *	
35	Describe your marketing strategy for promoting this contract opportunity. Upload representative samples of your marketing materials (if applicable) in the document upload section of your response.	• Product Literature: We display the Sourcewell contract awarded logo on our product line cards, product catalogs, and our website. See supporting document "Sewer Equipment Co. of America Full Product Line Catalog". • Website: We will highlight this in our website blog content when awarded and highlight on our social platforms. • Magazines: Collaborate with Industry Partners and Trade Publications advertise and write articles highlighting the benefits of utilizing the Sourcewell Contract. • Training on Finance Options: Promote the use of the Contract and Finance Options during our yearly Dealer Meetings. • Main Phone Line: Our on-hold message for our main Sewer Equipment phone line includes a narrative describing the contract and benefits to our customers. • Tradeshows: We display Sourcewell flags/banners at the major industry shows and our distribution (dealer) partners do as well at dozens of local shows each year. • Field: Our three regional sales managers, national sales manager, and demonstration specialists promote the contract at in person customer visits and demonstrations. Trailing has also been provided to our distribution (dealer) partners on how to also promote the contract in the field	*
36	Describe your use of technology and digital data (e.g., social media, metadata usage) to enhance marketing effectiveness.	Our marketing platforms include: our websites (Sewer Equipment and Rock Rental), ad campaigns through Google AdWords, LinkedIn ads, and Facebook ads, social media platforms such as LinkedIn, Facebook, and Twitter, advertising and editorial content with trade magazines, and email campaigns to established dealer networks and customers.	*
37	In your view, what is Sourcewell's role in promoting contracts arising out of this RFP? How will you integrate a Sourcewell-awarded contract into your sales process?	We feel that Sourcewell provides the medium and Sewer Equipment supplies the product, both supplying prospects. Sourcewell's marketing efforts are important to expose municipalities to the contract and the accepted option as an alternative to the traditional bid process. Sewer Equipment's responsibility is to market our product to prospects and our distribution network. Integrate Into Sales Process: • We will continue with our existing plan which is mentioned in number 35 above. In addition to what is mentioned we have additional plans already in place that we will continue with that include: o WWETT show, Indianapolis, February 2022: announce renewal of contract at annual dealer meeting. o Each year we present the top 3 Sourcewell dealer salespersons with monetary awards covered by Sewer Equipment. o Our secured dealer portal website includes: all Sourcewell pricing, Sourcewell quick start guide which outlines all pertinent details of our contract. o Internal quarterly sales meeting includes update on sales success regarding the contract. o When a new dealer is brought on, we allocate for 1 hour of Sourcewell training.	*
38	Are your products or services available through an e-procurement ordering process? If so, describe your e-procurement system and how governmental and educational customers have used it.	We do not have an e-procurement system in place at this time.	*

Table 8: Value-Added Attributes

Line Item	Question	Response *	
39	Describe any product, equipment, maintenance, or operator training programs that you offer to Sourcewell participating entities. Include details, such as whether training is standard or optional, who provides training, and any costs that apply.	Operational training is standard and provided free of charge by our distributors at time of delivery of new machines. Because a large percentage of our customers are repeat buyers, we choose to offer additional on-site operator training by a factory representative on an optional basis for those that feel they need it. Price is $1,839.00 for the first day and $1,370.00 for each subsequent day, including all expenses such as transportation. Model specific maintenance training is optional, customizable, and available on demand. This covers daily, weekly, monthly, and annual maintenance requirements as well as basic and model specific troubleshooting. This is typically 2 days at our plant and is $943 per person. Meals and lodging are included in the price and customer is responsible for transportation.	*
40	Describe any technological advances that your proposed products or services offer.	Our primary "advancement" revolves around the principle of keeping our systems simple. Particularly in the combination truck, hydro excavator, and full-size truck jet market, nearly every manufacturer has moved to microprocessor-controlled modules that incorporate touch screens and complex digital user interfaces. We have retained the use of traditional 12-volt control systems. This makes our trucks easier and safer to run, easier to maintain without special training and tools (increasing up-time) and eliminates the obsolescence and fragility of high-tech components. We are in the process of manufacturing the world's only battery powered rodder for the City of Seattle sewer collections department. The Genesis Recycling Combination truck is an exclusive partnership with Cappellotto of Italy that allows us to offer their world leading technology of this product in North America with the sales efforts and support of our nationwide dealer network. Our patented Hydro Drive system utilized on our 900-ECO drives our blower and water pump in a very unique but surprisingly simple manner that offers a host of benefits. Eliminating the transfer case present in most other designs removes a potential maintenance headache, allows our truck to work in neutral offering unmatched operator safety and ease of setup, and consumes less horsepower, thus cutting fuel consumption and emissions. The 800-HPRTV Series IV was recently refined and is the most user friendly and productive TV/Jet combination systems in the truck and trailer market, allowing customers to TV and clean sewer lines simultaneously.	*

41	Describe any "green" initiatives that relate to your company or to your products or services, and include a list of the certifying agency for each.	Company 2020 solar panel project. Through the Illinois Adjustable Block Program Sewer Equipment's 706.86 kW solar system is generating 11,871 REC's (Renewable Energy Credits). (attachment – 41 Sewer Equipment Solar Renewable… and attachment - 41 Illinois Adjustable….), Sewer Equipment participated in ComEd's Smart Inverter rebate program which incentivizes non-residential customers to make renewable energy investments. (attachment – 41 Smart Inverter….) To date, Sewer Equipment's solar charging system has saved CO2 emissions of 895,396 lbs. (attachment 41 Solar Edge summary.) Battery powered forklifts and material handling devices utilize solar charging Adoption of low VOC paints has decreased overall VOC generation despite a 10-fold increase in production in the last 10 years. Installation of a water recirculation system for jetter testing, saving hundreds of thousands of gallons per year. Recycling Program Utilization of reusable, steel transport skids for our locally sourced large components eliminates the need for one-use wood and plastic skids. Recycling of wood and cardboard shipping components Plant-wide paper and plastic recycling program Products The Genesis recycler combo truck can clean sewers all day without using a drop of fresh water. It processes the debris and water that is vacuumed during the operating process, using the reclaimed water for jetting. Our 900-ECO truck, 800HPR-ECO truck and 747-ECO trailer operating system allows the engine to operate at 30-50% lower speed while in the work mode, offering reductions in fuel use, emissions, and ambient noise. Our rodders are the only commonly accepted waterless sewer cleaning tools, making them popular in arid regions where water conservation is of importance. Thousands of gallons of water are saved daily versus traditional sewer jet-vac technology. Although traditionally gas powered, we have now developed a battery powered rodder. Biodegradable hydraulic fluid is offered as an option in all our systems. We have manufactured several CNG powered jet trucks for the Southern California Market	*
42	Identify any third-party issued eco-labels, ratings or certifications that your company has received for the equipment or products included in your Proposal related to energy efficiency or conservation, life-cycle design (cradle-to-cradle), or other green/sustainability factors.	Sewer Equipment has not received any third-party ECO ratings specifically. However, a patent has been granted by the US Patent office for our HydroDrive system described above, as used on our 900-ECO. This system does provide fuel saving vs traditional drive systems. (Attachment 42 HydroDrive…)	*
43	Describe any Women or Minority Business Entity (WMBE), Small Business Entity (SBE), or veteran owned business certifications that your company or hub partners have obtained. Upload documentation of certification (as applicable) in the document upload section of your response.	We continue to receive the EDGE credit from the State of Illinois. This credit is based on the number of jobs created and retained. (Attachment 43 Edge Credit……)	*
44	What unique attributes does your company, your products, or your services offer to Sourcewell participating entities? What makes your proposed solutions unique in your industry as it applies to Sourcewell participating entities?	One of the most unique attributes of our offering is our unprecedented breadth of product. No other manufacturer in our marketplace offers everything from small jetters used in the plumbing segment to full size combo trucks, and everything in between. This means that our distributors cans be consultants starting with assessing a customer's needs and then supplying the proper product. This also makes us one of the only suppliers of smaller products in the sewer industry that has a strong nationwide sales and service network.	*

Table 9A: Warranty

Describe in detail your manufacturer warranty program, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your warranty materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *	
45	Do your warranties cover all products, parts, and labor?	Sewer Equipment's standard warranty policy covers all items manufactured by Sewer Equipment except for wear items. Many major components are covered by their respective manufactures warranty policy. (Attachment 45 Warranty Policy……)	*
46	Do your warranties impose usage restrictions or other limitations that adversely affect coverage?	Sewer Equipment's standard warranty policy covers 12 months or use or 2000 hours. The 2000 hours limit covers typical usage by all Municipalities.	*
47	Do your warranties cover the expense of technicians' travel time and mileage to perform warranty repairs?	Sewer Equipment provides up to 3 hours of travel time for warranty reimbursement. Our Dealers pick up travel time in addition to the 3 hours as needed. Our Municipal customers do not have to pay for travel time regardless of where they are located.	*
48	Are there any geographic regions of the United States or Canada (as applicable) for which you cannot provide a certified technician to perform warranty repairs? How will Sourcewell participating entities in these regions be provided service for warranty repair?	Sewer Equipment has dealers that cover 46 of States in the U.S. In Canada we have dealers currently covering 4 Providences. Our dealers cover service in these areas. For customer in other states or providences in Canada we have two options for service. First Sewer Equipment employs direct field service personnel that we can send directly to the customers locations. We also work with third party service centers across North America that will do warranty work on Sewer Equipment products. Regardless of the customers location, we have service handled.	*
49	Will you cover warranty service for items made by other manufacturers that are part of your proposal, or are these warranties issues typically passed on to the original equipment manufacturer?	Sewer Equipment assist in processing warranty claims for all purchased items covered by their respective manufacturer's warranties. For most items we handle these claims directly with the manufacturer for a seamless claim by the end user. This would be similar to claims on Sewer manufactured items. The only exception is auxiliary engines. Engine warranty claims and repairs are handled by the respective manufacturers service centers around the country. Sewer Equipment does assist with communication between the end user and the service center.	*
50	What are your proposed exchange and return programs and policies?	If the customer decides to return a purchased item such as a spare part, Sewer Equipment charges a 25% re-stocking fee. The customer will also be responsible for shipping charges. This policy does not apply to new custom-built equipment sold through our dealer network. Any potential return for new equipment would be negotiated with the selling dealer.	*
51	Describe any service contract options for the items included in your proposal.	Sewer Equipment's dealer network offers service packages for customers. These packages are priced by our dealers. For regions not supported by our dealer network, Sewer Equipment offers quarterly maintenance packages with work performed by our own Field Service Personnel. Pricing is on a case-by-case basis based on expectations of the customer.	*

Table 9B: Performance Standards or Guarantees

Describe in detail your performance standards or guarantees, including conditions and requirements to qualify, claims procedure, and overall structure. You may upload representative samples of your performance materials (if applicable) in the document upload section of your response in addition to responding to the questions below.

Line Item	Question	Response *	
52	Describe any performance standards or guarantees that apply to your services	Sewer Equipment does not have any performance guarantees that apply to service. We do offer a 27/7 phone support for all service-related issues. For urgent parts needs, we typically ship 90% of orders within 24 hours.	*
53	Describe any service standards or guarantees that apply to your services (policies, metrics, KPIs, etc.)	We do not have service performance standards currently but are looking to implement a program in 2022.	*

Table 10: Payment Terms and Financing Options

Line Item	Question	Response *	
54	Describe your payment terms and accepted payment methods?	Sewer Equipment's payment terms for all municipal and educational Customers is Net 30. Our dealers would also utilize Net 30-day terms to their customers.	*
55	Describe any leasing or financing options available for use by educational or governmental entities.	Sewer Equipment utilizes and recommends NCL Government Capital for leasing options to our Municipal Customers. This has proved very useful for long term leasing arrangements. For short term rental needs, we offer rentals through our subsidiary Rock Rentals. Many of our dealers also partner with us in offering short term equipment rentals.	*
56	Describe any standard transaction documents that you propose to use in connection with an awarded contract (order forms, terms and conditions, service level agreements, etc.). Upload a sample of each (as applicable) in the document upload section of your response.	Sewer Equipment and our dealers utilize our standard Sourcewell Price sheets for quoting to our customers. When a customer submits a purchase order to one of our dealers, the dealer submits a copy of the customer purchase order along with the worksheet used for quotation to us. We utilize this information to establish the Sourcewell Contract fee. All other related transaction documents are handled between our dealers and customers. See copies of our worksheets uploaded in the pricing section.	*
57	Do you accept the P-card procurement and payment process? If so, is there any additional cost to Sourcewell participating entities for using this process?	Sewer Equipment does not accept P-Card for payments currently.	*

Table 11: Pricing and Delivery

Provide detailed pricing information in the questions that follow below. Keep in mind that reasonable price and product adjustments can be made during the term of an awarded Contract as described in the RFP, the template Contract, and the Sourcewell Price and Product Change Request Form.

Line Item	Question	Response *	
58	Describe your pricing model (e.g., line-item discounts or product-category discounts). Provide detailed pricing data (including standard or list pricing and the Sourcewell discounted price) on all of the items that you want Sourcewell to consider as part of your RFP response. If applicable, provide a SKU for each item in your proposal. Upload your pricing materials (if applicable) in the document upload section of your response.	Sewer Equipment utilizes a straightforward discount off list pricing model for all our new equipment sales. This also applies to all spare parts and accessories. Pricing for all our new equipment models has been uploaded and is included with this submittal. We do not utilize SKUs for our equipment. All worksheets are identified by their model name. Pricing for all parts and accessories is not included with this submittal as the number of items is quite large. MSRP pricing for most items can be found at www.sewershop.com.	*
59	Quantify the pricing discount represented by the pricing proposal in this response. For example, if the pricing in your response represents a percentage discount from MSRP or list, state the percentage or percentage range.	The Sourcewell Contract discount for all new equipment is 3% off MSRP. The discount for parts and accessories is 5% off MSRP. The discount for rentals is 3% off published rates. The buyout price for rentals if applicable is priced at 3% off MSRP. These discounts are minimums, and our dealers may provide additional discounts.	*
60	Describe any quantity or volume discounts or rebate programs that you offer.	Sewer Equipment does not have a standard volume discount pricing structure. However, us and our dealers will offer volume discounts as necessary on a case by case basis. When offered, these discounts are noted on the quote to be above and beyond the standard Sourcewell discount.	*
61	Propose a method of facilitating “sourced” products or related services, which may be referred to as “open market” items or “nonstandard options”. For example, you may supply such items “at cost” or “at cost plus a percentage,” or you may supply a quote for each such request.	Sewer Equipment and/or our dealers will provide non-standard items to be mounted on our equipment at request of our customers. These items are quoted on a case-by-case basis and are considered part of our product. These non-standard items are subject to the Sourcewell discount. Sewer Equipment and/or our dealers will also supply chassis for our truck mounted models. These chassis are currently being quoted at cost on a case by case basis due to pricing influx in the market. We consider these items to be “pass-thru” items and are not subject to Sourcewell discounts or fee reporting.	*
62	Identify any element of the total cost of acquisition that is NOT included in the pricing submitted with your response. This includes all additional charges associated with a purchase that are not directly identified as freight or shipping charges. For example, list costs for items like pre-delivery inspection, installation, set up, mandatory training, or initial inspection. Identify any parties that impose such costs and their relationship to the Proposer.	Items that can be included on a quotation to a customer but are not on our pricing worksheet or discussed in the above sections include the following. Dealer supplied freight, training, and pre-delivery inspections. These items are not subject to Sourcewell Discount or fee reporting.	*
63	If freight, delivery, or shipping is an additional cost to the Sourcewell participating entity, describe in detail the complete freight, shipping, and delivery program.	Sewer Equipment charges freight from our Dixon, IL location to our Dealers location. We charge freight on a per mile bases. Our dealers may impose an additional charge for freight from their location to the customers location depending on location. That is a separate charge as listed in question 62.	*
64	Specifically describe freight, shipping, and delivery terms or programs available for Alaska, Hawaii, Canada, or any offshore delivery.	For freight charges to customers located outside of the continental United States or Canada, we will with our freight broker to establish the lowest price options for our customers. Our customers are also welcomed to take on the freight responsibility themselves.	*
65	Describe any unique distribution and/or delivery methods or options offered in your proposal.	We do not currently offer any unique freight programs other that what is listed above.	*

Table 12: Pricing Offered

Line Item	The Pricing Offered in this Proposal is: *	Comments
66	c. better than the Proposer typically offers to GPOs, cooperative procurement organizations, or state purchasing departments.	Sewer Equipment has always offered a discount from list price on the Sourcewell Contract.

Table 13: Audit and Administrative Fee

Line Item	Question	Response *	
67	Specifically describe any self-audit process or program that you plan to employ to verify compliance with your proposed Contract with Sourcewell. This process includes ensuring that Sourcewell participating entities obtain the proper pricing, that the Vendor reports all sales under the Contract each quarter, and that the Vendor remits the proper administrative fee to Sourcewell. Provide sufficient detail to support your ability to report quarterly sales to Sourcewell as described in the Contract template.	Our Sourcewell pricing worksheets are accessible for download on our dealer website. This assures that our dealer sales staff have access to the correct price pages. These contract specific price sheets have the 3% minimum discount already listed to prevent error. Sewer Equipment audits every incoming order to determine if our Dealers have sold it via the Sourcewell Contract. If it was determined it was a Sourcewell sale, we verify all contract pricing via our worksheet and the customer purchase order. Every customer purchase order utilizing the Sourcewell contract must list their Sourcewell membership number and Sewer Equipment's contract number. Upon confirming the order is purchased via the contract, we document every order on an Excel spreadsheet. This spreadsheet tracks contract sell price, contract fee, and so on. Our Accounting Department audits this spreadsheet on every order that is completed before shipping. We also identify the use of the contract on our order tracking database for an easy to access record of all Sourcewell orders. For fee reporting and remittance we have a dedicated person in our Accounting Department that audits the Sourcewell Orders spreadsheet and reports sales on a quarterly basis. Fees are paid based on this quarterly reporting.	*
68	If you are awarded a contract, provide a few examples of internal metrics that will be tracked to measure whether you are having success with the contract.	We continually monitor contract usage against overall sales volumes through our Dealerships. We track and award the highest grossing dealer salesperson that utilizes the Sourcewell Contract on a yearly basis during our dealer awards ceremony. It should be noted that the Sourcwell Contract is the only contract where we offer this award. We also compare the Sourcewell contract against competing national contracts and dealer held state contracts. These comparisons help us to put emphasis on training dealer sales staff.	*
69	Identify a proposed administrative fee that you will pay to Sourcewell for facilitating, managing, and promoting the Sourcewell Contract in the event that you are awarded a Contract. This fee is typically calculated as a percentage of Vendor's sales under the Contract or as a per-unit fee; it is not a line-item addition to the Member's cost of goods. (See the RFP and template Contract for additional details.)	Sewer Equipment will pay an administrative fee to Sourcewell based on 1% of the Sourcewell sell price to the customer. This 1% fee is paid on our equipment, spare parts, and accessories. We do not pay the administrative fee on chassis which are considered a pass thru with our units. We will also pay the 1% administrative fee on all rental billings limited to 18 months and to buyouts of rentals based on the negotiated buyout price. The fees are calculated and paid on a quarterly basis.	*

Table 14A: Depth and Breadth of Offered Equipment Products and Services

Line Item	Question	Response *	
70	Provide a detailed description of the equipment, products, and services that you are offering in your proposal.	Sewer Equipment is offering an extensive range of equipment that all fall into the Sewer Vacuum, & Hydro-Excavation Category on this proposal. Our list of offered equipment is as follows…. • Our models 400-ECO & 900-ECO Combination Sewer Cleaners • Our Genesis Recycler Sewer Cleaner • Our Mongoose Series of Truck and Trailer Jetters • Our 545 & 747 Series of Truck and Trailer Jetters • Our 800 Series Truck Jetters • Our Ramvac Series Hydro Excavation Trucks • Or Ramvac Series Air Excavation Trucks. • Our JAJ Series of Easement Machines for Sewer Cleaning • Our 444, 866 & 877 Rodders for Sewer Cleaning • Spare parts and Accessories for above listed equipment. • Our Rental Program of above equipment.	*
71	Within this RFP category there may be subcategories of solutions. List subcategory titles that best describe your products and services.	All our equipment falls under the primary category on the proposal.	*

Table 14B: Depth and Breadth of Offered Equipment Products and Services

Indicate below if the listed types or classes of equipment, products, and services are offered within your proposal. Provide additional comments in the text box provided, as necessary.

Line Item	Category or Type	Offered *	Comments	
72	Sewer vacuums or combination sewer cleaners	(•) Yes ( ) No	See Equipment List	*
73	Hydro or air excavation equipment	(•) Yes ( ) No	See Equipment List	*
74	Jetters and rodders	(•) Yes ( ) No	See Equipment List	*
75	Dewatering, mud, trash, and centrifugal pumps	( ) Yes (•) No	No items specifically in this category, but our Geneisis Recycler unit does de-water before dumping.	*
76	Pumps used in lift stations, sewage treatment, water treatment, or water collection facilities	( ) Yes (•) No	No items specifically in this category, but our 900-ECO with optional trash pump can be used as an emergency pump system.	*
77	Accessories, supplies and replacement or wear parts related to the offerings above.	(•) Yes ( ) No		

Table 15: Industry Specific Questions

Line Item	Question	Response *	
78	Describe any product or equipment features that improve operator safety.	Our 900-ECO with patented HydroDrive system operates with the transmission in neutral and no transfer case required which has the potential to pop into gear and drive away. All of our ECO Series equipment operators at a reduced RPM for lowered noise for the operator. Our standard wireless remote has an e-stop safety check built in.	*
79	Describe any product or equipment innovations that increase uptime and operator productivity.	Our 900-ECO with patented HydroDrive system operates with the transmission in neutral and no transfer case required. The operator simply puts the truck in neutral, sets the parking brake, gets out of the truck, and turns on one switch to activate the unit. Then they can vacuum and/or jet within seconds. We do not utilize any completed computers or touch screens that prevent the operator from using while wearing gloves. Our dig-deep boom available on the 900-ECO and our HX12 series allows for increase vacuum depth without the need for as many vacuum tube additions.	

Table 16: Exceptions to Terms, Conditions, or Specifications Form

Line Item 80. NOTICE: To identify any exception, or to request any modification, to the Sourcewell template Contract terms, conditions, or specifications, a Proposer must submit the exception or requested modification on the **Exceptions to Terms, Conditions, or Specifications Form** immediately below. The contract section, the specific text addressed by the exception or requested modification, and the proposed modification must be identified in detail. Proposer's exceptions and proposed modifications are subject to review and approval of Sourcewell and will not automatically be included in the contract.

Contract Section	Term, Condition, or Specification	Exception or Proposed Modification

Documents

Ensure your submission document(s) conforms to the following:

1. Documents in PDF format are preferred. Documents in Word, Excel, or compatible formats may also be provided.

2. Documents should NOT have a security password, as Sourcewell may not be able to open the file. It is your sole responsibility to ensure that the uploaded document(s) are not either defective, corrupted or blank and that the documents can be opened and viewed by Sourcewell.

3. Sourcewell may reject any response where any document(s) cannot be opened and viewed by Sourcewell.

4. If you need to upload more than one (1) document for a single item, you should combine the documents into one zipped file. If the zipped file contains more than one (1) document, ensure each document is named, in relation to the submission format item responding to. For example, if responding to the Marketing Plan category save the document as "Marketing Plan."

- Pricing - Price Sheets.zip - Monday October 11, 2021 13:50:43
- Financial Strength and Stability - Financials.zip - Monday October 11, 2021 13:51:14
- Marketing Plan/Samples - Marketing Documents.zip - Monday October 11, 2021 13:52:29
- WMBE/MBE/SBE or Related Certificates - 43 Edge Credit Cert of Verification.pdf - Monday October 11, 2021 13:53:20
- Warranty Information - 45 WARRANTY POLICY AND PROCEDURE.docx - Monday October 11, 2021 13:52:48
- Standard Transaction Document Samples - Sourewell Order Transaction Document.pdf - Monday October 11, 2021 13:57:20
- Upload Additional Document - Additional Documents.zip - Monday October 11, 2021 13:54:30

Addenda, Terms and Conditions

PROPOSER AFFIDAVIT AND ASSURANCE OF COMPLIANCE

I certify that I am the authorized representative of the Proposer submitting the foregoing Proposal with the legal authority to bind the Proposer to this Affidavit and Assurance of Compliance:

1. The Proposer is submitting this Proposal under its full and complete legal name, and the Proposer legally exists in good standing in the jurisdiction of its residence.

2. The Proposer warrants that the information provided in this Proposal is true, correct, and reliable for purposes of evaluation for contract award.

3. The Proposer, including any person assisting with the creation of this Proposal, has arrived at this Proposal independently and the Proposal has been created without colluding with any other person, company, or parties that have or will submit a proposal under this solicitation; and the Proposal has in all respects been created fairly without any fraud or dishonesty. The Proposer has not directly or indirectly entered into any agreement or arrangement with any person or business in an effort to influence any part of this solicitation or operations of a resulting contract; and the Proposer has not taken any action in restraint of free trade or competitiveness in connection with this solicitation. Additionally, if Proposer has worked with a consultant on the Proposal, the consultant (an individual or a company) has not assisted any other entity that has submitted or will submit a proposal for this solicitation.

4. To the best of its knowledge and belief, and except as otherwise disclosed in the Proposal, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest. An organizational conflict of interest exists when a vendor has an unfair competitive advantage or the vendor's objectivity in performing the contract is, or might be, impaired.

5. The contents of the Proposal have not been communicated by the Proposer or its employees or agents to any person not an employee or legally authorized agent of the Proposer and will not be communicated to any such persons prior to Due Date of this solicitation.

6. If awarded a contract, the Proposer will provide to Sourcewell Participating Entities the equipment, products, and services in accordance with the terms, conditions, and scope of a resulting contract.

7. The Proposer possesses, or will possess before delivering any equipment, products, or services, all applicable licenses or certifications necessary to deliver such equipment, products, or services under any resulting contract.

8. The Proposer agrees to deliver equipment, products, and services through valid contracts, purchase orders, or means that are acceptable to Sourcewell Members. Unless otherwise agreed to, the Proposer must provide only new and first-quality products and related services to Sourcewell Members under an awarded Contract.

9. The Proposer will comply with all applicable provisions of federal, state, and local laws, regulations, rules, and orders.

10. The Proposer understands that Sourcewell will reject RFP proposals that are marked "confidential" (or "nonpublic," etc.), either substantially or in their entirety. Under Minnesota Statutes Section 13.591, subdivision 4, all proposals are considered nonpublic data until the evaluation is complete and a Contract is awarded. At that point, proposals become public data. Minnesota Statutes Section 13.37 permits only certain narrowly defined data to be considered a "trade secret," and thus nonpublic data under Minnesota's Data Practices Act.

11. Proposer its employees, agents, and subcontractors are not:

    1. Included on the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury found at: https://www.treasury.gov/ofac/downloads/sdnlist.pdf;

    2. Included on the government-wide exclusions lists in the United States System for Award Management found at: https://sam.gov/SAM/; or

    3. Presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from programs operated by the State of Minnesota; the United States federal government or the Canadian government, as applicable; or any Participating Entity. Vendor certifies and warrants that neither it nor its principals have been convicted of a criminal offense related to the subject matter of this solicitation.

☑ By checking this box I acknowledge that I am bound by the terms of the Proposer's Affidavit, have the legal authority to submit this Proposal on behalf of the Proposer, and that this electronic acknowledgment has the same legal effect, validity, and enforceability as if I had hand signed the Proposal. This signature will not be denied such legal effect, validity, or enforceability solely because an electronic signature or electronic record was used in its formation. - Shawn Bondele, Inside Sales Manager, Sewer Equipment Co. of America

The Proposer declares that there is an actual or potential Conflict of Interest relating to the preparation of its submission, and/or the Proposer foresees an actual or potential Conflict of Interest in performing the contractual obligations contemplated in the bid.

○ **Yes** ◉ **No**

The Bidder acknowledges and agrees that the addendum/addenda below form part of the Bid Document.

Check the box in the column "**I have reviewed this addendum**" below to acknowledge each of the addenda.

File Name	I have reviewed the below addendum and attachments (if applicable)	Pages
Addendum_3_Sewer_Vac_Hydro-Excavation_Pumps_RFP_101221 Thu September 30 2021 03:29 PM	☑	2
Addendum_2_Sewer_Vac_Hydro-Excavation_Pumps_RFP_101221 Fri September 10 2021 02:40 PM	☑	2
Addendum_1_Sewer_Vac_Hydro-Excavation_Pumps_RFP_101221 Thu August 26 2021 05:40 PM	☑	1

EXHIBIT B
TO
COOPERATIVE CONTRACT PURCHASE ADDENDUM
CONTRACT NO. 2025127

[Quote 23223]

See following page(s).

AZ Wastewater Industries, Inc.
Phone: 800 778-9359 **Fax: 480 425-3321**
www.usa-awi.com

ARIZONA LOCATION:
3201 W. Virginia Ave, Suite 3
Phoenix, AZ 85009

NEVADA LOCATION:
61 Spectrum Blvd
Las Vegas, NV 89101

QUOTE

Quote No.	**23223**
Quote Date	7/8/2024
Sales Rep.	SH
Payment Terms	Net 30 Days
F.O.B.	Fatory
Prices Good For	120 Days

Customer:

City of Buckeye
530 East Monroe Ave
Buckeye, AZ 85326
Attn: Accounts Payable

Item	Item Description	Qty	Unit Cost	Total
HX-9	Truck Mounted 9 Yard Hydro-Excavator (per the attached specifications)	1	368,764.00	368,764.00T
Discount-Sales	Sourcewell Discount (Per Contract # 101221-SCA)		-3.00%	-11,062.92
Warranty	1 Year Extended Warranty $7,375	1	0.00	0.00T
Option	Front Spray Bar $3,500		0.00	0.00T
Chassis	Chassis Model: 114SD, 370hp (Per Attached Specifications)	1	135,377.00	135,377.00T
Freight Charge	Freight Charges to Apply	1	7,500.00	7,500.00

Subtotal	$500,578.08
Sales Tax (8.6%)	$42,404.72
Total	**$542,982.80**

3.5% credit card processing fee will be applied to all invoices paid with credit card

Quote# 23223 for City of Buckeye, AZ

RAMVAC HX-9 Truck Mounted Hydro Excavator

Water System:
- 1300 gal Duraprolene tank capacity
- Hydraulic Powered Water Pump Via Transmission PTO Drive (0 - 10 gpm @ 2500 psi)
- Alum Toolbox 18"x18"x30"
- Water Pressure Display
- 400,000 BTU Water Heater
- 2.5" Hydrant Fill system w/ 25' hose
- Air Purge Valve, Recirculation System and Wash Station
- 75' of 3/8" Hose w/ retractable reel

Electrical:
- NEMA 4 Control Panel
- Wireless Remote Control
- Hour Meter

Debris Tank:
- 9 cubic yards (1800 gl) Debris Tank
- Debris Level Indicator
- Hydraulic Dump, 50° Dump Angle (Cylinder)
- Fold Down Pipe Rack
- Debris Tank Flush
- Hydraulic Powered Open/Close Rear Door

Vacuum System:
- 4400 CFM Blower
- 8" Vacuum Hose system
- 18" HG vacuum rating
- Cyclone Separator
- Heavy Duty Final Filter Box
- Vacuum Enhancer
- Directional Discharge System
- Hydrostatic Blower Drive via rear mount chassis engine pump drive

Boom:
- Powered boom
- 330° Working Radius
- Boom Reach - 16' extendable to 21'

Compartment:
- Steel shroud encloses all water components
- 80,000 BTU Compartment Heater
- Roll Up Doors
- Heated Equipment Locker

Truck:
- Mounting to approved chassis
- Alum Toolbox 18"x18"x30"
- Alum Toolbox 18"x18"x36" driver
- Alum Toolbox 18"x18"x74" passenger
- Mud flaps, Bumper
- LED D.O.T. approved lighting

Accessories:
- (4) 8" x 6' Extension Tubes
- (5) Quick Clamps 8"
- (1) 8" x 6' Digging Tube
- Kit, Wand,Digging,Hydro-Ex Truck Wand,Digging,Hydro-Ex Truck
- Washdown Gun Kit & Nozzle
- (1) Hydrant Wrench
- 25' Fill Hose
- (1) Paper Owner's Manual

BASE UNIT AS OUTLINED ABOVE

STANDARD OPTIONS:

ENCLOSURE AND TOOL TRAYS:	QTY
Deduct for No Water Heater	1
Deduct for No Compartment Heater	1
EXCAVATION SYSTEM(S) ATTACHMENTS:	
2" Water Fill 'Y' Strainer	1
VACUUM OPTIONS:	
Vacuum Breaker Option (4400 CFM Blower Only)	1
DEBRIS BOX & BOOM:	
Central Lubrication System	1
Boom out of Rest Alarm (Triggers alarm in Cab to Indicate Boom is not Properly Stored)	1
ELECTRICAL & LIGHTING:	
LED Strobe Light (Factory Standard)	1
LED Arrow Stick (Factory Standard)	1
Boom Mounted Work Lights (2)	1
Body Mounted Work Lights (2) on Shroud	1
Rear Door Work Lights (2)	1
(12 Light) Premium Strobe Package	1
Wireless Remote Water Pressure Control	1
CHASSIS:	
Rear Back Up Camera System with Blind Spot Cameras (includes color monitor in cab)	1
Six (6) 28" D.O.T. Safety Cones and Holder	1
PAINT (SHROUD & DEBRIS TANK):	
SHROUD: • STERLING WHITE (FDG91327)	STANDARD
DEBRIS TANK: • STERLING WHITE (FDG91327)	STANDARD

BOOM: • STD BLACK (FDG-9000)	STANDARD		
SPECIAL PAINT: Solid Colors			
SPECIAL PAINT: Metallic, Base Coat / Clear Coat			

MANUALS & TRAINING:	
USB Operator's Manual	1

SIGNATURE DATE

CITY OF BUCKEYE
Regular Council Meeting
COUNCIL ACTION REPORT

MEETING DATE: 09/03/24	**AGENDA ITEM:** 4.E. DS - Tristar Engineering and Management On-Call Consulting Contract Task Order No. 7
DATE PREPARED: 08/29/24	**DISTRICT NO.:** All
STAFF LIAISON: Brian Craig, Development Services Director, bcraig@buckeyeaz.gov (623) 349-6209	
DEPARTMENT: Development Services	**AGENDA ITEM TYPE:** Consent Agenda Items / New Business

ACTION/MOTION: (This language identifies the formal motion to be made by the Council)
Council to take action on Task Order No. 7 to the On-Call Consulting Contract (No. 2022003.35) between the City of Buckeye, an Arizona municipal corporation, and Tristar Engineering and Management, Inc., an Arizona corporation, related to civil inspections for various projects/permits such as earthwork, asphalt work, concrete work, wet and dry utilities, traffic control and bridge inspection projects; and authorizing the City Manager to execute and deliver said Task Order of behalf of the City.

SUMMARY

PROJECT DESCRIPTION:
The Development Services Department is requesting funds through Task Order No. 7 to keep up with the current demand for Civil Inspection services. Tristar Engineering and Management, Inc. will provide assistance with Civil Inspections. The total amount to be paid under this Task Order will not exceed $150,000.00.

BENEFITS:
To maintain or exceed customer service expectation in the Development Services Department.

FUTURE ACTION:
None.

FINANCIAL IMPACT STATEMENT:
10005180-520037 - $150,000.00

CURRENT FISCAL YEAR TOTAL COST:
$150,000.00

BUDGETED:
Yes

FISCAL YEAR:
24/25

FUND/DEPARTMENT:
10005180-520037

Items related to a project or facility location must include an attached vicinity map for Council Review.
ATTACHMENTS:

240611 - Jonathan Taylor Fee Proposal - package (002).pdf

4E TO 7 to Contract No. 2022003.35 with Tristar Engineering.pdf

TRISTAR
Engineering and Management, Inc.

June 11, 2024

Mr. Michael M. Byrne
Construction Inspection Supervisor
City of Buckeye
Engineering Department
530 E. Monroe Ave
Buckeye, AZ 85326

Email: mbyrne@buckeyeaz.gov

Re: City of Buckeye On-Call Consulting for
Engineering and Architectural Services
Category 18: Civil Inspection Services
Contract No. 2022003.35

Dear Mr. Byrne:
Tristar Engineering and Management, Inc. (Tristar) is pleased to submit our cost proposal to provide inspection services for City of Buckeye Engineering Department.

Tristar will provide Jonathan Taylor, Senior Construction Inspector, for inspection assignments on various projects/permits such as: earthwork, asphalt work, concrete work, wet and dry utilities, traffic control and bridge inspection. Attached, for your consideration, please find our fee proposal summary, schedule, and Jonathan's resume.

If you have any questions or require additional information, please do not hesitate to contact me at 602-768-4178 or clara@tristar-az.com.

We look forward to working with you and the City of Buckeye on this assignment.

Respectfully,
TRISTAR ENGINEERING & MANAGEMENT, INC.

Carlos R. Lara
Vice President

Enclosure: Fee Proposal Summary
Schedule
Jonathan Taylor Resume

TRISTAR
Engineering and Management, Inc.

DERIVATION OF COST PROPOSAL

FIRM NAME: **Tristar Engineering and Management Inc.**
10625 N. 25th Avenue, Suite 103
Phoenix, AZ 85029

Contract No.:
Tristar Proj. No.
New Contract: X

PROJECT NAME: **City of Buckeye**
RFQ #2022003.35, Category 18 - Civil Inspection Services

Date: 6/11/2024

ESTIMATED DIRECT LABOR			
Classifications	**Man-Hours**	**Hourly Rates**	**Labor Costs**
Sr. Resident Engr.		$270.00	
Resident Engr		$202.00	
Resident Landscape Architech		$133.00	
Sr. Inspector Supervisor		$163.00	
Chief Inspector		$150.00	
Sr. Construction Inspector	1032	$141.00	$145,512.00
Document Control Specialist		$130.00	
Field Inspector		$125.00	
		Total Estimated Labor	**$145,512.00**

ESTIMATED DIRECT EXPENSES (Listed by item at estimated actual cost - no markup)				
Description		**Unit Price**	**Quantity**	**Expense Amount**
			Total Estimated Expenses	

SUBCONSULTANT (Listed by Firm or name at est cost - No Markup)		
Subconsultants (cost proposal included)		**Total Cost**
	Total Estimated Subconsultant(s)	

TOTAL ESTIMATED COST:	**$145,512.00**

Contract Time: Calendar Days

Carlos Lara, P.E. — *6/11/2024*

Principal, Tristar Engineering & Management, Inc. — Date



Carlos Lara, P.E.

CONSULTANT/SUBCONSULTANT
SCHEDULED PROJECT MAN-HOURS BY CLASSIFICATION

CONSULTANT: **Tristar Engineering and Management Inc.** Contract No.: _____

PROJECT NAME: **City of Buckeye**
RFQ #2022003.35, Category 18 - Civil Inspection Services

Date: **6/11/2024**

DIRECT LABOR														
Classifications		**JAN**	**FEB**	**MAR**	**APR**	**MAY**	**JUN**	**JUL**	**AUG**	**SEP**	**OCT**	**NOV**	**DEC**	**Man-Hours**
Sr. Resident Engr.														
Resident Engr														
Resident Landscape Architech														
Sr. Inspector Supervisor														
Chief Inspector														
Sr. Construction Inspector														1032
								172	172	172	172	172	172	
Document Control Specialist														
Field Inspector														
TOTAL								172	172	172	172	172	172	1032

JONATHAN TAYLOR, ACI, ATTI, ATSSA
CONSTRUCTION INSPECTOR



CONTACT

Phone: 480.845.2339
Email: jtaylor@tristar-az.com
Resides: Phoenix, AZ

YEARS OF EXPERIENCE

20 Total; 5 with Tristar

PROFESSIONAL CERTIFICATIONS AND EDUCATION

ACI Field Technician
Expires 09/17/2026

ATTI Field Technician
Expires 02/23/2026

ATSSA Traffic Control Technician, Expires 02/24/2026

CAREER HIGHLIGHTS AND SKILLS

Previous ADOT Employee

Construction Inspection

Materials Testing

Survey Experience

Plans Reading

Asphaltic Concrete

Structures Inspection

ADOT Specifications

Mr. Jonathan Taylor has more than 20 years of experience in the civil construction and field inspection industry. He began his career with ADOT and is knowledgeable of federal standards, policies, and procedures for highway construction as well as municipal MAG specifications and standard drawings.

Mr. Taylor is experienced with the inspection of structures, earthwork, concrete, subgrade, curb and gutter, minor concrete incidentals and asphaltic concrete. He is proficient in pay item documentation, plans reading, density testing and materials sampling. He is certified with industry-standard materials testing procedures and requirements.

SELECTED PROJECT EXPERIENCE

City of Buckeye, AZ – Canyon Springs Blvd Bridge over C.A.P. Canal

Mar 2022 to Current | Supervisor: Michael Byrne

★ Mr. Taylor is serving as a Senior Inspector, overseeing the construction of the new structure. He is responsible for inspection and documentation, ensuring all work is completed per plans and specifications.

Tristar is providing inspection staff augmentation services for this project that is constructing a new 335’ Type 5 modified girder bridge over the C.A.P. Canal, which will extend Canyon Springs Blvd for future development.

City of Phoenix – Streets Dept. Maintenance Division – 7th Street & UPRR Bridge Rehabilitation Phase 3, Phoenix, AZ

Sept 2022 and Various Additional Dates | Supervisor: Rick Evans

★ Mr. Taylor served as a structures inspector, ensuring and documenting all work is performed per plans and specifications.

Tristar is providing inspection staff for work which includes replacing some PCCP sections, remove/replace deck joints and compression seal membrane, flood coat the approach slabs with healer/sealer, and repair damaged sidewalk. Ensured coordination with Truesdell and the COP to make sure work did not interfere with baseball games or concerts at Chase Field.

MCDOT - Deer Valley Road, El Mirage Road to 109th Avenue (TT0248), El Mirage, AZ

Aug 2019 to Mar 2022 | Supervisor: John Hall, PE

★ Mr. Taylor was assigned to the structures team where he inspected drilled shafts, abutments, columns and pier caps, girder placement and bridge deck.

Tristar is providing full-service construction administration services for the one-mile project to extended Deer Valley Road to (5 lanes). The scope includes a new 711-ft five span, precast, prestessed, AASHTO Type Super VI concrete girder bridge over the Agua Fria River and more than 750,000 CY of earthwork borrow material will be imported to construct the bridge approaches in accordance with the USACE 404 Permit. One mile of Williams

Drive will be widened to a 5-lane facility and two roundabouts will be constructed at the intersection of Deer Valley Road / 109th Avenue and 117th Avenue.

Town of Gilbert, Germann Road, Gilbert to Val Vista (ST0145)

Feb 2018 to Sept 2019 | Supervisor: John Akin, PE

- ★ Mr. Taylor provided field inspection duties and responsibilities for this project.

As a subconsultant to CEI, Tristar provided inspection services for this $20M project to widen Germann Road, which included new underground municipal utilities, new flood irrigation facilities, new sidewalk, curb and gutter and new asphalt paving. The project also included bridge widening over the SRP Eastern Canal and RWCD canal, which parallel one another.

Town of Gilbert - Intersection Improvements at Cooper and Guadalupe Roads

Sept 2016 to Nov 2017 | Supervisor: Corum Brown, PE

- ★ Mr. Taylor provided field inspection duties and responsibilities for this project.

Tristar provided CA&I services for this CMAR project which replaced the existing 6-inch wastewater DIP force main with fusible 8-inch-high density polyethylene (HDPE) pipe and updated manholes. A new 12-inch water main pipeline was installed and provided new water services to each of the commercial properties. The project also widened the road to three lanes at all legs of the intersection with sufficient width to accommodate bike lanes, raised medians, and reconstructed curbs, gutters, and sidewalks. Other municipal utility improvements included gravity sewer, water main and lateral replacement, storm drains, underground retention and basins, signal upgrades (including improved telecommunication with the railroad), and landscaping.

During his time with Tristar, Mr. Taylor has provided service on multiple projects under our ADOT on-call and Temp Tech contracts.

ADOT, I-40 Townsend-Winona Bridge Deck Replacement (F010801C)

Flagstaff District

- ★ Mr. Taylor performed as the lead bridge inspector for super structure throughout the demolition and reconstruction of the bridge. His duties included inspections for the demolition of the bridge, abutments, wing and retaining walls. He also provided inspections for pier caps, steel girder placement, deck and roadway, and quality control for the new bridge structure.

This $3.8M bridge rehabilitation project was located on Interstate 40 near Flagstaff. The work consisted of replacing girders, bearing pads and bridge deck. Project challenges included working over live traffic, coordinating closures with DPS and local law enforcement, coordination of the removal of lead-based paint, and demo and reconstruction of steel girder bridge.

ADOT, SR101L Baseline Road to SR202L (Santan) (H687301C)

Central District

- ★ Mr. Taylor was assigned to the structures crew and was responsible for inspection of drilled shafts, abutments, wing walls, retaining walls, columns and pier caps, girder placement, bridge deck and roadway, and soil nail walls.

This $68M Design-Build project includes design and construction for general purpose lanes on SR101L in both travel directions. The work includes constructing pavement, structures, retaining walls, barriers, drainage facilities, signing, pavement markings, street lighting, traffic signal modifications, ITS, utilities relocation, landscape restoration, and rubberized friction course.

ADOT, I-10 Earley Road – Junction I-8 (H798401C)

Central District

★ Mr. Taylor performed as the bridge inspector for sub structure and super structure through different phases of the project. His duties included inspections for drilled shafts, abutments, wing and retaining walls, girder placement, deck and roadway.

This $49M project was located on Interstate 10, in Pinal County through the city of Casa Grande. The work consisted of widening I-10 from four lanes to six lanes including two new bridges over Jimmie Kerr Boulevard and the Union Pacific Railroad. The scope and time frame of the project was under an A+B schedule. Project challenges included working near UPRR Railroad, APS overhead powerlines, and Kinder Morgan natural gas lines.

ADOT, SR 77, S. Old Tiger Rd to Miguel Rd (H879101C)

South Central District

This $6.1M project in Pinal County on SR 77 consisted of milling and replacing existing Asphaltic Concrete pavement and a double chip seal coat application. Additional work included removing and replacing guardrail, pipe culverts, sidewalk, driveways, sidewalk ramps, pavement markings, and other related work. Mr. Taylor was assigned to the milling, tack, and paving operations.

ADOT, I-10 Gila River Bridge to SR 587 (H892501C)

Central District

This $6.2M project was located on Interstate 10, in Pinal County within the Gila River Indian Reservation. The work consisted of milling and replacing existing Asphaltic Concrete pavement and AR-ACFC. Additional work included installing new guardrail, replacing pavement markings seeding and other related items. Mr. Taylor was assigned to hot plant inspection and guardrail reconstruction.

ADOT, SR 89, Jct US 93 to Jct SR 71 (H813601C)

Northwest District

This $2.6M pavement preservation consisted of replacing the full width of SR 89 with asphaltic concrete and an asphalt rubber-AC friction course, shoulder build-up with milled AC, installing traffic loop detector, replacing signs and reflectors, and related work. Mr. Taylor was responsible for inspection of:

- 500’ reconstruction of SR 71 including subgrade and AC
- Concrete driveways and other minor work
- Required testing and sampling
- Daily documentation and communication with his supervisor.

ADOT, Grand Avenue Corridor Improvements

Valley West & Deer Valley Field Offices

As an ADOT employee, Mr. Taylor was part of the team that built much of the Grand Avenue Corridor improvements while working for the Valley West Field Office and on loan to the Deer Valley Field Office. Some of the segments he worked on include:

- 27th Avenue and Thomas
- 43rd Avenue and Camelback
- 51st Avenue and Bethany Home Road

EMPLOYMENT HISTORY

Construction Inspector / Materials Tester

Tristar Engineering and Management, Inc. 2017 to Present

Mr. Taylor is available for assignment for a variety of highway and municipal construction projects statewide. He serves as a construction inspector and materials tester responsible for project inspection services, field sampling and testing of concrete and soils.

Field / Laboratory Technician

Ninyo & Moore 2015-2017

- Perform density testing by nuclear and sand cone method
- Sample concrete perform slump, temperature, and cast test samples
- Sample asphaltic concrete per ASTM testing methods
- Plans reading, interpreting standards and specifications from MAG, ADOT, different municipalities.
- Perform different testing procedures by following ASTM test methods guidelines, ACI and ATTI.
- Keep records of all testing through daily reports and testing reports.
- Communicate with Project Managers, Inspectors, and Contractors with results of testing or findings at field level and up.

Quality Control for Sand and Gravel

Vulcan Materials 2014-2015

- Responsible for the quality of the sand and gravel that is produce daily.
- Daily aggregates sampling through sieves, sand and equivalent, durability index and plasticity index all testing follow ASTM or ASHTO standards.
- Daily walk through the plant from feed to discharge point.
- Daily preventive maintenance checks with screens and belts
- Assisted ground man with shoveling material around tail pulley or away from plant
- Operated water truck when needed to keep up with dust control on haul roads
- Generated monthly reports for salesman
- Escorted clients around plant to see our products or stockpiles

Night Lead

UPS Mail Innovations 2013

Customer Service Supervisor

Transperfect Remote Interpreting 2011-2012

E-4 / Corporal Bulk Fuel Specialist

United States Marine Corp 2003-2011

- Set up connect dispense fuel to ground vehicles, fixed wing and rotary wing aircraft by either expeditionary fuel sites or air bases.
- Team leader of 4 Marines and assistant squad leader
- Volunteer for ceremonial details (Funeral Details) Flag folding, presenting, pall bearing, and rifle commander

- Deployed to Horn of Africa for security missions on base of Camp Lemonnier Djibouti, Africa. Billets held team leader, rifleman, and machine gunner.
- Received Letter of Appreciation from Deputy Commander CJTF Horn of Africa and good conduct award

Construction Materials Tester

Speedie and Associates 2008

- Inspected and performed quality checks on construction materials
- Soil densities with nuclear gauge
- Sampled concrete, Soils, and Asphalt

Transportation Construction Tech II

Arizona Department of Transportation 2000-2004

- Surveyor Instrument Man with District Survey
- Field Technician soil, concrete, asphalt sampling,
- Civil inspections underground utilities, structural, rebar, soil nail, retaining walls
- Tracking quantities
- Reading plans and specs

ON-CALL CONSULTING TASK ORDER
FOR ENGINEERING AND ARCHITECTURAL SERVICES
BETWEEN
THE CITY OF BUCKEYE
AND
TRISTAR ENGINEERING AND MANAGEMENT, INC.

ON-CALL CONSULTING CONTRACT NO. 2022003.35
TASK ORDER #7
FY25 CIVIL INSPECTION SERVICES

THIS TASK ORDER #7 (this "Task Order") is entered into as of _____, between the City of Buckeye, an Arizona municipal corporation (the "City"), and Tristar Engineering and Management, Inc., an Arizona corporation (the "Consultant"). This Task Order is subject to and governed by the terms and conditions of On-Call Consulting Contract No. 2022003.35 between the City and Consultant, dated March 1, 2022 (the "Contract").

ARTICLE 1
SCOPE OF SERVICES

Consultant shall provide Civil Inspection Services for the Fiscal Year 2025, as more fully set forth in the Consultant's Proposal, which is attached hereto as **Exhibit A** and incorporated as if fully set forth herein (the "Work").

ARTICLE 2
SCHEDULE OF COMPLETION OF SERVICES

The Consultant shall commence work immediately, and complete the services and deliverables on or before June 30, 2025, unless this Task Order is earlier terminated pursuant to the terms and conditions of the Contract.

ARTICLE 3
FEE BREAKDOWN

Consultant shall be paid in accordance with the fee schedule set forth in the Contract. The total cost to complete the Work shall not exceed **One Hundred Forty-Five Thousand Five Hundred Twelve Dollars and Zero Cents ($145,512.00),** as set forth in **Exhibit A**.

ARTICLE 4
ADDITIONAL TERMS

This Task Order is subject to the terms and requirements of the Contract and may be canceled pursuant to the provisions of A.R.S. § 38-511.

By executing this Task Order, the Consultant certifies its compliance with A.R.S. § 35-393.01. To the extent applicable under A.R.S. § 35-394, the Consultant certifies that it does not, and will not for the duration of the Contract, use the forced labor, any goods or services produced by the forced labor, or any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

If there is any discrepancy between the terms and conditions of this Task Order, the Contract, and **Exhibit A** to this Task Order, the documents shall govern in that order.

ARTICLE 5
EXHIBITS

This Task Order includes and incorporates the following Exhibit:

Exhibit A – Consultant's Proposal

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Task Order as of the date first set forth above.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

Dan Cotterman, City Manager

CONSULTANT:

TRISTAR ENGINEERING AND MANAGEMENT, INC., an Arizona corporation

Carlos Lara, Senior Vice President

ATTEST:

Lucinda Aja, City Clerk

RECOMMENDED:

William Kauppi

William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

K. Scott McCoy, City Attorney

Adobe Acrobat Sign Transaction Number: CBJCHBCAABAAmU7hR2aHJG0EQfcC9...fKXV9

EXHIBIT A

TO

TASK ORDER #7

CONSULTANT'S PROPOSAL

TRISTAR
Engineering and Management, Inc.

June 11, 2024

Mr. Michael M. Byrne
Construction Inspection Supervisor
City of Buckeye
Engineering Department
530 E. Monroe Ave
Buckeye, AZ 85326

Email: mbyrne@buckeyeaz.gov

Re: City of Buckeye On-Call Consulting for
Engineering and Architectural Services
Category 18: Civil Inspection Services
Contract No. 2022003.35

Dear Mr. Byrne:
Tristar Engineering and Management, Inc. (Tristar) is pleased to submit our cost proposal to provide inspection services for City of Buckeye Engineering Department.

Tristar will provide Jonathan Taylor, Senior Construction Inspector, for inspection assignments on various projects/permits such as: earthwork, asphalt work, concrete work, wet and dry utilities, traffic control and bridge inspection. Attached, for your consideration, please find our fee proposal summary, schedule, and Jonathan's resume.

If you have any questions or require additional information, please do not hesitate to contact me at 602-768-4178 or clara@tristar-az.com.

We look forward to working with you and the City of Buckeye on this assignment.

Respectfully,
TRISTAR ENGINEERING & MANAGEMENT, INC.

Carlos R. Lara
Vice President

Enclosure: Fee Proposal Summary
Schedule
Jonathan Taylor Resume

Corporate Office
10625 N. 25th Avenue
Suite 103
Phoenix, AZ 85029

Mesa Office
2152 S. Vineyard,
Suite 123
Mesa, AZ 85210

Gilbert Office
175 S. Hamilton Drive
Bldg. 6, Suite 113
Gilbert, AZ 85233

Tucson Office
3161 E. 47th Street
Tucson, AZ 85713

Mailing Address: PO Box 35278, Phoenix, AZ 85069-5278
Tel: (602) 288-5594 Fax: (602) 288-5592

TRISTAR
Engineering and Management, Inc.

DERIVATION OF COST PROPOSAL

FIRM NAME: **Tristar Engineering and Management Inc.**
10625 N. 25th Avenue, Suite 103
Phoenix, AZ 85029

Contract No.:
Tristar Proj. No.
New Contract: X

PROJECT NAME: **City of Buckeye**
RFQ #2022003.35, Category 18 - Civil Inspection Services

Date: 6/11/2024

ESTIMATED DIRECT LABOR			
Classifications	**Man-Hours**	**Hourly Rates**	**Labor Costs**
Sr. Resident Engr.		$270.00	
Resident Engr		$202.00	
Resident Landscape Architech		$133.00	
Sr. Inspector Supervisor		$163.00	
Chief Inspector		$150.00	
Sr. Construction Inspector	1032	$141.00	$145,512.00
Document Control Specialist		$130.00	
Field Inspector		$125.00	
		Total Estimated Labor	**$145,512.00**

ESTIMATED DIRECT EXPENSES (Listed by item at estimated actual cost - no markup)				
Description		**Unit Price**	**Quantity**	**Expense Amount**
			Total Estimated Expenses	

SUBCONSULTANT (Listed by Firm or name at est cost - No Markup)		
Subconsultants (cost proposal included)		**Total Cost**
	Total Estimated Subconsultant(s)	

TOTAL ESTIMATED COST:	**$145,512.00**

Contract Time: Calendar Days

Carlos Lara, P.E. — *6/11/2024*

Principal, Tristar Engineering & Management, Inc. — Date



Carlos Lara, P.E.

CONSULTANT/SUBCONSULTANT
SCHEDULED PROJECT MAN-HOURS BY CLASSIFICATION

CONSULTANT: **Tristar Engineering and Management Inc.** Contract No.: _____

PROJECT NAME: **City of Buckeye**
RFQ #2022003.35, Category 18 - Civil Inspection Services

Date: **6/11/2024**

DIRECT LABOR														
Classifications		**JAN**	**FEB**	**MAR**	**APR**	**MAY**	**JUN**	**JUL**	**AUG**	**SEP**	**OCT**	**NOV**	**DEC**	**Man-Hours**
Sr. Resident Engr.														
Resident Engr														
Resident Landscape Architech														
Sr. Inspector Supervisor														
Chief Inspector														
														1032
Sr. Construction Inspector								172	172	172	172	172	172	
Document Control Specialist														
Field Inspector														
TOTAL								172	172	172	172	172	172	1032



CONTACT

Phone: 480.845.2339
Email: jtaylor@tristar-az.com
Resides: Phoenix, AZ

YEARS OF EXPERIENCE

20 Total; 5 with Tristar

PROFESSIONAL CERTIFICATIONS AND EDUCATION

ACI Field Technician
Expires 09/17/2026

ATTI Field Technician
Expires 02/23/2026

ATSSA Traffic Control Technician, Expires 02/24/2026

CAREER HIGHLIGHTS AND SKILLS

Previous ADOT Employee

Construction Inspection

Materials Testing

Survey Experience

Plans Reading

Asphaltic Concrete

Structures Inspection

ADOT Specifications

Mr. Jonathan Taylor has more than 20 years of experience in the civil construction and field inspection industry. He began his career with ADOT and is knowledgeable of federal standards, policies, and procedures for highway construction as well as municipal MAG specifications and standard drawings.

Mr. Taylor is experienced with the inspection of structures, earthwork, concrete, subgrade, curb and gutter, minor concrete incidentals and asphaltic concrete. He is proficient in pay item documentation, plans reading, density testing and materials sampling. He is certified with industry-standard materials testing procedures and requirements.

SELECTED PROJECT EXPERIENCE

City of Buckeye, AZ – Canyon Springs Blvd Bridge over C.A.P. Canal

Mar 2022 to Current | Supervisor: Michael Byrne

★ Mr. Taylor is serving as a Senior Inspector, overseeing the construction of the new structure. He is responsible for inspection and documentation, ensuring all work is completed per plans and specifications.

Tristar is providing inspection staff augmentation services for this project that is constructing a new 335' Type 5 modified girder bridge over the C.A.P. Canal, which will extend Canyon Springs Blvd for future development.

City of Phoenix – Streets Dept. Maintenance Division – 7th Street & UPRR Bridge Rehabilitation Phase 3, Phoenix, AZ

Sept 2022 and Various Additional Dates | Supervisor: Rick Evans

★ Mr. Taylor served as a structures inspector, ensuring and documenting all work is performed per plans and specifications.

Tristar is providing inspection staff for work which includes replacing some PCCP sections, remove/replace deck joints and compression seal membrane, flood coat the approach slabs with healer/sealer, and repair damaged sidewalk. Ensured coordination with Truesdell and the COP to make sure work did not interfere with baseball games or concerts at Chase Field.

MCDOT - Deer Valley Road, El Mirage Road to 109th Avenue (TT0248), El Mirage, AZ

Aug 2019 to Mar 2022 | Supervisor: John Hall, PE

★ Mr. Taylor was assigned to the structures team where he inspected drilled shafts, abutments, columns and pier caps, girder placement and bridge deck.

Tristar is providing full-service construction administration services for the one-mile project to extended Deer Valley Road to (5 lanes). The scope includes a new 711-ft five span, precast, prestessed, AASHTO Type Super VI concrete girder bridge over the Agua Fria River and more than 750,000 CY of earthwork borrow material will be imported to construct the bridge approaches in accordance with the USACE 404 Permit. One mile of Williams

Drive will be widened to a 5-lane facility and two roundabouts will be constructed at the intersection of Deer Valley Road / 109th Avenue and 117th Avenue.

Town of Gilbert, Germann Road, Gilbert to Val Vista (ST0145)

Feb 2018 to Sept 2019 | Supervisor: John Akin, PE

- ★ Mr. Taylor provided field inspection duties and responsibilities for this project.

As a subconsultant to CEI, Tristar provided inspection services for this $20M project to widen Germann Road, which included new underground municipal utilities, new flood irrigation facilities, new sidewalk, curb and gutter and new asphalt paving. The project also included bridge widening over the SRP Eastern Canal and RWCD canal, which parallel one another.

Town of Gilbert - Intersection Improvements at Cooper and Guadalupe Roads

Sept 2016 to Nov 2017 | Supervisor: Corum Brown, PE

- ★ Mr. Taylor provided field inspection duties and responsibilities for this project.

Tristar provided CA&I services for this CMAR project which replaced the existing 6-inch wastewater DIP force main with fusible 8-inch-high density polyethylene (HDPE) pipe and updated manholes. A new 12-inch water main pipeline was installed and provided new water services to each of the commercial properties. The project also widened the road to three lanes at all legs of the intersection with sufficient width to accommodate bike lanes, raised medians, and reconstructed curbs, gutters, and sidewalks. Other municipal utility improvements included gravity sewer, water main and lateral replacement, storm drains, underground retention and basins, signal upgrades (including improved telecommunication with the railroad), and landscaping.

During his time with Tristar, Mr. Taylor has provided service on multiple projects under our ADOT on-call and Temp Tech contracts.

ADOT, I-40 Townsend-Winona Bridge Deck Replacement (F010801C)

Flagstaff District

- ★ Mr. Taylor performed as the lead bridge inspector for super structure throughout the demolition and reconstruction of the bridge. His duties included inspections for the demolition of the bridge, abutments, wing and retaining walls. He also provided inspections for pier caps, steel girder placement, deck and roadway, and quality control for the new bridge structure.

This $3.8M bridge rehabilitation project was located on Interstate 40 near Flagstaff. The work consisted of replacing girders, bearing pads and bridge deck. Project challenges included working over live traffic, coordinating closures with DPS and local law enforcement, coordination of the removal of lead-based paint, and demo and reconstruction of steel girder bridge.

ADOT, SR101L Baseline Road to SR202L (Santan) (H687301C)

Central District

- ★ Mr. Taylor was assigned to the structures crew and was responsible for inspection of drilled shafts, abutments, wing walls, retaining walls, columns and pier caps, girder placement, bridge deck and roadway, and soil nail walls.

This $68M Design-Build project includes design and construction for general purpose lanes on SR101L in both travel directions. The work includes constructing pavement, structures, retaining walls, barriers, drainage facilities, signing, pavement markings, street lighting, traffic signal modifications, ITS, utilities relocation, landscape restoration, and rubberized friction course.

ADOT, I-10 Earley Road – Junction I-8 (H798401C)

Central District

- ★ Mr. Taylor performed as the bridge inspector for sub structure and super structure through different phases of the project. His duties included inspections for drilled shafts, abutments, wing and retaining walls, girder placement, deck and roadway.

This $49M project was located on Interstate 10, in Pinal County through the city of Casa Grande. The work consisted of widening I-10 from four lanes to six lanes including two new bridges over Jimmie Kerr Boulevard and the Union Pacific Railroad. The scope and time frame of the project was under an A+B schedule. Project challenges included working near UPRR Railroad, APS overhead powerlines, and Kinder Morgan natural gas lines.

ADOT, SR 77, S. Old Tiger Rd to Miguel Rd (H879101C)

South Central District

This $6.1M project in Pinal County on SR 77 consisted of milling and replacing existing Asphaltic Concrete pavement and a double chip seal coat application. Additional work included removing and replacing guardrail, pipe culverts, sidewalk, driveways, sidewalk ramps, pavement markings, and other related work. Mr. Taylor was assigned to the milling, tack, and paving operations.

ADOT, I-10 Gila River Bridge to SR 587 (H892501C)

Central District

This $6.2M project was located on Interstate 10, in Pinal County within the Gila River Indian Reservation. The work consisted of milling and replacing existing Asphaltic Concrete pavement and AR-ACFC. Additional work included installing new guardrail, replacing pavement markings seeding and other related items. Mr. Taylor was assigned to hot plant inspection and guardrail reconstruction.

ADOT, SR 89, Jct US 93 to Jct SR 71 (H813601C)

Northwest District

This $2.6M pavement preservation consisted of replacing the full width of SR 89 with asphaltic concrete and an asphalt rubber-AC friction course, shoulder build-up with milled AC, installing traffic loop detector, replacing signs and reflectors, and related work. Mr. Taylor was responsible for inspection of:

- 500’ reconstruction of SR 71 including subgrade and AC
- Concrete driveways and other minor work
- Required testing and sampling
- Daily documentation and communication with his supervisor.

ADOT, Grand Avenue Corridor Improvements

Valley West & Deer Valley Field Offices

As an ADOT employee, Mr. Taylor was part of the team that built much of the Grand Avenue Corridor improvements while working for the Valley West Field Office and on loan to the Deer Valley Field Office. Some of the segments he worked on include:

- 27th Avenue and Thomas
- 43rd Avenue and Camelback
- 51st Avenue and Bethany Home Road

EMPLOYMENT HISTORY

Construction Inspector / Materials Tester

Tristar Engineering and Management, Inc. 2017 to Present

Mr. Taylor is available for assignment for a variety of highway and municipal construction projects statewide. He serves as a construction inspector and materials tester responsible for project inspection services, field sampling and testing of concrete and soils.

Field / Laboratory Technician

Ninyo & Moore 2015-2017

- Perform density testing by nuclear and sand cone method
- Sample concrete perform slump, temperature, and cast test samples
- Sample asphaltic concrete per ASTM testing methods
- Plans reading, interpreting standards and specifications from MAG, ADOT, different municipalities.
- Perform different testing procedures by following ASTM test methods guidelines, ACI and ATTI.
- Keep records of all testing through daily reports and testing reports.
- Communicate with Project Managers, Inspectors, and Contractors with results of testing or findings at field level and up.

Quality Control for Sand and Gravel

Vulcan Materials 2014-2015

- Responsible for the quality of the sand and gravel that is produce daily.
- Daily aggregates sampling through sieves, sand and equivalent, durability index and plasticity index all testing follow ASTM or ASHTO standards.
- Daily walk through the plant from feed to discharge point.
- Daily preventive maintenance checks with screens and belts
- Assisted ground man with shoveling material around tail pulley or away from plant
- Operated water truck when needed to keep up with dust control on haul roads
- Generated monthly reports for salesman
- Escorted clients around plant to see our products or stockpiles

Night Lead

UPS Mail Innovations 2013

Customer Service Supervisor

Transperfect Remote Interpreting 2011-2012

E-4 / Corporal Bulk Fuel Specialist

United States Marine Corp 2003-2011

- Set up connect dispense fuel to ground vehicles, fixed wing and rotary wing aircraft by either expeditionary fuel sites or air bases.
- Team leader of 4 Marines and assistant squad leader
- Volunteer for ceremonial details (Funeral Details) Flag folding, presenting, pall bearing, and rifle commander

- Deployed to Horn of Africa for security missions on base of Camp Lemonnier Djibouti, Africa. Billets held team leader, rifleman, and machine gunner.
- Received Letter of Appreciation from Deputy Commander CJTF Horn of Africa and good conduct award

Construction Materials Tester

Speedie and Associates 2008

- Inspected and performed quality checks on construction materials
- Soil densities with nuclear gauge
- Sampled concrete, Soils, and Asphalt

Transportation Construction Tech II

Arizona Department of Transportation 2000-2004

- Surveyor Instrument Man with District Survey
- Field Technician soil, concrete, asphalt sampling,
- Civil inspections underground utilities, structural, rebar, soil nail, retaining walls
- Tracking quantities
- Reading plans and specs

CITY OF BUCKEYE
Regular Council Meeting
COUNCIL ACTION REPORT

MEETING DATE: 09/03/24	**AGENDA ITEM:** 4.F. DS - Westpark Phase 2.2 "Parcel 7S" - Final Plat - PLZS-23-00016
DATE PREPARED: 08/29/24	**DISTRICT NO.:** Council District 3
STAFF LIAISON: Patricia Cooley, Planner 1, pcooley@buckeyeaz.gov, (623) 349-6233	
DEPARTMENT: Development Services	**AGENDA ITEM TYPE:** Consent Agenda Items / New Business

ACTION/MOTION: (This language identifies the formal motion to be made by the Council)
Council to take action on a Final Plat of Westpark Phase 2.2 "Parcel 7S," located north of the northwest corner of West Westpark Loop North and West Warner Street.

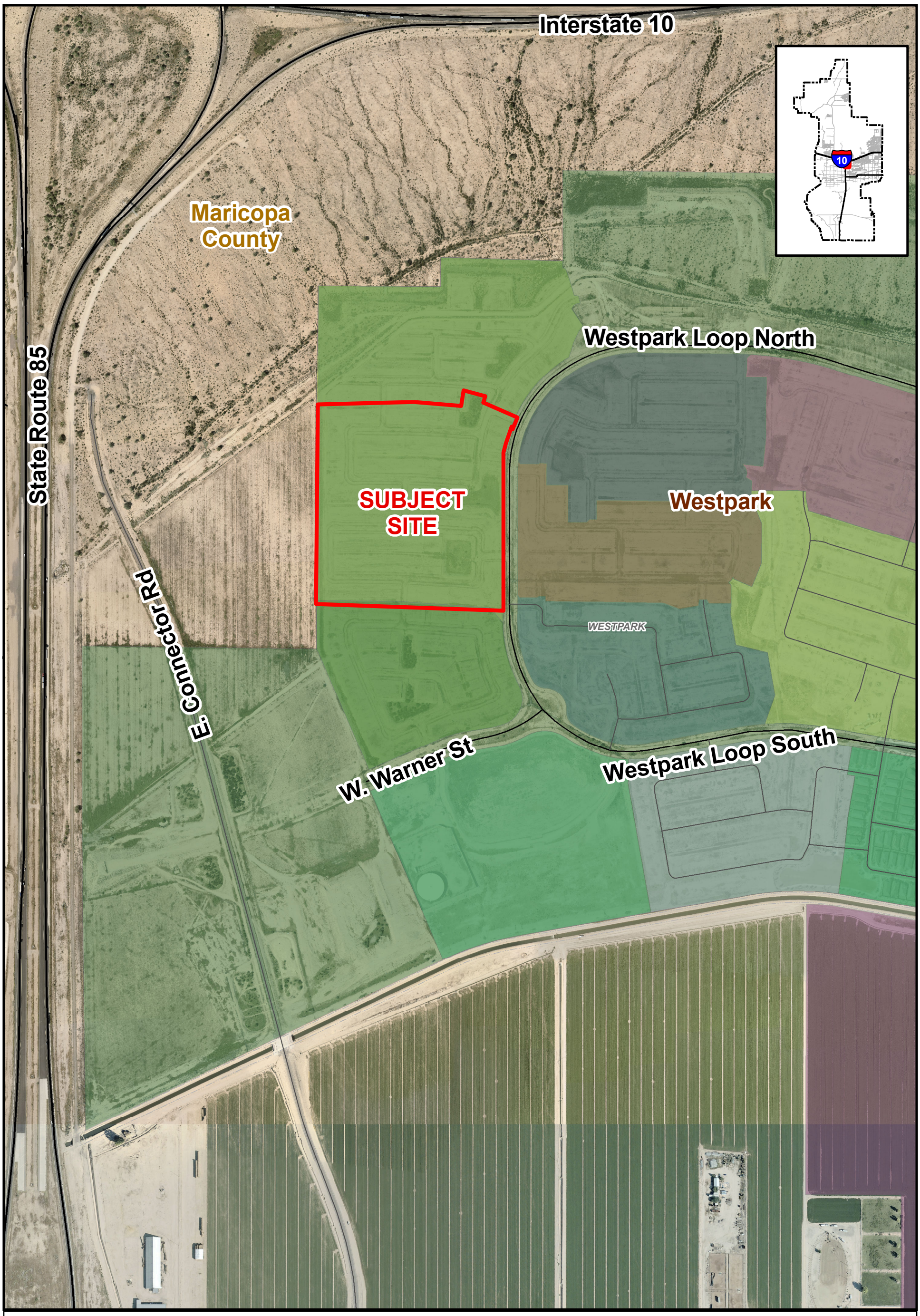
SUMMARY

PROJECT DESCRIPTION:
Barry Lindner from Atwell, Inc, on behalf of D.R. Horton Inc, is requesting approval of a Final Plat of Westpark Phase 2.2 "Parcel 7S" located north of the northwest corner of W. Westpark Loop North and W. Warner Street. The project encompasses approximately 26.02 acres and includes 109 single-family lots,18 tracts and approximately 4.69 acres of open space with an overall density of approximately 4.19 dwelling units per acre. Approximately 4.88 acres of Right-of-way (ROW) is being dedicated to the City of Buckeye through this Final Plat. The proposal is in substantial conformance with the Preliminary Plat. The Final Plat is accompanied by a Certificate of Assured Water Supply from the Department of Water Resources, per A.R.S. 9-463.01(I).

BENEFITS:
The subject Final Plat will allow continued development of traditional single-family residences within the City of Buckeye.

FINANCIAL IMPACT STATEMENT:
Although a fiscal impact analysis has not been conducted on this specific project, all new development will have an ongoing fiscal impact on the city. The development is responsible for construction of all infrastructure necessary to serve the site and will generate one-time revenue for the city such as permit fees, construction sales tax and development impact fees. Longer term fiscal impacts include increased demands for municipal services, the costs of which may or may not be offset by increased property values/tax levies, city sales tax, state shared revenues and the increased demand for commercial and retail development. Any areas that will be maintained by the city are constructed by the developer and then conveyed to the city two years after construction.

Items related to a project or facility location must include an attached vicinity map for Council Review.
ATTACHMENTS:
Exhibit A - PLZS-23-00016 - Westpark 7S - Final Plat - Vicinity Map.pdf
Exhibit B - PLZS-23-00016 - Westpark 7S - Final Plat - Narrative.pdf
Exhibit C - PLZS-23-00016 - Westpark 7S Final Plat - Final Plat.pdf
Exhibit D - PLZS-23-00016 - Westpark 7S - Final Plat - CAWS.pdf



VICINITY MAP

BUCKEYE, AZ

PLZS-23-00016
Westpark Phase 2.2 Parcel 7S Final Plat
City Council District 3

N
W E
S

Final Plat Narrative Report

For

Westpark – Phase 2.2
Parcel 7S

PLZS-23-00016

SEC of I-10 & SR-85
Buckeye, AZ



4700 E. Southern Avenue, Mesa, AZ 85206 Tel: 480.218.8831 Fax: 480.830.4888
www.atwell-group.com

Purpose of Request

The primary purpose of the subject Final Plat submittals is to fulfill prior project entitlements and to complete site development of Phase 2.2 for the existing Westpark residential subdivision. This current phase of the project will focus on completing the remaining portions of the Westpark Loop Road and Warner Street infrastructure, as well as continue with final development approvals to permit full construction of Parcels 5, 6, 7N, 7S, 8, 18N, 19 and 20N. The improvements for the remaining portions of the West Park Loop Road and Warner Street will be completed under a separate cover specific to only off-site improvements while each of the different parcels will be constructed under individual on-site covers. Refer to the Development Standards section of this narrative for a table of the approved and proposed development zoning conditions. Developer is expecting to commence construction of Westpark Loop North before the end of the year. Agreements with builders and other developers affect the schedule with the intent to construct Westpark Loop North first, then Parcels 8, 7S & 19. The development schedule of the remaining parcels is not certain at this time.

Project Background & Current Conditions

The overall Westpark subdivision is located at the southeast corner of the intersection of Interstate 10 (I-10) and State Route 85 (SR-85) in Buckeye, Arizona. As it sits today, the overall subdivision is mostly surrounded by undeveloped desert and agricultural farmlands with an existing development directly southeast. It is bordered to the south by the RID Canal but is not necessarily served by those irrigation facilities. Public vehicular access is currently only provided from Miller Road to the East. There are two access points to Miller Road, and they are the North and South Westpark Loop Road connections. A tertiary access road identified as E. Connector Road was constructed in 2010. This road connects to W. Broadway Road to the south, bridges the RID Canal, then stops at a point along the old SR-85 frontage road just south of the intersection with I-10. There are future plans by a developer to connect this over to the existing end of W. Durango Street, just north of Phase 1. Eventually, additional interior street connections with Westpark will be made to aide in overall vehicular circulation and connectivity with local roadways.

The subdivision was originally planned as “Roston/Buckeye” and received approval of its Community Master Plan (CMP) in October of 2000 since it was consistent with the City’s General Plan Land Use Designation of “Master Planned Community” (MPC). Several amendments have occurred over the years since it’s initial approval to enact minor updates to better suit the changing needs of the City and surrounding area. A Preliminary Plat of Westpark Phase 2, Project No. PP04-09, was approved in mid-2004 and is the basis for the scope of work proposed with the subject project submittals. Parcel 7S is proposing 109 lots over a total of 26.02 acres, which equates to a density of 4.19 dwelling units per acre. The minimum lot size proposed is 53’x115’. While the parcel has an overlying zoning of Planned Community (PC), the development standards remain consistent with the City’s underlying applicable residential zoning standards and maintain the initial intent and approvals of the CMP.

Construction of Phase 1 began around 2004 and met full build-out in 2007. With Phase 1 nearing completion and the need for further expansion, Phase 2 began construction in 2006 but stalled out after mass grading and some portions of infrastructure work. The mass grading covered a predominance of the Phase 2 area, but a small portion of the northerly parcels was left in a natural state due to an irrigation supply ditch that was necessary to remain in service at the time. Since then, the subject ditch has been decommissioned and is no longer needed. The site has remained in a partially completed state until the southeasterly portion of it (identified as Phase 2.1 and consisting of platted Parcels 13, 14, 18S and 20S was resurrected recently in 2019 by a separate ownership entity. These four parcels are continuing development pursuit by said owner on a parallel track to the subject Phase 2.2 work. Currently, Parcel 14 is complete, Parcel 18S has approved plans, and improvement plans for Parcels 13 and 20S are in progress.

The mass grading work established large offsite drainage attenuating basins along the entire northerly portion of the property. These basins intercept offsite runoff then route them accordingly and discharge in the historic courses. Individual parcels will maintain the necessary offsite routing as well as provide for the required onsite stormwater management addressing the 100-year design conditions as typical. Existing ground conditions have been maintained over the years to keep unwanted vegetation growth at bay and to ensure the in-place network of surface basins and drainageways function as needed. Natural terrain falling from northeast to southwest remains as the overall condition.

Utilities and Services

Water and sewer are both provided to and serving the Westpark subdivision by the City of Buckeye. Westpark falls within the limits of the City's water pressure Zone 2. This zone is primarily supplied by a facility identified as the North Airport Road Water Campus (NARWC), which is located approximately 8-miles northeast of Westpark. The primary supply of water is brought to the subdivision by offsite 16" transmission mains located within W. Durango Street and Miller Road. Phase 1 contains distribution mains throughout which vary in size from 6" through 16" which stop at Phase 2 for continuation. Phase 2 will install the same type and sizes of potable distribution throughout and a new 16" connection to the offsite main in W. Durango Street to help bolster the overall system's capabilities. A 16" main line stub exists at the west end of Warner Street for future connection and further continuation of the water system. Parcel 7S's potable water distribution is mostly comprised of 8" mains and connects to the 16" main within the Weskpark Loop Road at two locations, an 8" stub in W. Kingman Street and 8" stub in Payson Road. The water distribution for Parcel 7S connects at two locations to Parcel 7N at S. 263rd Drive north of Payson Road & S. 264th Drive, and one location to Parcel 8 at S. 264th Drive.

Similar to the water distribution, sewage collection is provided throughout the existing subdivision utilizing a network of 8" through 10" public collection gravity main lines. Due to the gravity design of the sewer following the natural terrain, the individual parcels within Phase 2 cascade through one another as the site sewerage flows from north to south. Infrastructure for the Phase 2.2 parcels will be constructed in a manner that starts with the lower end of the system so that dependent parcels are able to discharge once flow demands come online. Parcel 7S's system consists of 8" & 10" sewer lines that ultimately drain to S 264th Drive, into Parcel 8. Existing Westpark Phase 1 discharges at its southwest corner and Phase 2 discharges at its southeast corner, meeting at an existing 18" main on the north side of the RID Canal at the intersection with the Rooks Road alignment. From there, the existing 18" main heads south, crosses the canal, then continues roughly 5 miles southeast where it ends up at the Beloat Wastewater Treatment Plant facility (which is located just south of downtown Buckeye, southeast of the intersection of S. Miller Road and E. Irwin Avenue). The plant currently has capacity to serve the Westpark Phase 2.2 build-out.

Other public utilities and service providers include Arizona Public Service (APS) for electrical with cable and telephone provided by both CenturyLink and Cox. Additionally, refuse/recycle service is handled by the City of Buckeye for typical residential collection services.

Emergency services are handled within the City's jurisdictional limits and are provided by Buckeye Fire Department and Buckeye Police Department. The nearest Fire Station to serve Phase 2.2 already exists within the Phase 1 limits. Buckeye Fire Station #706 is located just east of Parcel 5, on the north side of the adjacent Westpark Elementary School. An additional future Fire Station site has been slated for a vacant parcel within the Phase 2.2 limits but is not yet defined for construction. The primary Buckeye Police Station dispatches from their home base located at 100 N. Apache Road, which is south of Downtown Buckeye on the east side of the MC85/Monroe Avenue curve.

Education services are provided through the local school districts. Students start off in the Buckeye Elementary School District which handles grades K-8. The nearest elementary school is Westpark Elementary, which happens to be adjacent east to Parcel 5. The school was completed and has been serving the neighborhood since 2007. Once students are ready to move on, they migrate to the Buckeye

Union High School District. The nearest public school is Youngker High School, which is approximately 1-mile due east of Westpark, at the northwest corner of S. Apache Road and W. Lower Buckeye Road.

Landscaping, Parks & Open Space

Overall, the new Phase 2.2 landscape design will match and mesh with the existing Westpark Phase 1 theme, continuing to provide appropriate green spaces that soften the development appearance while maintaining strict standards for a low water-use plant palette and maintenance. With 20.6% of open space allocated in Phase 2.2, there is a meaningful natural appearance offering an array of outdoor uses that tie the subdivision together. Overall, this equates to roughly 41 +/- acres of common area open space and amenities for the residents. Each parcel is proposed to include a "pocket park" for safe family activities as well as harnessing the various remaining open spaces for activity opportunities. Parcel 7S specifically has multiple dual-use basins located throughout the site, with a playground, shade structure, and activity area located at one of the more centralized basins. These areas help make up the 4.68 acres of parks and open space, which is about 18% of the Parcel. An 8' wide multiuse path is also provided along the exterior of the site and connects to the subdivision's larger trail network. This trail network will ensure all the open/green spaces are connected to one another as well as providing a safe and continuous accessway throughout the entire subdivision. This network and other access means will be extended to each of the future phases as well, completing the harmonious nature of the development and general community feel. Although not part of this current plan of development, a large format regional park and recreation facility is designed and slated for one of the remaining undeveloped parcels of Phase 2.2. It is adjacent south of Warner Street and will be a substantial amenity benefit to the area. When developed, it will add an additional 25 +/- acres of high-quality recreational facilities of varied substance.

Development Schedule

Currently, the anticipated development schedule is somewhat dependent on the timing of all jurisdictional reviews and approvals. As mentioned prior, the entirety of Phase 2 (with the exception of portions of the northerly parcels) was mass-graded in 2006, with some primary utility infrastructure placed as well. The utility work was focused on the southern leg of the Loop Road, and the adjacent four Parcels 13, 14, 18S and 20S. This prior work reduces some of the longer field processes associated with site development, but there is still plenty to do once field work commences.

In general, it is expected that the first portion of new development will be to construct the remaining segments of Westpark Loop Road, Warner Street and the offsite water main connection north to Durango Street. Once work begins, it is projected to be completed in approximately 5-8 months. Individual parcel construction will commence once approvals are obtained and home builders have committed to parcels accordingly. Since this is not yet clearly defined, some speculation is necessary to forecast the development progress. It is anticipated that individual parcel development would take an initial 3-6 months to complete site improvements and begin constructing homes. With construction varying both regionally and throughout the industry, we would anticipate first homes coming online for sale within the following 4-6 months. Currently home builders are averaging anywhere from 5 to 8 home closings per month once they are in full swing (after site work). As identified prior, since there are some infrastructure limitations for several parcels, the progression of development is expected to proceed in the following order: Loop Road/Offsite Infrastructure, then Parcels 8, 7S, 19, 20N, 7N, 6, 18N & 5. This order will ensure that suitable utilities and drainage facilities are maintained to support the construction and new residents of Buckeye accordingly.

Tract Table

TRACT TABLE			
TRACT	AREA SQ FT	AREA ACRES	USAGES
TRACT A7	40,449	0.93	LANDSCAPE & OPEN SPACE
TRACT B7	5,642	0.13	LANDSCAPE & OPEN SPACE
TRACT C7	58,186	1.34	LANDSCAPE & OPEN SPACE
TRACT D7	531	0.01	LANDSCAPE & OPEN SPACE
TRACT E7	955	0.02	LANDSCAPE & OPEN SPACE
TRACT F7	463	0.02	LANDSCAPE & OPEN SPACE
TRACT G7	3,945	0.09	LANDSCAPE & OPEN SPACE
TRACT I5	462	0.02	LANDSCAPE & OPEN SPACE
TRACT J5	31,460	0.72	LANDSCAPE & OPEN SPACE
TRACT K5	584	0.01	LANDSCAPE & OPEN SPACE
TRACT M5	592	0.01	LANDSCAPE & OPEN SPACE
TRACT S6	463	0.01	LANDSCAPE & OPEN SPACE
TRACT U6	925	0.02	LANDSCAPE & OPEN SPACE
TRACT V6	935	0.02	LANDSCAPE & OPEN SPACE
TRACT W6	1,900	0.04	LANDSCAPE & OPEN SPACE
TRACT X6	928	0.02	LANDSCAPE & OPEN SPACE
TRACT Y6	54,993	1.26	LANDSCAPE & OPEN SPACE
TRACT Z6	925	0.02	LANDSCAPE & OPEN SPACE
TOTAL	204,338	4.68	

Development Standards

Parcel No.	Gross Parcel Area (Acres)	Lot Count	Lot Size (Min.)	Gross Density (DU/Acre)	Open Space (Acre)
5	42.85	153	53' x 120'	3.57	12.83
6	22.06	84	58' x 115'	3.81	5.01
7N	21.81	77	58' x 115'	3.53	6.00
7S	26.02	109	53' x 115'	4.19	4.68
8	17.30	85	45' x 110'	4.91	3.21
18N	30.84	164	45' x 110'	5.32	6.34
19	21.80	106	53' x 115'	4.86	2.73
20N	17.16	70	65' x 120'	4.08	0.44
Totals:	**199.84**	**847**	--	**4.28**	**41.24**

Parcel No.	Lot Count	Lot Size (Min.)	Lot Coverage (Max.)	Front Setback	Rear Setback	Side Setbacks
5	153	53' x 120'	65%	*	20'	5' / 8'
6	84	58' x 115'	50%	*	20'	5' / 8'
7N	77	58' x 115'	50%	*	20'	5' / 8'
7S	109	53' x 115'	65%	*	20'	5' / 8'
8	85	45' x 110'	65%	*	15'	5' / 5'
18N	164	45' x 110'	65%	*	15'	5' / 5'
19	105	53' x 115'	65%	*	20'	5' / 8'
20N	70	65' x 120'	50%	*	20'	5' / 10'

* = 10' to side entry garage
12' to living area
18' to garage

RESIDENTIAL PARCEL TABLE

PARCEL	LOT SIZE	UNIT COUNT
5	53' X 120'	153
6	58' X 115'	84
7N	58' X 115'	77
7S	53' X 115'	109
8	45' X 110'	85
18N	45' X 110'	164
19	53' X 115'	105
20N	65' X 120'	70
	TOTAL LOTS:	847

(NOT A PART)

(NOT A PART)

(NOT A PART)

PARCEL 6
58' x 115'
84 LOTS

PARCEL 5
53' x 120'
153 LOTS

EXISTING PHASE 1
(NOT A PART)

PARCEL 7N
58' x 115'
77 LOTS

WESTPARK LOOP NORTH

PARCEL 19
53' x 115'
105 LOTS

PARCEL 18N
45' x 110'
164 LOTS

PARCEL 7S
53' x 115'
109 LOTS

PARCEL 20N
65' x 120'
70 LOTS

FUTURE PHASE 3
(NOT A PART)

NARRATIVE REPORT PERTAINS
TO PARCEL 7S ONLY

PARCEL 8
45' x 110'
85 LOTS

PARCEL 18S
PHASE 2.1

PARCEL 20S
PHASE 2.1

EAST CONNECTOR ROAD

FUTURE PHASE 3
(NOT A PART)

WARNER STREET

WESTPARK LOOP SOUTH

EXISTING PHASE 1
(NOT A PART)

PARK
NOT A PART

PARCEL 13
PHASE 2.1

PARCEL 14
PHASE 2.1

FUTURE PHASE 3
(NOT A PART)

R.I.D. CANAL

WESTPARK - PHASE 2.2

EXHIBIT 4

200 0 200 400

SEPTEMBER 17, 2021

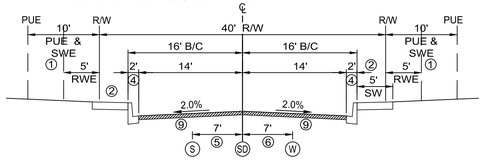
ATWELL
866.850.4200 www.atwell-group.com

k:\21001100 – westpark phases 2.2\dwg\presentation\21001100_marketing map.dwg

COPYRIGHT © 2021 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC

GENERAL NOTES

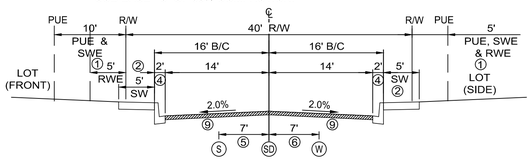
① PUE / LPPUE / LANDSCAPE - 8:1 MAX SLOPE.
② 5' S / W PER MAG STD DTL 230.
③ ROW / LANDSCAPE AREA, 1.5% SLOPE. FIRE HYDRANTS, TREES & STREET LIGHTS LOCATED 2' BACK OF SIDEWALK.
④ CURB & GUTTER PER MAG STD DTL 220-1, TYPE 'A' OR C'.
⑤ SANITARY SEWER MAINS SHALL BE PLACED 7' SOUTH OR WEST OF CL.
⑥ WATER MAINS SHALL BE PLACED 7' NORTH OR EAST OF CL.
⑦ NOT USED
⑧ STORM DRAIN SHALL BE PLACED ON THE CL OF STREET.
⑨ PAVEMENT REQUIREMENTS:
AC - 2.5" OF R12.5MM MARSHALL.
BASE - 8" OF ABC. PER MAG STD SPEC 702.2.
SUB-BASE - 8" OF 95% COMPACTION.



LOCAL STREET - MODIFIED COB DTL 63170
(FRONT LOADED LOTS)
SCALE: 1"=10'

GENERAL NOTES

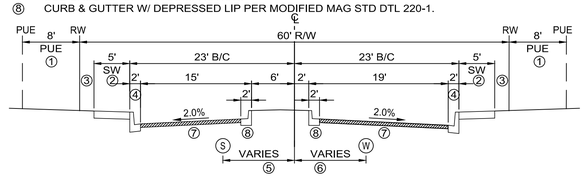
① PUE / LPPUE / LANDSCAPE - 8:1 MAX SLOPE.
② 5' S / W PER MAG STD DTL 230.
③ ROW / LANDSCAPE AREA, 1.5% SLOPE. FIRE HYDRANTS, TREES & STREET LIGHTS LOCATED 2' BACK OF SIDEWALK.
④ CURB & GUTTER PER MAG STD DTL 220-1, TYPE 'A' OR C'.
⑤ SANITARY SEWER MAINS SHALL BE PLACED 7' SOUTH OR WEST OF CL.
⑥ WATER MAINS SHALL BE PLACED 7' NORTH OR EAST OF CL.
⑦ NOT USED
⑧ STORM DRAIN SHALL BE PLACED ON THE CL OF STREET.
⑨ PAVEMENT REQUIREMENTS:
AC - 2.5" OF R12.5MM MARSHALL.
BASE - 8" OF ABC. PER MAG STD SPEC 702.2.
SUB-BASE - 8" OF 95% COMPACTION.



LOCAL STREET - MODIFIED COB DTL 63170
(FRONT & SIDE LOADED LOTS)
SCALE: 1"=10'

GENERAL NOTES

① PUE / LPPUE / LANDSCAPE - 8:1 MAX SLOPE.
② 5' ATTACHED S / W PER MAG STD DTL 230.
③ LANDSCAPE AREA, SREET LIGHTS CENTERED IN MEDIAN
④ CURB & GUTTER PER MAG STD DTL 220-1, TYPE 'A' OR C'.
⑤ WATER MAINS SHALL BE PLACED 7' NORTH OR EAST OF CL, CENTERED IN DRIVING LANE
⑥ SANITARY SEWER MAINS SHALL BE PLACED 7' SOUTH OR WEST OF CL, CENTERED IN DRIVING LANE
⑦ PAVEMENT REQUIREMENTS:
AC - 3" OF R12.5MM MARSHALL.
BASE - 8" OF ABC. PER MAG STD SPEC 702.2.
SUB-BASE - 8" OF 95% COMPACTION.
⑧ CURB & GUTTER W/ DEPRESSED LIP PER MODIFIED MAG STD DTL 220-1.



RESIDENTIAL ENTRANCE - COB DTL 63190
SCALE: 1"=10'

THE LOCATIONS OF EXISTING UNDERGROUND UTILITIES ARE SHOWN IN AN APPROXIMATE WAY ONLY AND HAVE NOT BEEN INDEPENDENTLY VERIFIED BY THE OWNER OR ITS REPRESENTATIVE. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING WORK, AND AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MIGHT BE OCCASIONED BY THE CONTRACTOR'S FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL UNDERGROUND UTILITIES.

NOTICE:
CONSTRUCTION SITE SAFETY IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR; NEITHER THE OWNER NOR THE ENGINEER SHALL BE EXPECTED TO ASSUME ANY RESPONSIBILITY FOR SAFETY OF THE WORK, OF PERSONS ENGAGED IN THE WORK, OF ANY NEARBY STRUCTURES, OR OF ANY OTHER PERSONS.

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8531

SITE PLAN

PROJECT:
WESTPARK PHASE 2.2
BUCKEYE, AZ

811 Know what's **below.** **Call** before you dig.

REVISIONS:

PRELIMINARY
NOT FOR
CONSTRUCTION
OR
RECORDING

PM.	CAP
DR.	C. PARENT
JOB NO.	21001100
FILE NO.	SITE LAYOUT

SHEET NO.
2 OF 5

DATE: 09/10/2021

k:\21001100 - westpark phases 2.2\dwg\lot fifsale layout exhibit.dwg Savedate:9/14/2021 11:00 AM Plotdate:8/10/2022 5:34 PM

5R PLZDR-24-0022 RECEIVED AUG 06 2024 AL

COPYRIGHT © 2024 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC

FINAL PLAT
OF
WESTPARK PHASE 2.2
"PARCEL 7S"

LOCATED IN A PORTION OF THE NORTHWEST QUARTER OF SECTION 24 AND THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 1 NORTH, RANGE 4 WEST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN MARICOPA COUNTY, ARIZONA

DEDICATION

STATE OF ARIZONA }
}SS
COUNTY OF MARICOPA }

KNOW ALL PERSONS BY THESE PRESENTS: D.R. HORTON INC, A DELAWARE CORPORATION ("OWNER"), HAS SUBDIVIDED UNDER THE NAME WESTPARK PHASE 2.2 "PARCEL 7S", A SUBDIVISION LOCATED IN A PORTION OF THE NORTHWEST QUARTER OF SECTION 24 AND THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 1 NORTH, RANGE 4 WEST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN MARICOPA COUNTY, ARIZONA AS SHOWN AND PLATTED HEREON AND DOES HEREBY PUBLISH THIS PLAT AS AND FOR THE PLAT OF WESTPARK PHASE 2.2 "PARCEL 7S" AND DECLARES THAT THIS PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF EACH LOT, TRACT, STREET, AND EASEMENTS CONSTITUTING SAME, AND THAT EACH LOT, TRACT, STREET, AND EASEMENT SHALL BE KNOWN BY THE NUMBER, LETTER, AND/OR NAME GIVEN TO EACH RESPECTIVELY AS SHOWN ON THIS PLAT.

OWNER HEREBY DEDICATES TO THE CITY OF BUCKEYE FEE TITLE TO ALL PUBLIC RIGHTS-OF-WAY AS SHOWN ON THIS PLAT.

OWNER HEREBY GRANTS TO THE CITY OF BUCKEYE A NON-EXCLUSIVE EASEMENT OVER, UPON AND ACROSS THE AREAS DESIGNATED AS PUBLIC UTILITY EASEMENTS AS SHOWN ON THE PLAT FOR THE PURPOSE OF INSTALLING, CONSTRUCTING, MAINTAINING, REPAIRING, REPLACING AND UTILIZING PUBLIC UTILITIES.

OWNER HEREBY GRANTS TO THE CITY OF BUCKEYE AN EXCLUSIVE EASEMENT FOR THE PURPOSE OF WATER WITHIN THE AREAS SHOWN ON THIS PLAT AS WATER EASEMENTS. THE CITY SHALL HAVE THE RIGHT TO ACCESS, CONSTRUCT, MAINTAIN, OPERATE AND REPLACE PUBLIC WATER LINES OVER, UNDER AND ACROSS THE EASEMENT AREAS SHOWN HEREON.

OWNER HEREBY GRANTS TO THE CITY OF BUCKEYE, A NON-EXCLUSIVE EASEMENT OVER, UPON AND ACROSS THE AREAS DESIGNATED AS SITE VISIBILITY TRIANGLES FOR THE PURPOSE OF ENSURING THAT THESE AREAS REMAIN FREE OF SITE VISIBILITY OBSTRUCTIONS AS PER THE ENGINEERING DESIGN STANDARDS.

OWNER HEREBY GRANTS TO THE UNITED STATES OF AMERICA DEPARTMENT OF THE AIR FORCE ("USAF") AN AVIGATION EASEMENT OVER AND ACROSS THIS PLAT AND EVERY LOT AND PARCEL THEREOF, WHICH EASEMENT SHALL INCLUDE, BUT NOT BE LIMITED TO; THE RIGHT OF FLIGHT OF AIRCRAFT OVER THIS PLAT, TOGETHER WITH ITS ATTENDANT NOISE, VIBRATIONS, FUMES, DUST, FUEL AND LUBRICANT PARTICLES, AND ALL OTHER EFFECTS THAT MAY BE CAUSED BY THE OPERATION OF AIRCRAFT LANDING AT, OR TAKING OFF FROM, OR OPERATING AT OR ON LUKE AIR FORCE BASE AND AUXILIARY FIELD.

D.R. HORTON INC, A DELAWARE CORPORATION, AS OWNER DOES HEREBY (1) RELEASE AND DISCHARGE THE USAF AND THE CITY OF BUCKEYE, AND (2) INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF BUCKEYE, OF AND FROM ANY LIABILITY FOR ANY AND ALL CLAIMS FOR DAMAGES OF ANY KIND TO PERSONS OR PROPERTY THAT MAY ARISE AT ANY TIME IN THE FUTURE OVER, OR IN CONNECTION WITH AIRCRAFT OVERFLIGHTS FROM AIRCRAFT UTILIZING LUKE AIR FORCE BASE, WHETHER SUCH DAMAGE SHALL ORIGINATE FROM NOISE, VIBRATION, FUMES, DUST, FUEL AND LUBRICANT PARTICLES, AND ALL OTHER EFFECTS THAT MAY BE CAUSED BY THE OPERATION OF AIRCRAFT LANDING AT, OR TAKING OFF FROM, OR OPERATING AT OR ON LUKE AIR FORCE BASE. THIS INSTRUMENT SHALL RUN WITH THE LAND AND BE BINDING UPON OWNER AND ITS HEIRS, ASSIGNS, AND SUCCESSORS IN INTEREST TO THIS PLAT OR ANY PARCEL OR LOT THEREOF. THIS INSTRUMENT DOES NOT RELEASE THE USAF FROM LIABILITY FOR DAMAGE OR INJURY TO PERSON OR PROPERTY CAUSED BY FALLING AIRCRAFT OR FALLING PHYSICAL OBJECTS FROM AIRCRAFT, EXCEPT AS STATED HEREIN WITH RESPECT TO NOISE, FUMES, DUST, FUEL, AND LUBRICANT PARTICLES.

D.R. HORTON INC, A DELAWARE CORPORATION, AS OWNER DOES HEREBY; (1) RELEASE AND DISCHARGE THE CITY OF BUCKEYE, AND (2) INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF BUCKEYE, OF AND FROM ANY LIABILITY FOR ANY AND ALL CLAIMS FOR DAMAGES OF ANY KIND TO PERSONS OR PROPERTY THAT MAY ARISE AT ANY TIME IN THE FUTURE OVER, OR IN CONNECTION WITH THE AREAS LOCATED WITHIN THE NEWLY DEDICATED RIGHT-OF-WAY AS DEPICTED ON THIS PLAT UNTIL SUCH TIME THE RIGHT-OF-WAY IS IMPROVED TO CITY STANDARDS AND THOSE IMPROVEMENTS ARE APPROVED AND ACCEPTED BY THE CITY. THE MAINTENANCE OF THE AREA WITHIN ANY NEWLY DEDICATED RIGHT-OF-WAY AS SHOWN ON THIS PLAT SHALL BE THE RESPONSIBILITY OF THE ADJACENT OWNER/OR SUBSEQUENT ADJACENT OWNERS WITHIN THE BOUNDARY OF SAID PLAT UNTIL SUCH TIME THAT THE AREA WITHIN THE RIGHT-OF-WAY IS IMPROVED TO CITY STANDARD AND ACCEPTED BY THE CITY OF BUCKEYE.

ALL IMPROVEMENTS, FOR STREETS AND PUBLIC UTILITIES OWNED AND OPERATED BY THE CITY, INSTALLED OR CONSTRUCTED BY OWNER WITHIN THE PUBLIC RIGHT-OF-WAYS, THE EASEMENTS, OR ANY TRACTS OR PARCELS HEREBY DEDICATED TO THE CITY OF BUCKEYE SHALL BE DEEMED TO HAVE BEEN DEDICATED BY OWNER TO THE CITY UPON THEIR COMPLETION; HOWEVER, SUCH TRANSFER SHALL NOT OCCUR UNTIL FOR THE CITY OF BUCKEYE MANIFESTS ITS ACCEPTANCE BY SEPARATE FORMAL ACTION.

THE EASEMENTS GRANTED WITHIN THIS DEDICATION ARE PERMANENT AND PERPETUAL AND SHALL RUN WITH THE LAND AND BE BINDING UPON OWNER AND ITS HEIRS, ASSIGNS, AND SUCCESSORS AND INTEREST TO THIS PLAT OR ANY PARCEL OR LOT THEREOF.

TRACTS A7, B7, C7, D7, E7, F7, G7, I5, J5, K5, M5, S6, U6, V6, W6, X6, Y6 AND Z6 ARE DECLARED TO BE FOR LANDSCAPE AND OPEN SPACE AS SHOWN IN THE TRACT INCLUDED HEREON.

TRACT C7 IS DECLARED TO BE FOR LANDSCAPE, OPEN SPACE AND DRAINAGE AS SHOWN IN THE TRACT TABLE INCLUDED HEREON.

ALL TRACTS ARE TO BE OWNED AND MAINTAINED BY THE WESTPARK PHASE 2.2 COMMUNITY ASSOCIATION. THERE HAS BEEN OR IS BEING RECORDED HEREWITH A DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (CC&R'S) FOR "WESTPARK PHASE 2.2, PARCEL 7S"

OWNER HEREBY GRANTS TO THE PUBLIC A NON-EXCLUSIVE EASEMENT FOR RECREATION OVER UPON AND ACROSS THOSE AREAS DESIGNATED AS RECREATION TRAILS OR AREAS FOR THE PURPOSE OF ALLOWING PUBLIC ACCESS TO THE TRAIL SYSTEM.

NOTHING CONTAINED HEREIN SHALL BE DEEMED TO DEDICATE ANY PORTION OF THE TRACTS FOR PUBLIC USE OTHER THAN FOR EASEMENTS SPECIFICALLY GRANTED TO THE PUBLIC HEREIN.

OWNER HEREBY GRANTS TO THE CITY OF BUCKEYE A NON-EXCLUSIVE EASEMENT OVER, UPON, AND ACROSS THE AREAS DESIGNATED AS "ROADWAY EASEMENTS" AS SHOWN ON THE PLAT FOR THE PURPOSE OF INSTALLING, CONSTRUCTION, MAINTAINING, REPAIRING AND UTILIZING STREET AS PER THE CITY OF BUCKEYE ENGINEERING DESIGN STANDARDS.

OWNER WARRANTS AND REPRESENTS TO THE CITY OF BUCKEYE TO BE THE SOLE OWNER OF THE PROPERTY COVERED HEREBY AND THAT EVERY LENDER, EASEMENT HOLDER, OR OTHER PERSON, OR ENTITY, HAVING ANY INTEREST IN THE LAND ADVERSE TO OR INCONSISTENT WITH THE DEDICATION, CONVEYANCES OR OTHER REAL PROPERTY INTEREST CREATED OR TRANSFERRED BY THIS PLAT HAS CONSENTED TO, OR JOINED IN THE PLAT, AS EVIDENCED BY INSTRUMENTS WHICH ARE RECORDED WITH THE MARICOPA COUNTY RECORDERS OFFICE, OR WHICH OWNER WILL RECORD NOT LATER THAN THE DATE ON WHICH THIS PLAT IS RECORDED.

THE MAINTENANCE OF LANDSCAPING WITHIN THE OPEN SPACES, LANDSCAPED TRACTS, RETENTION BASINS AND PARKS SHALL BE THE RESPONSIBILITY OF THE OWNER OR THE ASSOCIATION FORMED BY THE OWNER.

THE MAINTENANCE OF LANDSCAPING WITHIN THE ADJACENT PUBLIC RIGHT-OF-WAYS, INCLUDING; LANDSCAPED MEDIANS WITHIN COLLECTORS AND LOCAL STREETS AND LANDSCAPED AREAS BETWEEN THE CURB AND THE DETACHED SIDEWALK, SHALL BE THE RESPONSIBILITY OF THE ADJACENT PROPERTY OWNER OR THE PROPERTY ASSOCIATION FORMED BY THE ADJACENT PROPERTY.

IN WITNESS WHEREOF, OWNER HAS HEREUNTO CAUSED ITS CORPORATE NAME TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY THE UNDERSIGNED, DULY AUTHORIZED OFFICER THIS _____ DAY OF _____, 2024.

D.R. HORTON INC, A DELAWARE CORPORATION

BY: _____
PATRICK BROWN, VICE PRESIDENT

ACKNOWLEDGMENT

STATE OF ARIZONA }
}SS
COUNTY OF MARICOPA }

ON THIS, THE _____ DAY OF _____, 2024, BEFORE ME THE UNDERSIGNED NOTARY, PATRICK BROWN PERSONALLY APPEARED WHO ACKNOWLEDGED HIMSELF TO BE THE VICE PRESIDENT AND ACKNOWLEDGED THAT HE, BEING DULY AUTHORIZED SO TO DO, EXECUTED THIS INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF:

I HEREUNTO SET MY HAND AND OFFICIAL SEAL:

_____ _____
NOTARY PUBLIC MY COMMISSION EXPIRES

RATIFICATION

KNOW ALL PERSONS BY THESE PRESENTS:

THE UNDERSIGNED, DULY AUTHORIZED OF THE WESTPARK PHASE 2.2, COMMUNITY ASSOCIATION, AN ARIZONA NON-PROFIT CORPORATION, HEREBY RATIFIES THE RECORDATION OF THIS FINAL PLAT OF WESTPARK PHASE 2.2, PARCEL 7S AND ACKNOWLEDGES THE RESPONSIBILITIES SET FORTH THEREIN.

WESTPARK PHASE 2.2 COMMUNITY ASSOCIATION, AN ARIZONA NON-PROFIT CORPORATION

BY: _____ DATE: _____

ITS: _____

ACKNOWLEDGMENT

STATE OF ARIZONA }
}SS
COUNTY OF MARICOPA }

ON THIS, THE _____ DAY OF _____, 2024, BEFORE ME THE UNDERSIGNED NOTARY, _____ PERSONALLY APPEARED WHO ACKNOWLEDGED HIMSELF/HERSELF TO BE THE _____ AND ACKNOWLEDGED THAT HE/SHE, BEING DULY AUTHORIZED SO TO DO, EXECUTED THIS INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF:

I HEREUNTO SET MY HAND AND OFFICIAL SEAL:

_____ _____
NOTARY PUBLIC MY COMMISSION EXPIRES

APPROVALS

APPROVED BY THE CITY COUNCIL OF THE CITY OF BUCKEYE ON THIS _____ DAY OF _____, 2024.

BY: _____
MAYOR

ATTEST: _____
CITY CLERK

I CERTIFY THAT ALL ENGINEERING CONDITIONS AND REQUIREMENTS HAVE BEEN COMPLIED WITH.

BY: _____
BUCKEYE CITY ENGINEER DATE

BY: _____
DEVELOPMENT SERVICES DIRECTOR DATE

BASIS OF BEARING

BASIS OF BEARING IS ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 24, T.1N., R.4W. BEING N89°39'26"W WITH A DISTANCE OF 2670.94 FEET.

BENCHMARK

BENCHMARK DATUM:
HORIZONTAL LOCATION= SE COR SEC 24, T.1N., R.4W. FOUND BRASS CAP IN HANDHOLE.
ELEVATION = 967.84' NORTH AMERICAN VERTICAL DATUM 1988

AREA CALCULATIONS

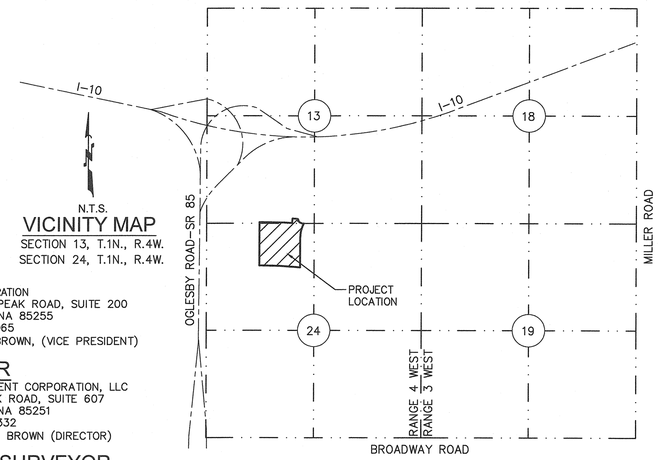
TRACTS	204,337 SQ.FT.	4.69 AC
LOTS = 109	716,513 SQ.FT.	16.45 AC
RIGHT OF WAY	212,467 SQ.FT.	4.88 AC
TOTAL	1,133,317 SQ.FT.	26.02 AC

RIGHT OF WAY TABLE

RIGHT OF WAY TABLE		
STREET	AREA SQ FT	AREA ACRES
263RD DRIVE	37,030	0.85
264TH DRIVE	20,920	0.48
264TH LANE	31,464	0.73
FLORENCE AVENUE	27,927	0.64
KINGMAN STREET	8,290	0.19
PAYSON ROAD	35,261	0.81
WILLIAMS STREET	28,310	0.65
WINSLOW AVENUE	23,265	0.53
TOTAL	212,467	4.88

LEGEND

⍋	SUBDIVISION CORNER TO BE SET
○	FOUND MONUMENT AS NOTED
◉	CENTERLINE MONUMENT (BRASS CAP)
PUE	PUBLIC UTILITY EASEMENT
MCR	MARICOPA COUNTY RECORDS
D	DELTA
R/W	RIGHT-OF-WAY
C1	CURVE TABLE NUMBER
L1	LINE TABLE NUMBER
①	33'x33' SIGHT VISIBILITY EASEMENT
VNAE	VEHICULAR NON-ACCESS EASEMENT
———	SUBDIVISION BOUNDARY
———	RIGHT OF WAY LINE
——— – ———	CENTERLINE
- - - - - - - - - -	EXISTING EASEMENT LINE
— — — — — —	NEW EASEMENT LINE
——— · · ———	SECTION LINE
———— ————	5' ROADWAY ACCESS EASEMENT ADJACENT RIGHT OF WAY (RWE)



VICINITY MAP

SECTION 13, T.1N., R.4W.
SECTION 24, T.1N., R.4W.

OWNER

D.R. HORTON INC,
A DELAWARE CORPORATION
7689 E. PINNACLE PEAK ROAD, SUITE 200
SCOTTSDALE, ARIZONA 85255
PHONE: 480-368-1065
CONTACT: PATRICK BROWN, (VICE PRESIDENT)

DEVELOPER

GARRETT DEVELOPMENT CORPORATION, LLC
6900 E. CAMELBACK ROAD, SUITE 607
SCOTTSDALE, ARIZONA 85251
PHONE 480-907-7332
CONTACT: WYATT P. BROWN (DIRECTOR)

ENGINEER/SURVEYOR

ATWELL, LLC
4700 E. SOUTHERN AVENUE
MESA, ARIZONA 85206
PHONE 480-218-8831
CONTACT: MICHAEL J. PARK (PE)
CONTACT: JAMES G. SPRING (PLS)

SHEET INDEX

DESCRIPTION	SHEET NO
COVER SHEET	1
KEY MAP, TRACT TABLE, LOT DETAIL AND LEGAL DESCRIPTION	2
PLAT SHEETS	3-6

NOTES

1. THE LOTS DEPICTED ON THIS PLAT ARE LOCATED WITHIN THE VICINITY OF LUKE AIR FORCE BASE AND MAY BE SUBJECT TO OVERFLIGHTS BY JET AIRCRAFT. ALL STRUCTURES WITHIN THIS PLAT SHALL BE CONSTRUCTED IN COMPLIANCE WITH THE STATUTORILY REQUIRED SOUND ATTENUATION STANDARDS.
2. THE PROPERTY OWNERS, OR ANY SUBSEQUENT OWNERS SHALL NOT PROCEED WITH ANY ON SITE GRADING OR EXCAVATION WITHOUT FIRST OBTAINING A PERMIT FROM THE CITY OF BUCKEYE.
3. IN ACCORDANCE WITH ARS § 9-461.07, THE CITY OF BUCKEYE HAS DETERMINED THAT ALL DEDICATIONS OCCURRING WITH THIS PLAT ARE IN CONFORMANCE WITH THE GENERAL PLAN.
4. PURSUANT TO A.R.S. § 42-11102, THE CITY OF BUCKEYE, A POLITICAL SUBDIVISION OF THE STATE OF ARIZONA, IS EXEMPT FROM ALL TAXES AND ASSESSMENTS BASED ON ASSESSED VALUE EXCEPT FOR SPECIAL DISTRICTS #14751 AND 14710, WHEN APPLICABLE.
5. THIS SITE CONSISTS OF A TOTAL OF 109 LOTS, 18 TRACTS, AND 1 PARCEL IN THE "PC" PLANNED COMMUNITY ZONING DISTRICT.
6. THIS FINAL PLAT IS IN SUBSTANTIAL CONFORMANCE WITH THE PRELIMINARY PLAT APPROVED ON JULY 13TH, 2004 UNDER CASE #PP04-09.
7. THIS SUBDIVISION WAS ISSUED A CERTIFICATE OF ASSURED WATER SUPPLY BY ARIZONA DEPARTMENT OF WATER RESOURCES ON OCTOBER 19TH, 2007 WITH ADWR CERTIFICATE #31-402138.0001.
8. NO STRUCTURE OF ANY KIND SHALL BE CONSTRUCTED OR ANY VEGETATION TO BE PLANTED OR BE ALLOWED TO GROW WITHIN ANY DRAINAGE EASEMENT WHICH WOULD IMPEDE THE FLOW OF WATER OVER, UNDER, OR THROUGH EASEMENTS.
9. FINAL PLAT APPROVAL BY THE CITY IS CONDITIONAL AND SUBJECT TO FINANCIAL ASSURANCES BEING IN PLACE FOR ALL IMPROVEMENTS AS SHOWN ON THE APPROVED PLANS. THE CITY WILL NOT RECORD ANY PLATS UNTIL SUCH TIME FINANCIAL ASSURANCES ARE IN PLACE. IF AFTER ONE YEAR FROM CITY COUNCIL APPROVAL THE FINAL PLAT HAS NOT BEEN RECORDED, THEN IT SHALL BE NULL AND VOID. A VALID PRELIMINARY PLAT NEEDS TO BE IN PLACE PRIOR TO APPROVAL OF ANY FINAL PLAT ASSOCIATED WITHIN THE PROJECT IN ACCORDANCE WITH THE DEVELOPMENT CODE. THE SIGNED PLAT WILL NOT BE SUBMITTED TO THE CITY FOR SIGNATURE AND RECORDING UNTIL THE FINANCIAL ASSURANCES ARE IN PLACE.
10. ALL NEW OR RELOCATED UTILITIES WILL BE PLACED UNDERGROUND EXCEPT POWER LINES 69KV AND LARGER.
11. IT IS ACKNOWLEDGED THAT THIS PROPERTY WILL BE PART OF A PARKWAY MAINTENANCE IMPROVEMENT DISTRICT (MID) AND STREET LIGHTING IMPROVEMENT DISTRICT (SLID) AT THE TIME THAT IT IS DEVELOPED, IN ACCORDANCE WITH BUCKEYE ORDINANCES 43-05 AND 42-06.
12. THE WATER EASEMENT DEDICATED HEREON WITHIN TRACT C7 IS INTENDED FOR FUTURE INSTALLATION OF WATER LINES. PRIOR TO THE INSTALLATION OF ANY FACILITIES WITHIN THE EASEMENT AREA, THE EXISTING DRAINAGE CHANNEL IN TRACT C7 SHALL BE RECONSTRUCTED IN A MANNER THAT PROVIDES A WATER EASEMENT CONFORMING TO THE REQUIREMENTS OF THE MOST RECENTLY ADOPTED CITY OF BUCKEYE ENGINEERING DESIGN STANDARDS.

FLOODZONE DESIGNATION

THE PROPERTY IS LOCATED WITHIN AN AREA DESIGNATED AS HAVING FLOOD ZONE X BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, ON FLOOD INSURANCE RATE MAP NO 04013C2115L, WITH A REVISION DATE OF OCTOBER 16TH, 2013 FOR COMMUNITY NO. 2115, IN THE CITY OF BUCKEYE, COUNTY OF MARICOPA, STATE OF ARIZONA, WHICH IS THE CURRENT FLOOD INSURANCE RATE MAP FOR THE COMMUNITY IN WHICH SAID PROPERTY IS SITUATED.

100 YEAR ASSURED WATER SUPPLY

THIS SUBDIVISION IS WITHIN THE CITY OF BUCKEYE WATER SERVICE AREA AND HAS OBTAINED A CERTIFICATE OF 100 YEAR ASSURED WATER SUPPLY FROM THE ARIZONA DEPARTMENT OF WATER RESOURCES, CERTIFICATE #31-402138.0001.

ZONING DESIGNATION

"PC" PLANNED COMMUNITY

SURVEYOR'S CERTIFICATION:

I, JAMES G. SPRING, HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR IN THE STATE OF ARIZONA, THAT THIS PLAT CONSISTING OF SIX SHEETS CORRECTLY REPRESENTS A BOUNDARY SURVEY MADE BY ME DURING THE MONTH OF JULY, 2024. THAT THE SURVEY IS TRUE AND CORRECT AS SHOWN, THAT ALL MONUMENTS EXIST OR WILL BE SET AND, THAT THEIR POSITIONS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

JAMES G. SPRING, PLS 22282
ATWELL, LLC
4700 E. SOUTHERN AVENUE
MESA, ARIZONA 85206

PROFESSIONAL LAND SURVEYOR CERTIFICATE NO. 22282 JAMES G. SPRING Date Signed 7/31/24 ARIZONA U.S.A. Expires 6-30-2025

NOTE:

A.R.S. § 32-151 STATES THAT THE USE OF THE WORD "CERTIFY" OR "CERTIFICATION" BY A PERSON OR FIRM THAT IS REGISTERED OR CERTIFIED BY THE BOARD IS AN EXPRESSION OF PROFESSIONAL OPINION REGARDING FACTS OR FINDINGS THAT ARE SUBJECT OF THE CERTIFICATION AND DOES NOT CONSTITUTE AN EXPRESS OR IMPLIED WARRANTY OR GUARANTEE.

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 13 & 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT
WESTPARK PHASE 2.2
"PARCEL 7S"
CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

ATWELL

PM. J. SPRING
DR. R. GILES
JOB NO. 21001100
N.T.S.
21001100 WESTPARK 7S FP.DWG
SHEET NO. 1 OF 6

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 7S\21001100 WESTPARK 7S FP.DWG SAVEDATE:8/5/2024 9:05 AM PLOTDATE:8/5/2024 8:30 AM

COPYRIGHT © 2024 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC

LEGAL DESCRIPTION

LOCATED IN A PORTION OF THE NORTHWEST QUARTER OF SECTION 24 AND THE SOUTHWEST QUARTER OF SECTION 13, TOWNSHIP 1 NORTH, RANGE 4 WEST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN MARICOPA COUNTY, ARIZONA

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND STONE IN HANDHOLE ACCEPTED AS THE SOUTH QUARTER CORNER OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 4 WEST, FROM WHICH A FOUND MONUMENT IN HANDHOLE, ACCEPTED AS THE SOUTHEAST CORNER OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 4 WEST,THEREOF BEARS N89°39'26"W A DISTANCE OF 2670.94 FEET;

THENCE, ALONG THE SOUTH LINE OF SAID SECTION 24, A DISTANCE OF 887.58 FEET;

THENCE, LEAVING THE SOUTH LINE OF SAID SECTION 24, N00°00'00"E A DISTANCE OF 4242.82 FEET, TO THE POINT OF BEGINNING;

THENCE, N89°13'42"W A DISTANCE OF 449.65 FEET;

THENCE, N00°01'42"W A DISTANCE OF 1067.29 FEET;

THENCE, N00°35'43"E A DISTANCE OF 12.82 FEET;

THENCE, S89°13'42"E A DISTANCE OF 605.00 FEET;

THENCE, S87°35'36"E A DISTANCE OF 51.89 FEET;

THENCE, S86°02'34"E A DISTANCE OF 159.00 FEET;

THENCE, N03°57'26"E A DISTANCE OF 115.00 FEET;

THENCE, S86°02'34"E A DISTANCE OF 100.16 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE RIGHT;

THENCE, EASTERLY ALONG SAID CURVE AN ARC LENGTH OF 35.45 FEET, WITH A RADIUS OF 180.00 FEET AND A CENTRAL ANGLE OF 11°17'08";

THENCE ALONG A LINE NON-TANGENT TO SAID CURVE, S19°47'06"E, A DISTANCE OF 31.47 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE LEFT;

THENCE, SOUTHWESTERLY ALONG SAID CURVE AN ARC LENGTH OF 22.25 FEET, WITH A RADIUS OF 760.00 FEET AND THE RADIAL BEARING OF S59°44'14"E AND A CENTRAL ANGLE OF 01°40'38";

THENCE ALONG A LINE NON-TANGENT TO SAID CURVE, S61°24'52"E, A DISTANCE OF 40.00 FEET;

THENCE, S19°32'06"E A DISTANCE OF 23.10 FEET;

THENCE, S66°39'39"E A DISTANCE OF 80.96 FEET;

THENCE, N70°04'54"E A DISTANCE OF 32.02 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE LEFT;

THENCE, SOUTHERLY ALONG SAID CURVE AN ARC LENGTH OF 361.44 FEET, WITH A RADIUS OF 740.00 FEET AND THE RADIAL BEARING OF S62°00'52"E AND A CENTRAL ANGLE OF 27°59'08";

THENCE, SOUTH A DISTANCE OF 747.76 FEET;

THENCE, N86°02'34"W A DISTANCE OF 515.00 FEET;

THENCE, N86°04'55"W A DISTANCE OF 55.00 FEET TO THE POINT OF BEGINNING.

TRACT TABLE

TRACT TABLE			
TRACT	AREA SQ FT	AREA ACRES	USAGES
TRACT A7	40,449	0.93	LANDSCAPE & OPEN SPACE
TRACT B7	5,642	0.13	LANDSCAPE & OPEN SPACE
TRACT C7	58,186	1.34	LANDSCAPE, OPEN SPACE & DRAINAGE
TRACT D7	531	0.01	LANDSCAPE & OPEN SPACE
TRACT E7	955	0.02	LANDSCAPE & OPEN SPACE
TRACT F7	463	0.02	LANDSCAPE & OPEN SPACE
TRACT G7	3,945	0.09	LANDSCAPE & OPEN SPACE
TRACT I5	462	0.02	LANDSCAPE & OPEN SPACE
TRACT J5	31,460	0.72	LANDSCAPE & OPEN SPACE
TRACT K5	584	0.01	LANDSCAPE & OPEN SPACE
TRACT M5	592	0.01	LANDSCAPE & OPEN SPACE
TRACT S6	463	0.01	LANDSCAPE & OPEN SPACE
TRACT U6	925	0.02	LANDSCAPE & OPEN SPACE
TRACT V6	935	0.02	LANDSCAPE & OPEN SPACE
TRACT W6	1,900	0.04	LANDSCAPE & OPEN SPACE
TRACT X6	928	0.02	LANDSCAPE & OPEN SPACE
TRACT Y6	54,993	1.26	LANDSCAPE & OPEN SPACE
TRACT Z6	925	0.02	LANDSCAPE & OPEN SPACE
TOTAL	204,338	4.68	

LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	N00°35'43"E	12.82'
L2	S87°35'36"E	51.89'
L3	S86°02'34"E	159.00'
L4	N03°57'26"E	115.00'
L5	S86°02'34"E	100.16'
L6	S19°47'06"E	31.47'
L7	S61°24'52"E	40.00'
L8	S19°32'06"E	23.10'
L9	S66°39'39"E	80.96'
L10	N70°04'54"E	32.02'
L11	N86°04'55"W	55.00'

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C1	35.45'	180.00'	011°17'08"
C2	22.25'	760.00'	001°40'38"
C3	361.44'	740.00'	027°59'08"

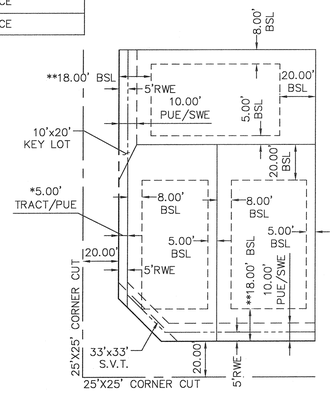
LOT DETAIL

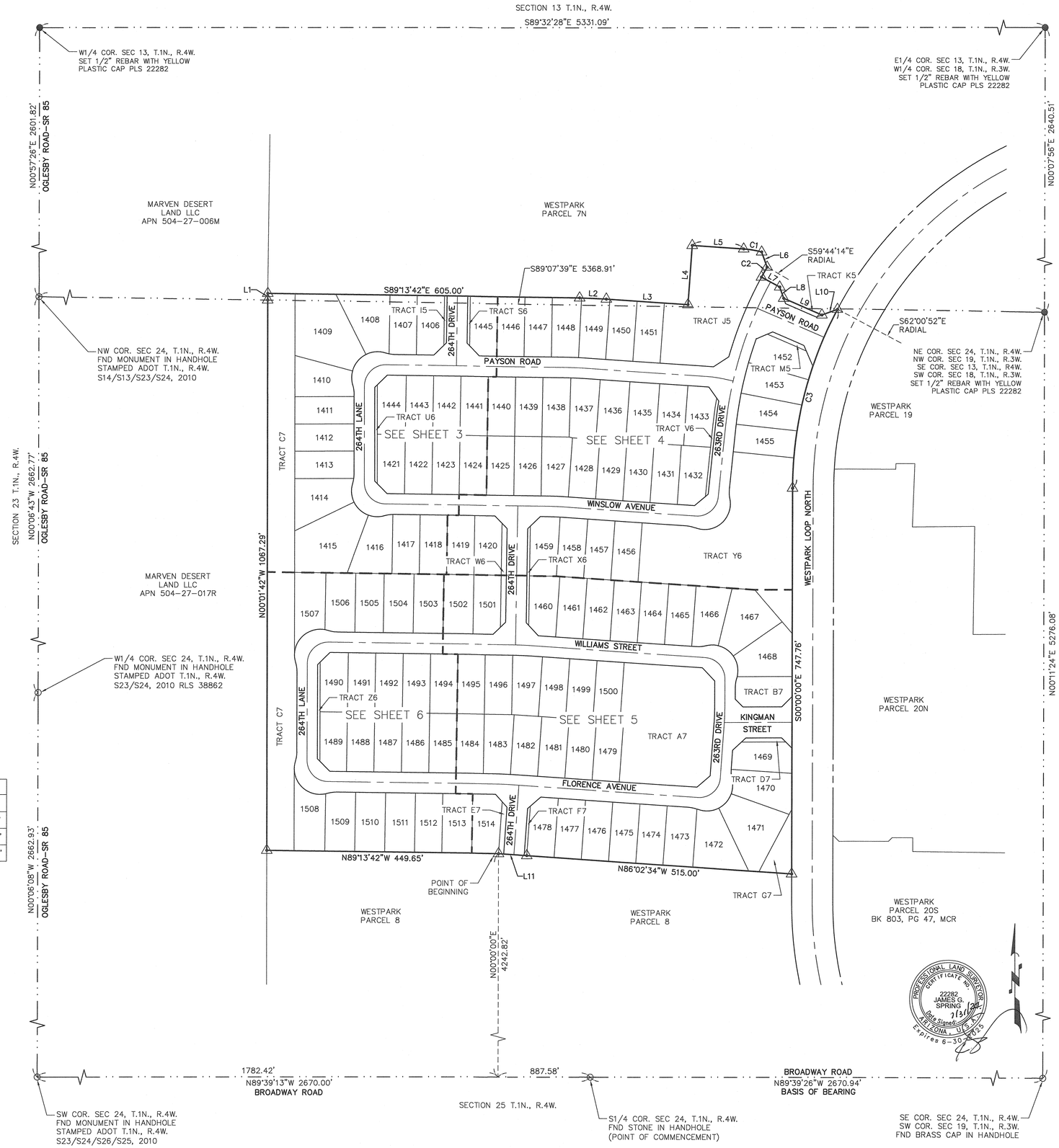
TYPICAL LOT DETAIL – 53' WIDTH
LOT COVERAGE 65% AS PER DEVELOPMENT STANDARDS

VARIED CONDITIONS:
* = 5' MIN. – 10' MAX.
(DEPENDENT ON 10' PUE ON OPPOSITE SIDE OF STREET)

** = 10' TO SIDE ENTRY GARAGE
= 12' TO LIVABLE AREA
= 18' TO GARAGE

SPECIAL NOTES:
1) SETBACKS MEASURED FROM PROPERTY LINE.
2) FRONT YARD SETBACKS TO BE STAGGERED 3' SO NO TWO CONSECUTIVE FRONTAGES MATCH.
3) DRIVEWAY SHALL NOT BE LESS THAN 20 FEET IN LENGTH FROM FACE OF GARAGE TO BACK OF THE SIDEWALK OR TO CURRENT DEVELOPMENT CODE STANDARDS.
4) RWE = ROADWAY ACCESS EASEMENT





ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 13 & 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT

WESTPARK PHASE 2.2 "PARCEL 7S"

CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

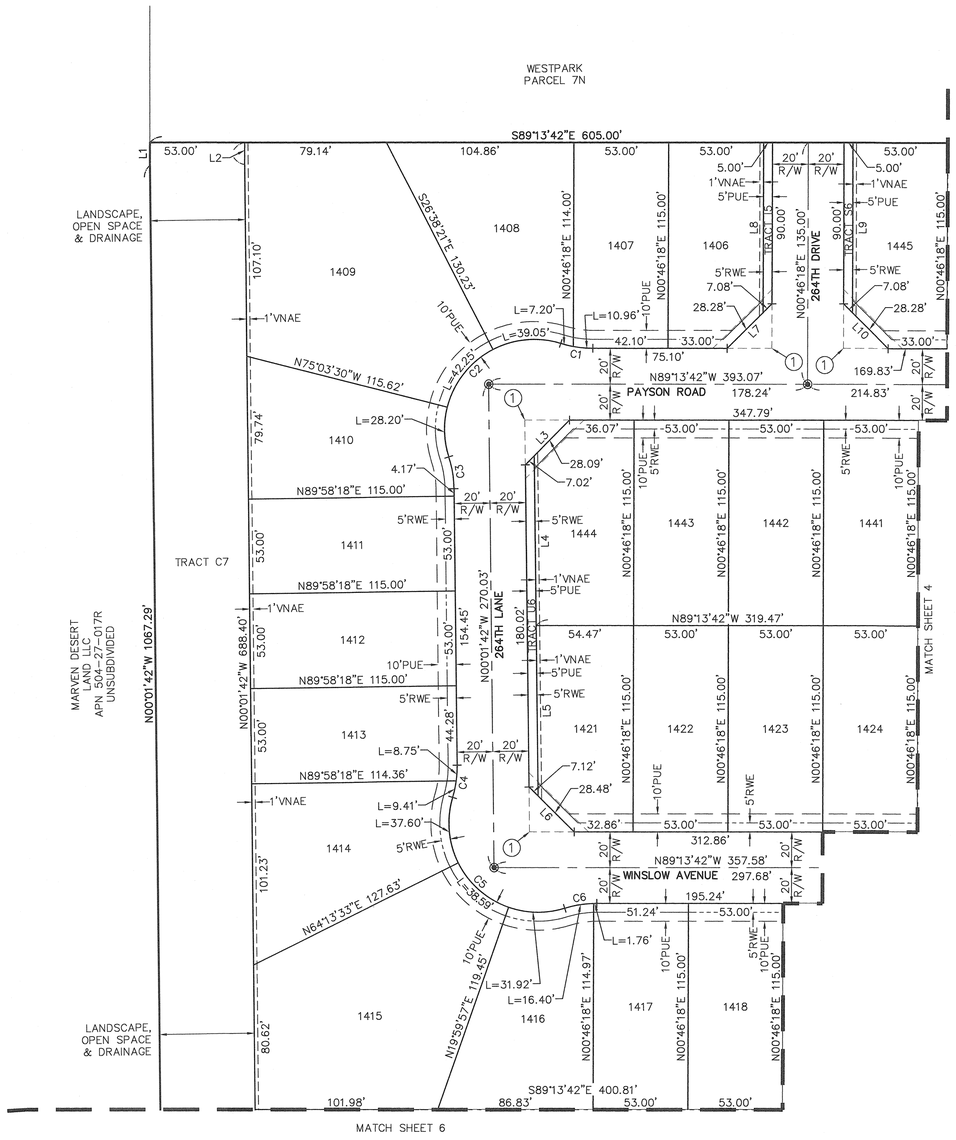
ATWELL

PM.	J. SPRING
DR.	R. GILES
JOB NO.	21001100
SCALE	0 50 100
	1" = 100 FEET
	21001100 WESTPARK 7S FP.DWG
SHEET NO.	2 OF 6

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 7S\21001100 WESTPARK 7S FP.DWG SAVEDATE:7/31/2024 12:35 PM PLOTDATE:7/31/2024 12:37 PM

CITY OF BUCKEYE PLANNING NO. PLZS 23-00016

COPYRIGHT © 2024 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC



LOT TABLE			LOT TABLE		
LOT	AREA SQ FT	AREA ACRES	LOT	AREA SQ FT	AREA ACRES
1406	5895	0.135	1417	6095	0.140
1407	6091	0.140	1418	6095	0.140
1408	8481	0.195	1421	5971	0.137
1409	14842	0.341	1422	6095	0.140
1410	7267	0.167	1423	6095	0.140
1411	6095	0.140	1424	6095	0.140
1412	6095	0.140	1441	6095	0.140
1413	6093	0.140	1442	6095	0.140
1414	8301	0.191	1443	6095	0.140
1415	13643	0.313	1444	6156	0.141
1416	7534	0.173	1445	5895	0.135

LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	N00°35'43"E	12.82'
L2	N00°35'43"E	12.36'
L3	N45°22'18"E	35.11'
L4	N00°01'42"W	95.01'
L5	N00°01'42"W	95.01'
L6	N44°37'42"W	35.60'
L7	N45°46'18"E	35.36'
L8	N00°46'18"E	95.00'
L9	N00°46'18"E	95.00'
L10	N44°13'42"W	35.36'

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C1	18.16'	60.00'	017°20'29"
C2	109.50'	50.00'	125°28'58"
C3	18.16'	60.00'	017°20'29"
C4	18.16'	60.00'	017°20'29"
C5	108.11'	50.00'	123°52'58"
C6	18.16'	60.00'	017°20'29"

(1)=SVT 33'X33' TYPICAL

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 13 & 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT
WESTPARK PHASE 2.2
"PARCEL 7S"
CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

ATWELL

PM. J. SPRING
DR. R. GILES
JOB NO. 21001100
SCALE 0 20 40
1" = 40 FEET
21001100 WESTPARK 7S FP.DWG
SHEET NO. 3 OF 6

PROFESSIONAL LAND SURVEYOR
CERTIFICATE NO.
22282
JAMES G. SPRING
7/31/24
State Signed
ARIZONA U.S.A.
Expires 6-30-2025

CITY OF BUCKEYE PLANNING NO. PLZS 23-00016

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 7S\21001100 WESTPARK 7S FP.DWG SAVEDATE: 7/31/2024 12:35 PM PLOTDATE: 7/31/2024 12:37 PM

COPYRIGHT © 2024 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC



LOT TABLE			LOT TABLE		
LOT	AREA SQ FT	AREA ACRES	LOT	AREA SQ FT	AREA ACRES
1419	6095	0.140	1439	6095	0.140
1420	5983	0.137	1440	6095	0.140
1425	6095	0.140	1446	6095	0.140
1426	6095	0.140	1447	6095	0.140
1427	6466	0.148	1448	6290	0.144
1428	6095	0.140	1449	6259	0.144
1429	6095	0.140	1450	6174	0.142
1430	6095	0.140	1451	6175	0.142
1431	6095	0.140	1452	6564	0.151
1432	6084	0.140	1453	6742	0.155
1433	6205	0.142	1454	6676	0.153
1434	6386	0.147	1455	6259	0.144
1435	6757	0.155	1456	6095	0.140
1436	6757	0.155	1457	6095	0.140
1437	6351	0.146	1458	6133	0.141
1438	6152	0.141	1459	6118	0.140

LINE TABLE			LINE TABLE		
LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH
L11	S87°35'36"E	51.89'	L25	S66°39'39"E	65.94'
L13	S86°02'34"E	159.00'	L26	N67°04'55"E	34.57'
L14	S86°02'34"E	100.16'	L27	N54°28'47"E	38.77'
L15	S19°47'06"E	31.47'	L28	S77°39'03"E	20.00'
L16	S61°24'52"E	40.00'	L29	N37°50'02"W	33.31'
L17	S19°32'06"E	23.10'	L30	S05°56'29"W	45.42'
L18	N19°32'06"W	34.02'	L31	N05°56'29"E	95.07'
L19	S66°39'39"E	65.03'	L32	N49°56'57"E	35.96'
L20	S66°39'39"E	80.96'	L33	N45°46'18"E	35.36'
L21	N70°04'54"E	32.02'	L34	N00°46'18"E	95.42'
L22	S70°04'54"W	43.70'	L35	N00°46'18"E	100.00'
L23	S23°24'12"E	43.70'	L36	N44°13'42"W	35.36'
L24	N66°39'39"W	82.10'			

CURVE TABLE				CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA	CURVE #	LENGTH	RADIUS	DELTA
C7	35.45'	180.00'	011°17'08"	C16	32.25'	580.00'	003°11'08"
C8	22.25'	760.00'	001°40'38"	C17	51.45'	765.00'	003°51'12"
C9	292.46'	740.00'	022°38'39"	C18	46.54'	760.00'	003°30'31"
C10	174.53'	720.00'	013°53'19"	C19	18.16'	60.00'	017°20'29"
C11	7.93'	220.00'	002°03'55"	C20	107.07'	50.00'	122°41'55"
C12	29.29'	200.00'	008°23'32"	C21	18.16'	60.00'	017°20'29"
C13	1.66'	180.00'	000°31'44"	C22	28.91'	520.00'	003°11'08"
C14	34.47'	620.00'	003°11'08"	C23	27.80'	500.00'	003°11'08"
C15	33.36'	600.00'	003°11'08"	C24	26.69'	480.00'	003°11'08"

(1) = SVT 33'X33' TYPICAL

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 13 & 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT
WESTPARK PHASE 2.2 "PARCEL 7S"
CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

ATWELL

PM. J. SPRING
DR. R. GILES
JOB NO. 21001100

SCALE 0 20 40
1" = 40 FEET

21001100 WESTPARK 7S FP.DWG

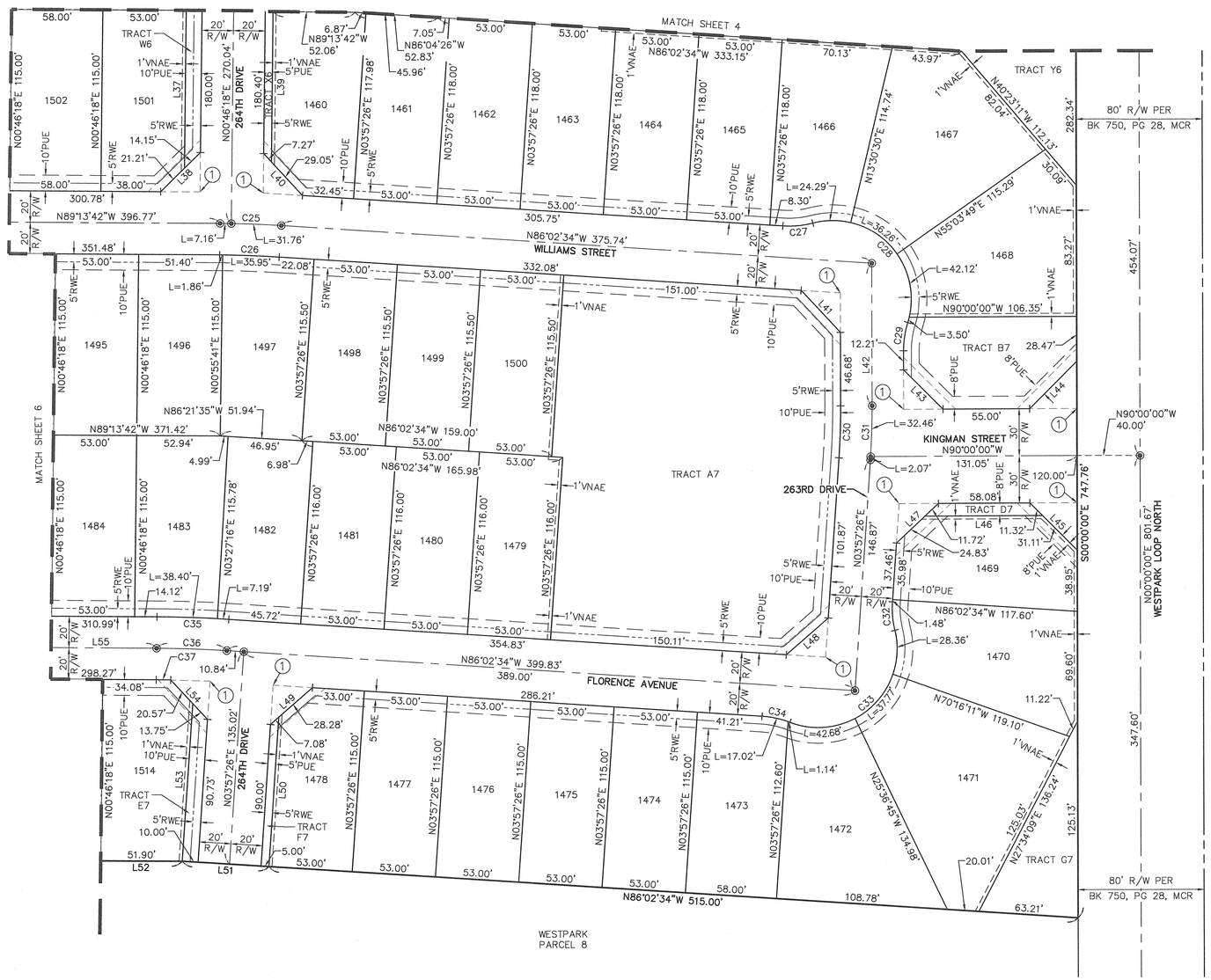
SHEET NO. 4 OF 6

PROFESSIONAL LAND SURVEYOR CERTIFICATE NO. 22282 JAMES G. SPRING Date Signed 7/31/24 ARIZONA U.S.A. Expires 6-30-2025

CITY OF BUCKEYE PLANNING NO. PLZS 23-00016

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 7S\21001100 WESTPARK 7S FP.DWG SAVEDATE:7/31/2024 12:35 PM PLOTDATE:7/31/2024 12:37 PM

COPYRIGHT © 2024 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC



LOT TABLE			LOT TABLE		
LOT	AREA SQ FT	AREA ACRES	LOT	AREA SQ FT	AREA ACRES
1460	6299	0.145	1477	6095	0.140
1461	6253	0.144	1478	5895	0.135
1462	6254	0.144	1479	6148	0.141
1463	6254	0.144	1480	6148	0.141
1464	6254	0.144	1481	6148	0.141
1465	6254	0.144	1482	6191	0.142
1466	6969	0.160	1483	6364	0.146
1467	9414	0.216	1484	6095	0.140
1468	8489	0.195	1495	6095	0.140
1469	6190	0.142	1496	6107	0.140
1470	7467	0.171	1497	6349	0.146
1471	11039	0.253	1498	6121	0.141
1472	8625	0.198	1499	6122	0.141
1473	6657	0.153	1500	6122	0.141
1474	6095	0.140	1501	5983	0.137
1475	6095	0.140	1502	6670	0.153
1476	6095	0.140	1514	6224	0.143

LINE TABLE			LINE TABLE		
LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH
L37	N00°46'18"E	100.00'	L47	N46°58'43"E	36.55'
L38	N45°46'18"E	35.36'	L48	N48°57'26"E	35.36'
L39	N00°46'18"E	95.26'	L49	N48°57'26"E	35.36'
L40	N42°38'08"W	36.32'	L50	N03°57'26"E	92.00'
L41	N43°01'17"W	36.55'	L51	S86°04'55"E	55.00'
L42	N00°00'00"E	90.34'	L52	N89°13'42"W	449.65'
L43	N45°00'00"W	35.36'	L53	N03°57'26"E	96.89'
L44	N45°00'00"E	42.43'	L54	N42°41'54"W	34.32'
L45	N45°00'00"W	42.43'	L55	N89°13'42"W	355.71'
L46	N90°00'00"W	74.65'			

CURVE TABLE				CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA	CURVE #	LENGTH	RADIUS	DELTA
C25	38.92'	700.00'	003°11'08"	C32	18.16'	60.00'	017°20'29"
C26	37.81'	680.00'	003°11'08"	C33	108.81'	50.00'	124°40'58"
C27	19.14'	60.00'	018°16'33"	C34	18.16'	60.00'	017°20'29"
C28	106.17'	50.00'	121°39'36"	C35	45.59'	820.00'	003°11'08"
C29	18.16'	60.00'	017°20'29"	C36	44.48'	800.00'	003°11'08"
C30	33.15'	480.00'	003°57'26"	C37	9.23'	780.00'	000°40'42"
C31	34.53'	500.00'	003°57'26"				

(1)=SVT 33'X33' TYPICAL

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION:13 & 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT
WESTPARK PHASE 2.2
"PARCEL 7S"
CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

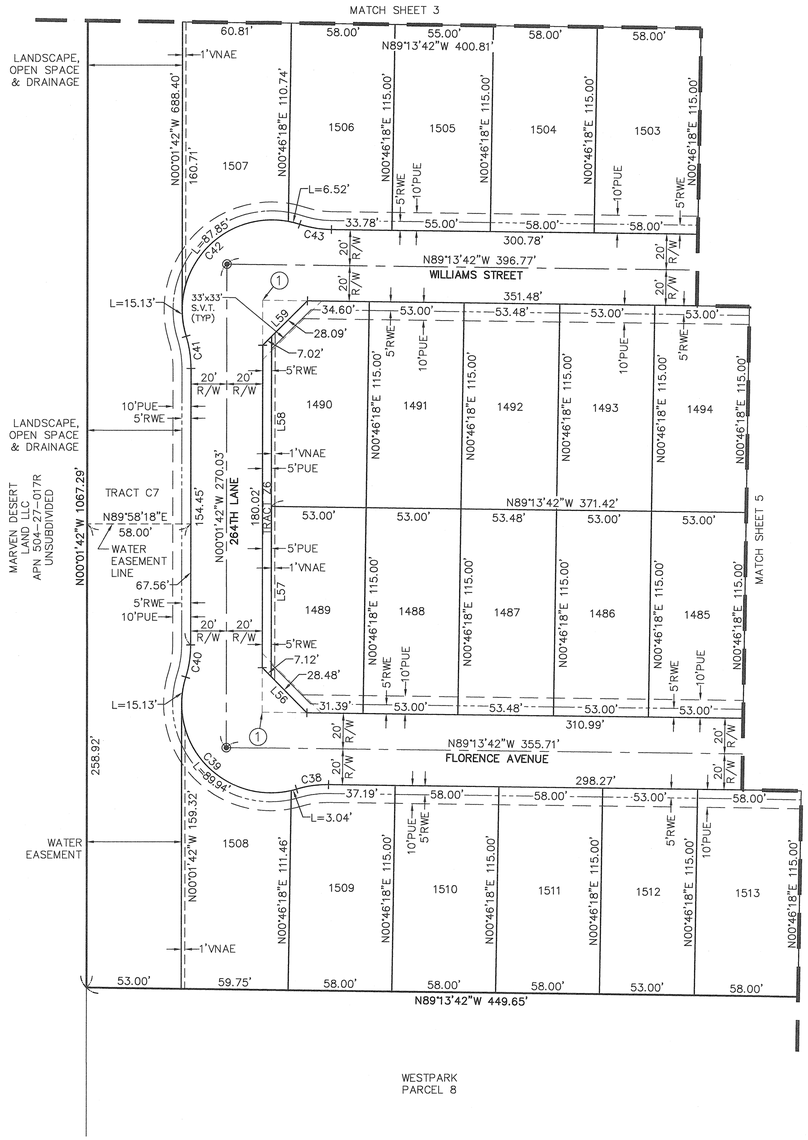
ATWELL
PM. J. SPRING
DR. R. GILES
JOB NO. 21001100
SCALE 0 20 40
1" = 40 FEET
21001100 WESTPARK 7S FP.DWG
SHEET NO. 5 OF 6

PROFESSIONAL LAND SURVEYOR CERTIFICATE NO. 72282 JAMES G. SPRING Date Signed 7/31/24 ARIZONA U.S.A. Expires 6-30-25

CITY OF BUCKEYE PLANNING NO. PLZS 23-00016

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 7S\21001100 WESTPARK 7S FP.DWG SAVEDATE:7/31/2024 12:35 PM PLOTDATE:7/31/2024 12:37 PM

COPYRIGHT © 2024 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC



LOT TABLE			LOT TABLE		
LOT	AREA SQ FT	AREA ACRES	LOT	AREA SQ FT	AREA ACRES
1485	6095	0.140	1504	6670	0.153
1486	6095	0.140	1505	6325	0.145
1487	6150	0.141	1506	6631	0.152
1488	6095	0.140	1507	7161	0.164
1489	5803	0.133	1508	7182	0.165
1490	5987	0.137	1509	6645	0.153
1491	6095	0.140	1510	6670	0.153
1492	6150	0.141	1511	6670	0.153
1493	6095	0.140	1512	6095	0.140
1494	6095	0.140	1513	6670	0.153
1503	6670	0.153			

LINE TABLE		
LINE #	DIRECTION	LENGTH
L56	N44°37'42"W	35.60'
L57	N00°01'42"W	95.01'
L58	N00°01'42"W	95.01'
L59	N45°22'18"E	35.11'

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C38	18.16'	60.00'	017°20'29"
C39	108.11'	50.00'	123°52'58"
C40	18.16'	60.00'	017°20'29"
C41	18.16'	60.00'	017°20'29"
C42	109.50'	50.00'	125°28'58"
C43	18.16'	60.00'	017°20'29"

(1)=SVT 33'X33' TYPICAL

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 13 & 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT

WESTPARK PHASE 2.2 "PARCEL 7S"

CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

ATWELL

PM. J. SPRING
DR. R. GILES
JOB NO. 21001100
SCALE 0 20 40
1" = 40 FEET
21001100 WESTPARK 7S FP.DWG
SHEET NO. 6 OF 6

PROFESSIONAL LAND SURVEYOR CERTIFICATE NO. 22282 JAMES G. SPRING Date Signed 7/31/24 ARIZONA U.S.A. Expires 6-30-25

CITY OF BUCKEYE PLANNING NO. PLZS 23-00016

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 7S\21001100 WESTPARK 7S FP.DWG SAVEDATE:7/31/2024 12:35 PM PLOTDATE:7/31/2024 12:37 PM

6R PLZS-23-00016 RECEIVED AUG 01 2024 WD

STATE OF ARIZONA
DEPARTMENT OF WATER RESOURCES
CERTIFICATE OF ASSURED WATER SUPPLY

This is to certify that

KEMF WP 2.2, LLC, an Arizona limited liability company, Owner, D.R.Horton, Inc., a Delaware corporation, Buyer, Century Communities of Arizona , an Arizona limited liability company, Buyer and GDC WP 2.2, LLC, an Arizona limited liability company, Buyer,

have met the requirements of A.R.S. §§ 45-576 and A.A.C.R12-15-701 et. seq., and

By powers vested in the Director of the Arizona Department of Water Resources by the State of Arizona, and subject to the conditions contained in A.A.C. R12-15-701 et seq.,

Are issued this Certificate of Assured Water Supply for

Westpark Phase 2.2 Parcels 7N, 7S, 8, 19 and 20N
Township 1 North, Range 4 West, Sections 13 and 24
GSRB&M Maricopa County, PHOENIX AMA

The referenced subdivision consists of **446 lots** as described in the preliminary plat on file with the Department, and has an estimated water demand of **199.52 acre-feet per year.** The subdivision will be served **groundwater** by **the City of Buckeye.**

This Certificate is invalid as to any entity not named above.
This Certificate may be assigned pursuant to A.A.C. R12-15-705.

Certificate Number: 31-402138.0001
Original Issue Date: October 19, 2007

ARIZONA DEPARTMENT OF WATER RESOURCES

Carol M. Ward

Assistant Director

July 29, 2024
Date

TYPE A CERTIFICATE

CITY OF BUCKEYE
Regular Council Meeting
COUNCIL ACTION REPORT

MEETING DATE: 09/03/24	**AGENDA ITEM:** 4.G. DS - Westpark Phase 2.2 "Parcel 8" - Final Plat - PLZS-23-00017
DATE PREPARED: 08/29/24	**DISTRICT NO.:** Council District 3
STAFF LIAISON: Patricia Cooley, Planner 1, pcooley@buckeyeaz.gov, (623) 349-6233	
DEPARTMENT: Development Services	**AGENDA ITEM TYPE:** Consent Agenda Items / New Business

ACTION/MOTION: (This language identifies the formal motion to be made by the Council)
Council to take action on a Final Plat of Westpark Phase 2.2 "Parcel 8," located at the northwest corner of West Westpark Loop North and West Warner Street.

SUMMARY

PROJECT DESCRIPTION:
Barry Lindner from Atwell, Inc, on behalf of DR Horton Inc, is requesting approval of a Final Plat of Westpark Phase 2.2 "Parcel 8" located at the northwest corner of W. Westpark Loop North and W. Warner Street. The project encompasses approximately 17.3 acres and includes 85 single-family lots,12 tracts and 3.21 acres of open space with an overall density of approximately 4.91 dwelling units per acre. Approximately 3.04 acres of Right-of-way (ROW) is being dedicated to the City of Buckeye through this Final Plat. The proposal is in substantial conformance with the Preliminary Plat. The Final Plat is accompanied by a Certificate of Assured Water Supply from the Department of Water Resources, per A.R.S. 9-463.01(I).

BENEFITS:
The subject Final Plat will allow continued development of traditional single-family residences within the City of Buckeye.

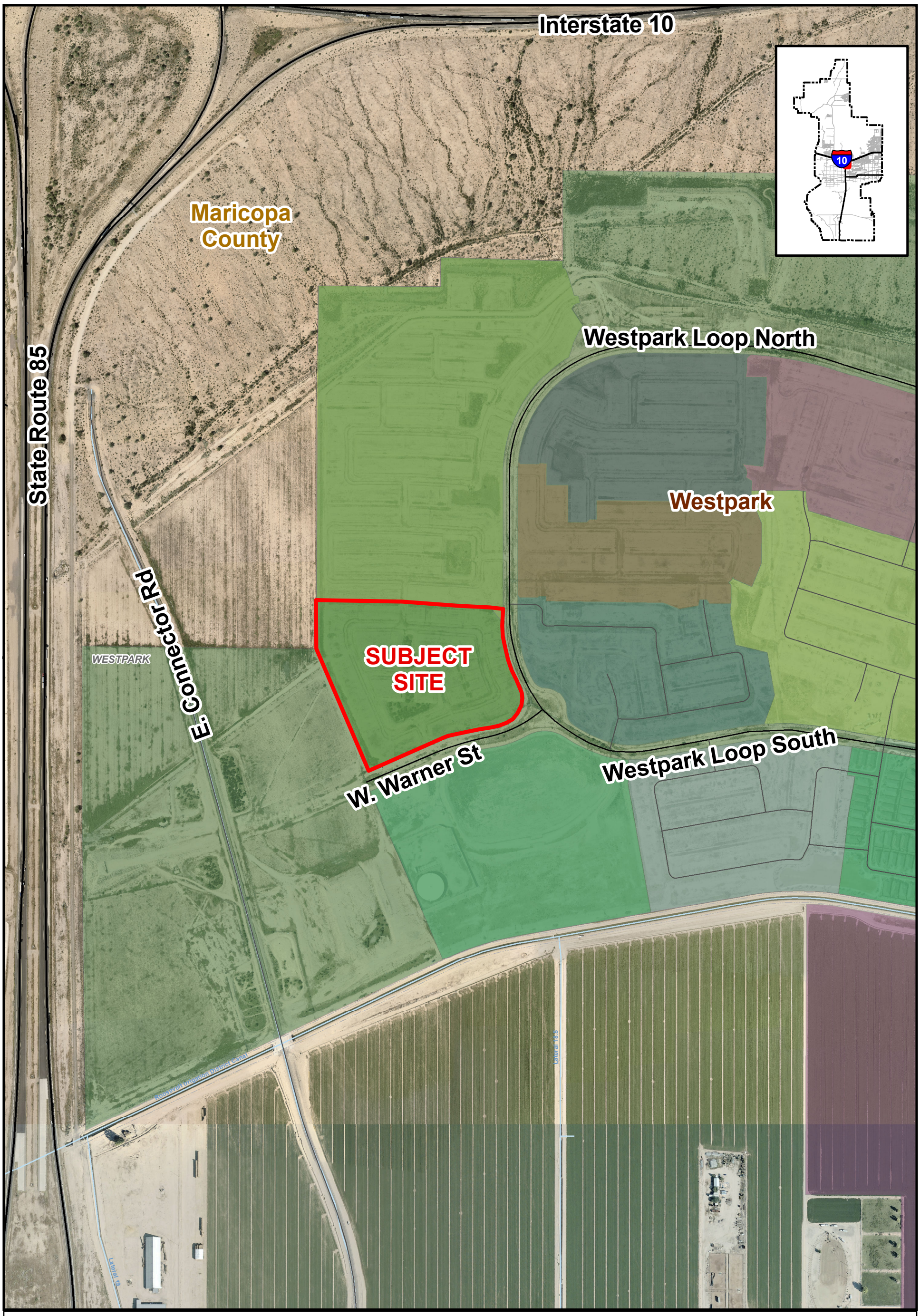
FINANCIAL IMPACT STATEMENT:
Although a fiscal impact analysis has not been conducted on this specific project, all new development will have an ongoing fiscal impact on the city. The development is responsible for construction of all infrastructure necessary to serve the site and will generate one-time revenue for the city such as permit fees, construction sales tax and development impact fees. Longer term fiscal impacts include increased demands for municipal services, the costs of which may or may not be offset by increased property values/tax levies, city sales tax, state shared revenues and the increased demand for commercial and retail development. Any areas that will be maintained by the city are constructed by the developer and then conveyed to the city two (2) years after construction.

FINANCIAL IMPACT STATEMENT:
Although a fiscal impact analysis has not been conducted on this specific project, all new development will have an ongoing fiscal impact on the city. The development is responsible for construction of all infrastructure necessary to serve the site and will generate one-time revenue for the city such as permit fees, construction sales tax and development impact fees. Longer term fiscal impacts include increased demands for municipal services, the costs of which may or may not be offset by increased property values/tax levies, city sales tax, state shared revenues and the increased demand for commercial and retail development. Any areas that will be maintained by the city are constructed by the developer and then conveyed to the city two years after construction.

Items related to a project or facility location must include an attached vicinity map for Council Review.

ATTACHMENTS:

Exhibit A - PLZS-23-00017 - Westpark Parcel 8 - Final Plat - Vicinity Map.pdf
Exhibit B - PLZS-23-00017 - Westpark Parcel 8 - Final Plat - Narrative.pdf
Exhibit C - PLZS-23-00017 - Westpark Parcel 8 - Final Plat - Final Plat.pdf
Exhibit D - PLZS-23-00017 - Westpark Parcel 8 - Final Plat - CAWS.pdf



VICINITY MAP

PLZS-23-00017
Westpark Phase 2.2 Parcel 8 Final Plat
City Council District 3

BUCKEYE, AZ

N W E S

4R PLZS-23-00017 RECEIVED DEC 12 2023 AL

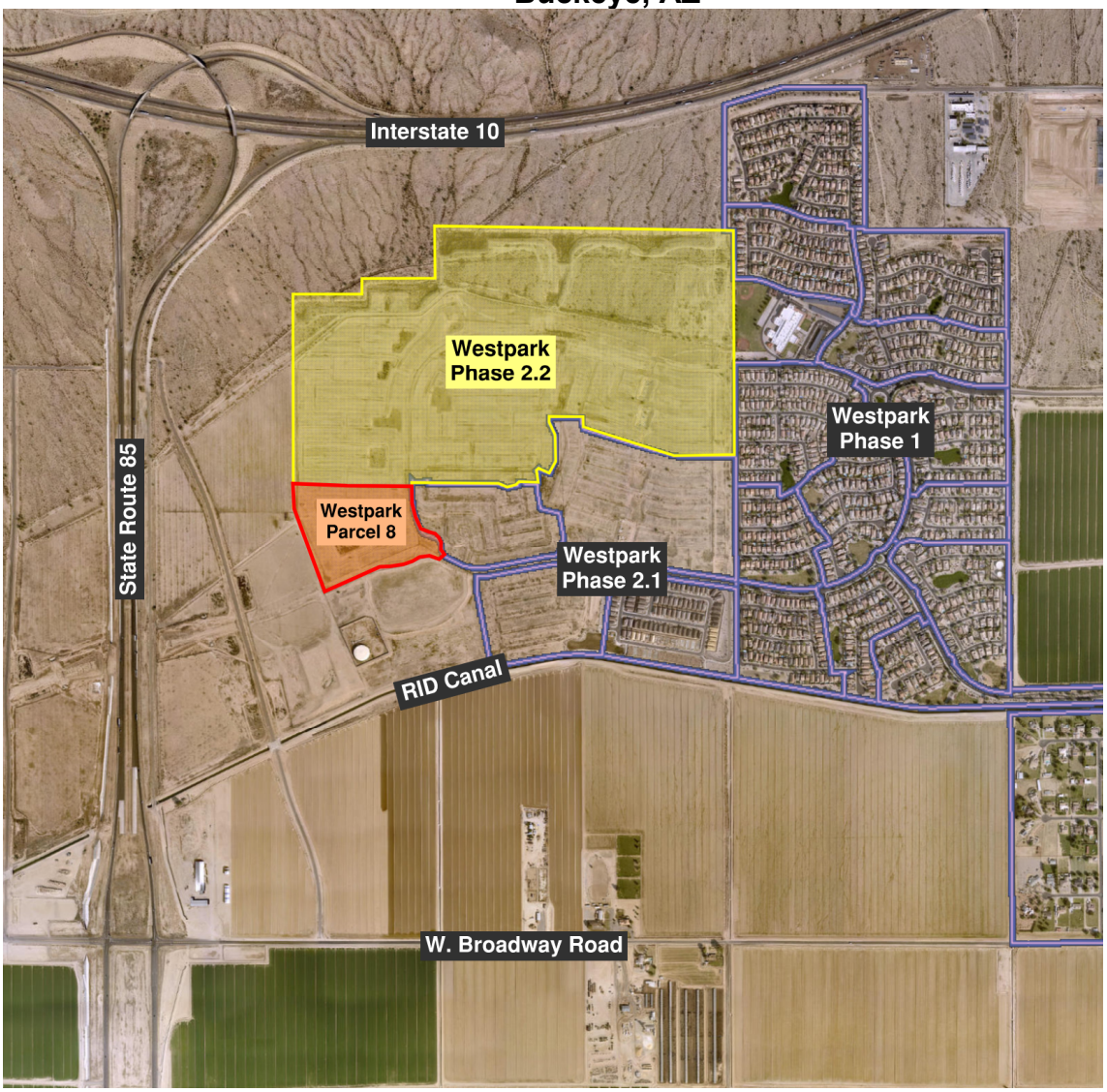
Final Plat Narrative Report

For

Westpark – Phase 2.2
Parcel 8

PLZS-23-00017

SEC of I-10 & SR-85
Buckeye, AZ



4700 E. Southern Avenue, Mesa, AZ 85206 Tel: 480.218.8831 Fax: 480.830.4888
www.atwell-group.com

Purpose of Request

The primary purpose of the subject Final Plat submittals is to fulfill prior project entitlements and to complete site development of Phase 2.2 for the existing Westpark residential subdivision. This current phase of the project will focus on completing the remaining portions of the Westpark Loop Road and Warner Street infrastructure, as well as continue with final development approvals to permit full construction of Parcels 5, 6, 7N, 7S, 8, 18N, 19 and 20N. The improvements for the remaining portions of the West Park Loop Road and Warner Street will be completed under a separate cover specific to only off-site improvements while each of the different parcels will be constructed under individual on-site covers. Refer to the Development Standards section of this narrative for a table of the approved and proposed development zoning conditions. Developer is expecting to commence construction of Westpark Loop North before the end of the year. Agreements with builders and other developers affect the schedule with the intent to construct Westpark Loop North first, then Parcels 8, 7S & 19. The development schedule of the remaining parcels is not certain at this time.

Project Background & Current Conditions

The overall Westpark subdivision is located at the southeast corner of the intersection of Interstate 10 (I-10) and State Route 85 (SR-85) in Buckeye, Arizona. As it sits today, the overall subdivision is mostly surrounded by undeveloped desert and agricultural farmlands with an existing development directly southeast. It is bordered to the south by the RID Canal but is not necessarily served by those irrigation facilities. Public vehicular access is currently only provided from Miller Road to the East. There are two access points to Miller Road, and they are the North and South Westpark Loop Road connections. A tertiary access road identified as E. Connector Road was constructed in 2010. This road connects to W. Broadway Road to the south, bridges the RID Canal, then stops at a point along the old SR-85 frontage road just south of the intersection with I-10. There are future plans by the developers to connect this over to the existing end of W. Durango Street, just north of Phase 1. Eventually, additional interior street connections with Westpark will be made to aide in overall vehicular circulation and connectivity with local roadways.

The subdivision was originally planned as “Roston/Buckeye” and received approval of its Community Master Plan (CMP) in October of 2000 since it was consistent with the City’s General Plan Land Use Designation of “Master Planned Community” (MPC). Several amendments have occurred over the years since it’s initial approval to enact minor updates to better suit the changing needs of the City and surrounding area. A Preliminary Plat of Westpark Phase 2, Project No. PP04-09, was approved in mid-2004 and is the basis for the scope of work proposed with the subject project submittals. Parcel 8 is proposing 85 lots over a total of 17.30 acres, which equates to a density of 4.91 dwelling units per acre. The minimum lot size proposed is 45’x110’. While the parcel has an overlying zoning of Planned Community (PC), the development standards remain consistent with the City’s underlying applicable residential zoning standards and maintain the initial intent and approvals of the CMP.

Construction of Phase 1 began around 2004 and met full build-out in 2007. With Phase 1 nearing completion and the need for further expansion, Phase 2 began construction in 2006 but stalled out after mass grading and some portions of infrastructure work. The mass grading covered a predominance of the Phase 2 area, but a small portion of the northerly parcels was left in a natural state due to an irrigation supply ditch that was necessary to remain in service at the time. Since then, the subject ditch has been decommissioned and is no longer needed. The site has remained in a partially completed state until the southeasterly portion of it (identified as Phase 2.1 and consisting of platted Parcels 13, 14, 18S and 20S) was resurrected recently in 2019 by a separate ownership entity. These four parcels are continuing development pursuit by said owner on a parallel track to the subject Phase 2.2 work. Currently, Parcel 14 is complete, Parcel 18S has approved plans, and improvement plans for Parcels 13 and 20S are in progress.

The mass grading work established large offsite drainage attenuating basins along the entire northerly portion of the property. These basins intercept offsite runoff then route them accordingly and discharge in the historic courses. Individual parcels will maintain the necessary offsite routing as well as provide for the required onsite stormwater management addressing the 100-year design conditions as typical. Existing ground conditions have been maintained over the years to keep unwanted vegetation growth at bay and to ensure the in-place network of surface basins and drainageways function as needed. Natural terrain falling from northeast to southwest remains as the overall condition.

Utilities and Services

Water and sewer are both provided to and serving the Westpark subdivision by the City of Buckeye. Westpark falls within the limits of the City's water pressure Zone 2. This zone is primarily supplied by a facility identified as the North Airport Road Water Campus (NARWC), which is located approximately 8-miles northeast of Westpark. The primary supply of water is brought to the subdivision by offsite 16" transmission mains located within W. Durango Street and Miller Road. Phase 1 contains distribution mains throughout which vary in size from 6" through 16" which stop at Phase 2 for continuation. Phase 2 will install the same type and sizes of potable distribution throughout and a new 16" connection to the offsite main in W. Durango Street to help bolster the overall system's capabilities. A 16" main line stub exists at the west end of Warner Street for future connection and further continuation of the water system. Parcel 8's potable water distribution is mostly comprised of 8" mains and connects to the 16" main within the Warner Street at one location, an 8" stub in S 264th Avenue. A main extension through Parcel 7S via Florence Avenue, S. 263rd Drive & Kingman Street is necessary to create a looped system.

Similar to the water distribution, sewage collection is provided throughout the existing subdivision utilizing a network of 8" through 10" public collection gravity main lines. Due to the gravity design of the sewer following the natural terrain, the individual parcels within Phase 2 cascade through one another as the site sewerage flows from north to south. Infrastructure for the Phase 2.2 parcels will be constructed in a manner that starts with the lower end of the system so that dependent parcels are able to discharge once flow demands come online. Parcel 8's system is at a low point in the overall system and consists of 8" & 10" sewer lines that ultimately drain to S 264th Avenue and connects to the existing 8" main in Warner Street. Existing Westpark Phase 1 discharges at its southwest corner and Phase 2 discharges at its southeast corner, meeting at an existing 18" main on the north side of the RID Canal at the intersection with the Rooks Road alignment. From there, the existing 18" main heads south, crosses the canal, then continues roughly 5 miles southeast where it ends up at the Beloat Wastewater Treatment Plant facility (which is located just south of downtown Buckeye, southeast of the intersection of S. Miller Road and E. Irwin Avenue). The plant currently has capacity to serve the Westpark Phase 2.2 build-out.

Other public utilities and service providers include Arizona Public Service (APS) for electrical with cable and telephone provided by both CenturyLink and Cox. Additionally, refuse/recycle service is handled by the City of Buckeye for typical residential collection services.

Emergency services are handled within the City's jurisdictional limits and are provided by Buckeye Fire Department and Buckeye Police Department. The nearest Fire Station to serve Phase 2.2 already exists within the Phase 1 limits. Buckeye Fire Station #706 is located just east of Parcel 5, on the north side of the adjacent Westpark Elementary School. An additional future Fire Station site has been slated for a vacant parcel within the Phase 2.2 limits but is not yet defined for construction. The primary Buckeye Police Station dispatches from their home base located at 100 N. Apache Road, which is south of Downtown Buckeye on the east side of the MC85/Monroe Avenue curve.

Education services are provided through the local school districts. Students start off in the Buckeye Elementary School District which handles grades K-8. The nearest elementary school is Westpark Elementary, which happens to be adjacent east to Parcel 5. The school was completed and has been serving the neighborhood since 2007. Once students are ready to move on, they migrate to the Buckeye

Union High School District. The nearest public school is Youngker High School, which is approximately 1-mile due east of Westpark, at the northwest corner of S. Apache Road and W. Lower Buckeye Road.

Landscaping, Parks & Open Space

Overall, the new Phase 2.2 landscape design will match and mesh with the existing Westpark Phase 1 theme, continuing to provide appropriate green spaces that soften the development appearance while maintaining strict standards for a low water-use plant palette and maintenance. With 20.6% of open space allocated in Phase 2.2, there is a meaningful natural appearance offering an array of outdoor uses that tie the subdivision together. Overall, this equates to roughly 41 +/- acres of common area open space and amenities for the residents. Parcel 8 specifically has multiple dual-use basins located throughout the site. These areas help make up the 3.21 acres of parks and open space, which is about 19% of the Parcel. An 8' wide multiuse path is also provided along the exterior of the site and connects to the subdivision's larger trail network. This trail network will ensure all the open/green spaces are connected to one another as well as providing a safe and continuous accessway throughout the entire subdivision. This network and other access means will be extended to each of the future phases as well, completing the harmonious nature of the development and general community feel. Although not part of this current plan of development, a large format regional park and recreation facility is designed and slated for one of the remaining undeveloped parcels of Phase 2.2. It is adjacent south of Warner Street and will be a substantial amenity benefit to the area. When developed, it will add an additional 25 +/- acres of high-quality recreational facilities of varied substance.

Development Schedule

Currently, the anticipated development schedule is somewhat dependent on the timing of all jurisdictional reviews and approvals. As mentioned prior, the entirety of Phase 2 (with the exception of portions of the northerly parcels) was mass-graded in 2006, with some primary utility infrastructure placed as well. The utility work was focused on the southern leg of the Loop Road, and the adjacent four Parcels 13, 14, 18S and 20S. This prior work reduces some of the longer field processes associated with site development, but there is still plenty to do once field work commences.

In general, it is expected that the first portion of new development will be to construct the remaining segments of Westpark Loop Road, Warner Street and the offsite water main connection north to Durango Street. Once work begins, it is projected to be completed in approximately 5-8 months. Individual parcel construction will commence once approvals are obtained and home builders have committed to parcels accordingly. Since this is not yet clearly defined, some speculation is necessary to forecast the development progress. It is anticipated that individual parcel development would take an initial 3-6 months to complete site improvements and begin constructing homes. With construction varying both regionally and throughout the industry, we would anticipate first homes coming online for sale within the following 4-6 months. Currently home builders are averaging anywhere from 5 to 8 home closings per month once they are in full swing (after site work). As identified prior, since there are some infrastructure limitations for several parcels, the progression of development is expected to proceed in the following order: Loop Road/Offsite Infrastructure, then Parcels 8, 7S, 19, 20N, 7N, 6, 18N & 5. This order will ensure that suitable utilities and drainage facilities are maintained to support the construction and new residents of Buckeye accordingly.

Tract Table

TRACT TABLE

TRACT TABLE			
TRACT	AREA SQ FT	AREA ACRES	USAGES
TRACT A9	23,332	0.54	LANDSCAPE, OPEN SPACE, DRAINAGE & PUE
TRACT B9	426	0.01	LANDSCAPE, OPEN SPACE & PUE
TRACT C9	48,495	1.10	LANDSCAPE, OPEN SPACE, DRAINAGE & PUE
TRACT D9	927	0.02	LANDSCAPE, OPEN SPACE & PUE
TRACT F9	464	0.01	LANDSCAPE, OPEN SPACE & PUE
TRACT G7	2,271	0.05	LANDSCAPE & OPEN SPACE
TRACT G9	466	0.01	LANDSCAPE, OPEN SPACE & PUE
TRACT H9	7,295	0.17	LANDSCAPE & OPEN SPACE
TRACT W8	54,018	1.25	LANDSCAPE, OPEN SPACE & DRAINAGE
TRACT X8	915	0.02	LANDSCAPE, OPEN SPACE & PUE
TRACT Y8	445	0.01	LANDSCAPE, OPEN SPACE & PUE
TRACT Z8	989	0.02	LANDSCAPE, OPEN SPACE & PUE
TOTAL	140,043	3.21	

Development Standards

Parcel No.	Gross Parcel Area (Acres)	Lot Count	Lot Size (Min.)	Gross Density (DU/Acre)	Open Space (Acre)
5	42.85	153	53' x 120'	3.57	12.85
6	22.06	84	58' x 115'	3.81	5.02
7N	22.52	77	58' x 115'	3.42	6.41
7S	25.31	109	53' x 115'	4.31	4.29
8	17.30	85	45' x 110'	4.91	3.21
18N	30.84	164	45' x 110'	5.32	6.35
19	21.80	106	53' x 115'	4.86	2.55
20N	17.16	70	65' x 120'	4.08	0.45
Totals:	**199.84**	**847**	--	**4.28**	**41.13**

Parcel No.	Lot Count	Lot Size (Min.)	Lot Coverage (Max.)	Front Setback	Rear Setback	Side Setbacks
5	153	53' x 120'	65%	*	20'	5' / 8'
6	84	58' x 115'	50%	*	20'	5' / 8'
7N	77	58' x 115'	50%	*	20'	5' / 8'
7S	109	53' x 115'	65%	*	20'	5' / 8'
8	85	45' x 110'	65%	*	15'	5' / 5'
18N	164	45' x 110'	65%	*	15'	5' / 5'
19	105	53' x 115'	65%	*	20'	5' / 8'
20N	70	65' x 120'	50%	*	20'	5' / 10'

* = 10' to side entry garage
12' to living area
18' to garage

RESIDENTIAL PARCEL TABLE		
PARCEL	LOT SIZE	UNIT COUNT
5	53' X 120'	153
6	58' X 115'	84
7N	58' X 115'	77
7S	53' X 115'	109
8	45' X 110'	85
18N	45' X 110'	164
19	53' X 115'	105
20N	65' X 120'	70
	TOTAL LOTS:	847

(NOT A PART)

(NOT A PART)

(NOT A PART)

PARCEL 6
58' x 115'
84 LOTS

PARCEL 5
53' x 120'
153 LOTS

EXISTING PHASE 1
(NOT A PART)

PARCEL 7N
58' x 115'
77 LOTS

WESTPARK LOOP NORTH

PARCEL 19
53' x 115'
105 LOTS

PARCEL 18N
45' x 110'
164 LOTS

PARCEL 7S
53' x 115'
109 LOTS

PARCEL 20N
65' x 120'
70 LOTS

FUTURE PHASE 3
(NOT A PART)

PARCEL 8
45' x 110'
85 LOTS

PARCEL 18S
NOT A PART

PARCEL 20S
NOT A PART

EAST CONNECTOR ROAD

FUTURE PHASE 3
(NOT A PART)

WARNER STREET

NARRATIVE REPORT PERTAINS
TO PARCEL 8 ONLY

WESTPARK LOOP SOUTH

EXISTING PHASE 1
(NOT A PART)

PARK
NOT A PART

PARCEL 13
NOT A PART

PARCEL 14
NOT A PART

FUTURE PHASE 3
(NOT A PART)

R.I.D. CANAL

WESTPARK - PHASE 2.2

200 0 200 400

SEPTEMBER 16, 2021

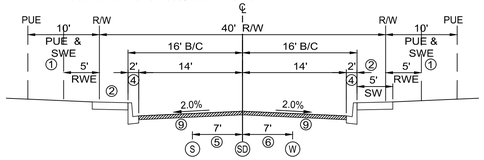
ATWELL
866.850.4200 www.atwell-group.com

k:\21001100 – westpark phases 2.2\dwg\presentation\21001100_marketing map.dwg

COPYRIGHT © 2021 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC

GENERAL NOTES

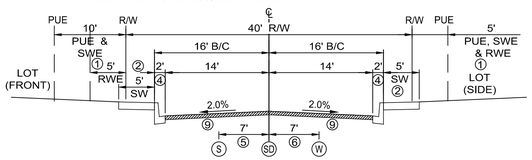
① PUE / LPPUE / LANDSCAPE - 8:1 MAX SLOPE.
② 5' S / W PER MAG STD DTL 230.
③ ROW / LANDSCAPE AREA, 1.5% SLOPE. FIRE HYDRANTS, TREES & STREET LIGHTS LOCATED 2' BACK OF SIDEWALK.
④ CURB & GUTTER PER MAG STD DTL 220-1, TYPE 'A' OR C'.
⑤ SANITARY SEWER MAINS SHALL BE PLACED 7' SOUTH OR WEST OF CL.
⑥ WATER MAINS SHALL BE PLACED 7' NORTH OR EAST OF CL.
⑦ NO PARKING SHALL BE SIGNED ON BOTH SIDES OF THE STREET.
⑧ STORM DRAIN SHALL BE PLACED ON THE CL OF STREET.
⑨ PAVEMENT REQUIREMENTS:
AC - 2.5" OF R12.5MM MARSHALL.
BASE - 8" OF ABC. PER MAG STD SPEC 702.2.
SUB-BASE - 8" OF 95% COMPACTION.



LOCAL STREET - MODIFIED COB DTL 63170
(FRONT LOADED LOTS)
SCALE: 1"=10'

GENERAL NOTES

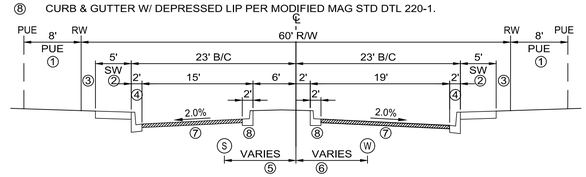
① PUE / LPPUE / LANDSCAPE - 8:1 MAX SLOPE.
② 5' S / W PER MAG STD DTL 230.
③ ROW / LANDSCAPE AREA, 1.5% SLOPE. FIRE HYDRANTS, TREES & STREET LIGHTS LOCATED 2' BACK OF SIDEWALK.
④ CURB & GUTTER PER MAG STD DTL 220-1, TYPE 'A' OR C'.
⑤ SANITARY SEWER MAINS SHALL BE PLACED 7' SOUTH OR WEST OF CL.
⑥ WATER MAINS SHALL BE PLACED 7' NORTH OR EAST OF CL.
⑦ NO PARKING SHALL BE SIGNED ON BOTH SIDES OF THE STREET.
⑧ STORM DRAIN SHALL BE PLACED ON THE CL OF STREET.
⑨ PAVEMENT REQUIREMENTS:
AC - 2.5" OF R12.5MM MARSHALL.
BASE - 8" OF ABC. PER MAG STD SPEC 702.2.
SUB-BASE - 8" OF 95% COMPACTION.



LOCAL STREET - MODIFIED COB DTL 63170
(FRONT & SIDE LOADED LOTS)
SCALE: 1"=10'

GENERAL NOTES

① PUE / LPPUE / LANDSCAPE - 8:1 MAX SLOPE.
② 5' ATTACHED S / W PER MAG STD DTL 230.
③ LANDSCAPE AREA, SREET LIGHTS CENTERED IN MEDIAN
④ CURB & GUTTER PER MAG STD DTL 220-1, TYPE 'A' OR C'.
⑤ WATER MAINS SHALL BE PLACED 7' NORTH OR EAST OF CL, CENTERED IN DRIVING LANE
⑥ SANITARY SEWER MAINS SHALL BE PLACED 7' SOUTH OR WEST OF CL, CENTERED IN DRIVING LANE
⑦ PAVEMENT REQUIREMENTS:
AC - 3" OF R12.5MM MARSHALL.
BASE - 8" OF ABC. PER MAG STD SPEC 702.2.
SUB-BASE - 8" OF 95% COMPACTION.
⑧ CURB & GUTTER W/ DEPRESSED LIP PER MODIFIED MAG STD DTL 220-1.



RESIDENTIAL ENTRANCE - COB DTL 63190
SCALE: 1"=10'

DATE: 09/10/2021

THE LOCATIONS OF EXISTING UNDERGROUND UTILITIES ARE SHOWN IN AN APPROXIMATE WAY ONLY AND HAVE NOT BEEN INDEPENDENTLY VERIFIED BY THE OWNER OR ITS REPRESENTATIVE. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING WORK, AND AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MIGHT BE OCCASIONED BY THE CONTRACTOR'S FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL UNDERGROUND UTILITIES.

NOTICE:
CONSTRUCTION SITE SAFETY IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR; NEITHER THE OWNER NOR THE ENGINEER SHALL BE EXPECTED TO ASSUME ANY RESPONSIBILITY FOR SAFETY OF THE WORK, OF PERSONS ENGAGED IN THE WORK, OF ANY NEARBY STRUCTURES, OR OF ANY OTHER PERSONS.

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8531

SITE PLAN

PROJECT: WESTPARK PHASE 2.2
BUCKEYE, AZ

Know what's below. Call before you dig.

REVISIONS:

PRELIMINARY
NOT FOR
CONSTRUCTION
OR
RECORDING

PM. CAP
DR. C. PARENT
JOB NO. 21001100
FILE NO. SITE LAYOUT

SHEET NO.
2 OF 5

k:\21001100 - westpark phases 2.2\dwg\lot fifsale layout exhibit.dwg Savedate:9/14/2021 11:00 AM Plotdate:8/10/2022 5:34 PM

5R PLZDR-24-0017 RECEIVED AUG 06 2024 AL

COPYRIGHT © 2024 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC

FINAL PLAT OF WESTPARK PHASE 2.2 "PARCEL 8"

LOCATED IN A PORTION OF THE NORTHWEST QUARTER OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 4 WEST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN MARICOPA COUNTY, ARIZONA

DEDICATION

STATE OF ARIZONA }
}SS
COUNTY OF MARICOPA }

KNOW ALL PERSONS BY THESE PRESENTS: D.R. HORTON INC, A DELAWARE CORPORATION ("OWNER"), HAS SUBDIVIDED UNDER THE NAME WESTPARK PHASE 2.2 "PARCEL 8", A SUBDIVISION LOCATED IN A PORTION OF THE NORTHWEST QUARTER OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 4 WEST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN MARICOPA COUNTY, ARIZONA AS SHOWN AND PLATTED HEREON AND DOES HEREBY PUBLISH THIS PLAT AS AND FOR THE PLAT OF WESTPARK PHASE 2.2 "PARCEL 8" AND DECLARES THAT THIS PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF EACH LOT, TRACT, STREET, AND EASEMENTS CONSTITUTING SAME, AND THAT EACH LOT, TRACT, STREET, AND EASEMENT SHALL BE KNOWN BY THE NUMBER, LETTER, AND/OR NAME GIVEN TO EACH RESPECTIVELY AS SHOWN ON THIS PLAT.

OWNER HEREBY DEDICATES TO THE CITY OF BUCKEYE FEE TITLE TO ALL PUBLIC RIGHTS-OF-WAY AS SHOWN ON THIS PLAT.

OWNER HEREBY GRANTS TO THE CITY OF BUCKEYE A NON-EXCLUSIVE EASEMENT OVER, UPON AND ACROSS THE AREAS DESIGNATED AS PUBLIC UTILITY EASEMENTS AS SHOWN ON THE PLAT FOR THE PURPOSE OF INSTALLING, CONSTRUCTING, MAINTAINING, REPAIRING, REPLACING AND UTILIZING PUBLIC UTILITIES.

OWNER HEREBY GRANTS TO THE CITY OF BUCKEYE AN EXCLUSIVE EASEMENT FOR THE PURPOSE OF WATER WITHIN THE AREAS SHOWN ON THIS PLAT AS WATER EASEMENTS. THE CITY SHALL HAVE THE RIGHT TO ACCESS, CONSTRUCT, MAINTAIN, OPERATE AND REPLACE PUBLIC WATER LINES OVER, UNDER AND ACROSS THE EASEMENT AREAS SHOWN HEREON.

OWNER HEREBY GRANTS TO THE CITY OF BUCKEYE, A NON-EXCLUSIVE EASEMENT OVER, UPON AND ACROSS THE AREAS DESIGNATED AS SITE VISIBILITY TRIANGLES FOR THE PURPOSE OF ENSURING THAT THESE AREAS REMAIN FREE OF SITE VISIBILITY OBSTRUCTIONS AS PER THE ENGINEERING DESIGN STANDARDS.

OWNER HEREBY GRANTS TO THE UNITED STATES OF AMERICA DEPARTMENT OF THE AIR FORCE ("USAF") AN AVIGATION EASEMENT OVER AND ACROSS THIS PLAT AND EVERY LOT AND PARCEL THEREOF, WHICH EASEMENT SHALL INCLUDE, BUT NOT BE LIMITED TO; THE RIGHT OF FLIGHT OF AIRCRAFT OVER THIS PLAT, TOGETHER WITH ITS ATTENDANT NOISE, VIBRATIONS, FUMES, DUST, FUEL AND LUBRICANT PARTICLES, AND ALL OTHER EFFECTS THAT MAY BE CAUSED BY THE OPERATION OF AIRCRAFT LANDING AT, OR TAKING OFF FROM, OR OPERATING AT OR ON LUKE AIR FORCE BASE AND AUXILIARY FIELD.

D.R. HORTON INC, A DELAWARE CORPORATION, AS OWNER DOES HEREBY (1) RELEASE AND DISCHARGE THE USAF AND THE CITY OF BUCKEYE, AND (2) INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF BUCKEYE, OF AND FROM ANY LIABILITY FOR ANY AND ALL CLAIMS FOR DAMAGES OF ANY KIND TO PERSONS OR PROPERTY THAT MAY ARISE AT ANY TIME IN THE FUTURE OVER, OR IN CONNECTION WITH AIRCRAFT OVERFLIGHTS FROM AIRCRAFT UTILIZING LUKE AIR FORCE BASE, WHETHER SUCH DAMAGE SHALL ORIGINATE FROM NOISE, VIBRATION, FUMES, DUST, FUEL AND LUBRICANT PARTICLES, AND ALL OTHER EFFECTS THAT MAY BE CAUSED BY THE OPERATION OF AIRCRAFT LANDING AT, OR TAKING OFF FROM, OR OPERATING AT OR ON LUKE AIR FORCE BASE. THIS INSTRUMENT SHALL RUN WITH THE LAND AND BE BINDING UPON OWNER AND ITS HEIRS, ASSIGNS, AND SUCCESSORS IN INTEREST TO THIS PLAT OR ANY PARCEL OR LOT THEREOF. THIS INSTRUMENT DOES NOT RELEASE THE USAF FROM LIABILITY FOR DAMAGE OR INJURY TO PERSON OR PROPERTY CAUSED BY FALLING AIRCRAFT OR FALLING PHYSICAL OBJECTS FROM AIRCRAFT, EXCEPT AS STATED HEREIN WITH RESPECT TO NOISE, FUMES, DUST, FUEL, AND LUBRICANT PARTICLES.

D.R. HORTON INC, A DELAWARE CORPORATION, AS OWNER DOES HEREBY; (1) RELEASE AND DISCHARGE THE CITY OF BUCKEYE, AND (2) INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF BUCKEYE, OF AND FROM ANY LIABILITY FOR ANY AND ALL CLAIMS FOR DAMAGES OF ANY KIND TO PERSONS OR PROPERTY THAT MAY ARISE AT ANY TIME IN THE FUTURE OVER, OR IN CONNECTION WITH THE AREAS LOCATED WITHIN THE NEWLY DEDICATED RIGHT-OF-WAY AS DEPICTED ON THIS PLAT UNTIL SUCH TIME THE RIGHT-OF-WAY IS IMPROVED TO CITY STANDARDS AND THOSE IMPROVEMENTS ARE APPROVED AND ACCEPTED BY THE CITY. THE MAINTENANCE OF THE AREA WITHIN ANY NEWLY DEDICATED RIGHT-OF-WAY AS SHOWN ON THIS PLAT SHALL BE THE RESPONSIBILITY OF THE ADJACENT OWNER/OR SUBSEQUENT ADJACENT OWNERS WITHIN THE BOUNDARY OF SAID PLAT UNTIL SUCH TIME THAT THE AREA WITHIN THE RIGHT-OF-WAY IS IMPROVED TO CITY STANDARD AND ACCEPTED BY THE CITY OF BUCKEYE.

ALL IMPROVEMENTS, FOR STREETS AND PUBLIC UTILITIES OWNED AND OPERATED BY THE CITY, INSTALLED OR CONSTRUCTED BY OWNER WITHIN THE PUBLIC RIGHT-OF-WAYS, THE EASEMENTS, OR ANY TRACTS OR PARCELS HEREBY DEDICATED TO THE CITY OF BUCKEYE SHALL BE DEEMED TO HAVE BEEN DEDICATED BY OWNER TO THE CITY UPON THEIR COMPLETION; HOWEVER, SUCH TRANSFER SHALL NOT OCCUR UNTIL THE CITY OF BUCKEYE MANIFESTS ITS ACCEPTANCE BY SEPARATE FORMAL ACTION.

THE EASEMENTS GRANTED WITHIN THIS DEDICATION ARE PERMANENT AND PERPETUAL AND SHALL RUN WITH THE LAND AND BE BINDING UPON OWNER AND ITS HEIRS, ASSIGNS, AND SUCCESSORS AND INTEREST TO THIS PLAT OR ANY PARCEL OR LOT THEREOF.

TRACTS A9, C9 AND W8 ARE DECLARED TO BE FOR LANDSCAPE, OPEN SPACE, DRAINAGE AND PUBLIC ACCESS, AS SHOWN IN THE TRACT TABLE INCLUDED HEREON.

TRACTS B9, D9, F9, G7, G9, H9, X8, Y8 AND Z8 ARE DECLARED TO BE FOR LANDSCAPE AND OPEN SPACE, AS SHOWN IN THE TRACT TABLE INCLUDED HEREON.

ALL TRACTS ARE TO BE OWNED AND MAINTAINED BY THE WESTPARK PHASE 2.2 COMMUNITY ASSOCIATION. THERE HAS BEEN OR IS BEING RECORDED HEREWITH A DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (CC&R'S) FOR "WESTPARK PHASE 2.2, PARCEL 8"

OWNER HEREBY GRANTS TO THE PUBLIC A NON-EXCLUSIVE EASEMENT FOR RECREATION OVER UPON AND ACROSS THOSE AREAS DESIGNATED AS RECREATION TRAILS OR AREAS FOR THE PURPOSE OF ALLOWING PUBLIC ACCESS TO THE TRAIL SYSTEM.

NOTHING CONTAINED HEREIN SHALL BE DEEMED TO DEDICATE ANY PORTION OF THE TRACTS FOR PUBLIC USE OTHER THAN FOR EASEMENTS SPECIFICALLY GRANTED TO THE PUBLIC HEREIN.

OWNER HEREBY GRANTS TO THE CITY OF BUCKEYE A NON-EXCLUSIVE EASEMENT OVER, UPON, AND ACROSS THE AREAS DESIGNATED AS "ROADWAY EASEMENTS" AS SHOWN ON THE PLAT FOR THE PURPOSE OF INSTALLING, CONSTRUCTION, MAINTAINING, REPAIRING AND UTILIZING STREET AS PER THE CITY OF BUCKEYE ENGINEERING DESIGN STANDARDS.

OWNER WARRANTS AND REPRESENTS TO THE CITY OF BUCKEYE TO BE THE SOLE OWNER OF THE PROPERTY COVERED HEREBY AND THAT EVERY LENDER, EASEMENT HOLDER, OR OTHER PERSON, OR ENTITY, HAVING ANY INTEREST IN THE LAND ADVERSE TO OR INCONSISTENT WITH THE DEDICATION, CONVEYANCES OR OTHER REAL PROPERTY INTEREST CREATED OR TRANSFERRED BY THIS PLAT HAS CONSENTED TO, OR JOINED IN THE PLAT, AS EVIDENCED BY INSTRUMENTS WHICH ARE RECORDED WITH THE MARICOPA COUNTY RECORDERS OFFICE, OR WHICH OWNER WILL RECORD NOT LATER THAN THE DATE ON WHICH THIS PLAT IS RECORDED.

THE MAINTENANCE OF LANDSCAPING WITHIN THE OPEN SPACES, LANDSCAPED TRACTS, RETENTION BASINS AND PARKS SHALL BE THE RESPONSIBILITY OF THE OWNER OR THE ASSOCIATION FORMED BY THE OWNER.

THE MAINTENANCE OF LANDSCAPING WITHIN THE ADJACENT PUBLIC RIGHT-OF-WAYS, INCLUDING; LANDSCAPED MEDIANS WITHIN COLLECTORS AND LOCAL STREETS AND LANDSCAPED AREAS BETWEEN THE CURB AND THE DETACHED SIDEWALK, SHALL BE THE RESPONSIBILITY OF THE ADJACENT PROPERTY OWNER OR THE PROPERTY ASSOCIATION FORMED BY THE ADJACENT PROPERTY.

IN WITNESS WHEREOF, OWNER HAS HEREUNTO CAUSED ITS CORPORATE NAME TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY THE UNDERSIGNED, DULY AUTHORIZED OFFICER THIS _____ DAY OF _____, 2024.

D.R. HORTON INC, A DELAWARE CORPORATION

BY: _____
PATRICK BROWN, VICE PRESIDENT

ACKNOWLEDGMENT

STATE OF ARIZONA }
}SS
COUNTY OF MARICOPA }

ON THIS, THE ____ DAY OF _____, 2024, BEFORE ME THE UNDERSIGNED NOTARY, PATRICK BROWN PERSONALLY APPEARED WHO ACKNOWLEDGED HIMSELF TO BE THE VICE PRESIDENT AND ACKNOWLEDGED THAT HE, BEING DULY AUTHORIZED SO TO DO, EXECUTED THIS INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF:

I HEREUNTO SET MY HAND AND OFFICIAL SEAL:

_____ _____
NOTARY PUBLIC MY COMMISSION EXPIRES

RATIFICATION

KNOW ALL PERSONS BY THESE PRESENTS:

THE UNDERSIGNED, DULY AUTHORIZED OF THE WESTPARK PHASE 2.2, COMMUNITY ASSOCIATION, AN ARIZONA NON-PROFIT CORPORATION, HEREBY RATIFIES THE RECORDATION OF THIS FINAL PLAT OF WESTPARK PHASE 2.2, PARCEL 8S AND ACKNOWLEDGES THE RESPONSIBILITIES SET FORTH THEREIN.

WESTPARK PHASE 2.2 COMMUNITY ASSOCIATION, AN ARIZONA NON-PROFIT CORPORATION

BY: _____ DATE: _____

ITS: _____

ACKNOWLEDGMENT

STATE OF ARIZONA }
}SS
COUNTY OF MARICOPA }

ON THIS, THE ____ DAY OF _____, 2024, BEFORE ME THE UNDERSIGNED NOTARY, _____ PERSONALLY APPEARED WHO ACKNOWLEDGED HIMSELF/HERSELF TO BE THE _____ AND ACKNOWLEDGED THAT HE/SHE, BEING DULY AUTHORIZED SO TO DO, EXECUTED THIS INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF:

I HEREUNTO SET MY HAND AND OFFICIAL SEAL:

_____ _____
NOTARY PUBLIC MY COMMISSION EXPIRES

APPROVALS

APPROVED BY THE CITY COUNCIL OF THE CITY OF BUCKEYE ON THIS ____ DAY OF _____, 2024.

BY: _____
MAYOR

ATTEST: _____
CITY CLERK

I CERTIFY THAT ALL ENGINEERING CONDITIONS AND REQUIREMENTS HAVE BEEN COMPLIED WITH.

BY: _____
BUCKEYE CITY ENGINEER DATE

BY: _____
DEVELOPMENT SERVICES DIRECTOR DATE

BASIS OF BEARING

BASIS OF BEARING IS ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 24, T.1N., R.4W. BEING N89°39'26"W WITH A DISTANCE OF 2670.94 FEET.

BENCHMARK

BENCHMARK DATUM:
HORIZONTAL LOCATION= SE COR SEC 24, T.1N., R.4W. FOUND BRASS CAP IN HANDHOLE.
ELEVATION = 967.84' NORTH AMERICAN VERTICAL DATUM 1988

AREA CALCULATIONS

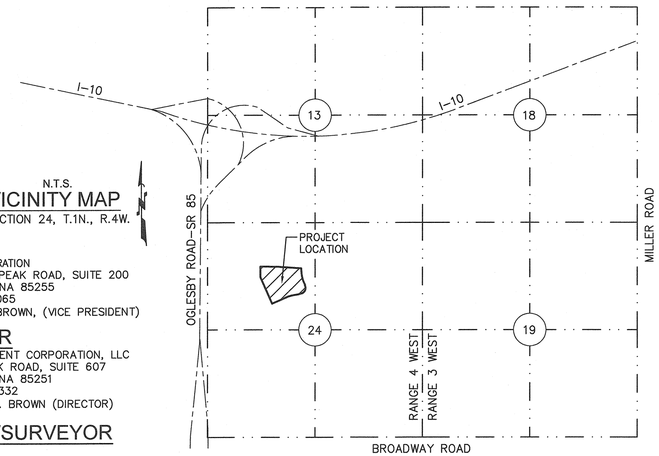
TRACTS	140,043 SQ.FT.	3.21 AC
LOTS = 85	481,280 SQ.FT.	11.05 AC
RIGHT OF WAY	132,304 SQ.FT.	3.04 AC
TOTAL	753,627 SQ.FT.	17.30 AC

RIGHT OF WAY TABLE

RIGHT OF WAY TABLE		
ROAD	AREA SQ FT	AREA ACRES
263RD DRIVE	19,036	0.44
264TH AVENUE	9,837	0.23
264TH DRIVE	13,531	0.31
264TH LANE	30,651	0.70
CROWN KING ROAD	24,222	0.56
MIAMI STREET	14,299	0.33
PIONEER STREET	20,728	0.47
TOTAL	132,304	3.04

LEGEND

⍋	SUBDIVISION CORNER TO BE SET
○	FOUND MONUMENT AS NOTED
◉	CENTERLINE MONUMENT (BRASS CAP)
PUE	PUBLIC UTILITY EASEMENT
MCR	MARICOPA COUNTY RECORDS
D	DELTA
R/W	RIGHT-OF-WAY
C1	CURVE TABLE NUMBER
L1	LINE TABLE NUMBER
①	33'x33' SIGHT VISIBILITY EASEMENT
VNAE	VEHICULAR NON-ACCESS EASEMENT
———	SUBDIVISION BOUNDARY
———	RIGHT OF WAY LINE
——— – ———	CENTERLINE
- - - - - - - - - -	EXISTING EASEMENT LINE
— — — — —	NEW EASEMENT LINE
——— · ——— · ———	SECTION LINE
——— - - ———	5' ROADWAY ACCESS EASEMENT ADJACENT RIGHT OF WAY (RWE)



N.T.S.

VICINITY MAP

SECTION 24, T.1N., R.4W.

OWNER

D.R. HORTON INC,
A DELAWARE CORPORATION
7689 E. PINNACLE PEAK ROAD, SUITE 200
SCOTTSDALE, ARIZONA 85255
PHONE: 480-368-1065
CONTACT: PATRICK BROWN, (VICE PRESIDENT)

DEVELOPER

GARRETT DEVELOPMENT CORPORATION, LLC
6900 E. CAMELBACK ROAD, SUITE 607
SCOTTSDALE, ARIZONA 85251
PHONE 480-907-7332
CONTACT: WYATT P. BROWN (DIRECTOR)

ENGINEER/SURVEYOR

ATWELL, LLC
4700 E. SOUTHERN AVENUE
MESA, ARIZONA 85206
PHONE 480-218-8831
CONTACT: MICHAEL J. PARK (PE)
CONTACT: JAMES G. SPRING (PLS)

SHEET INDEX

DESCRIPTION	SHEET NO
COVER SHEET	1
KEY MAP, TRACT TABLE, LOT DETAIL AND LEGAL DESCRIPTION	2
PLAT SHEETS	3-6

NOTES

1. THE LOTS DEPICTED ON THIS PLAT ARE LOCATED WITHIN THE VICINITY OF LUKE AIR FORCE BASE AND MAY BE SUBJECT TO OVERFLIGHTS BY JET AIRCRAFT. ALL STRUCTURES WITHIN THIS PLAT SHALL BE CONSTRUCTED IN COMPLIANCE WITH THE STATUTORILY REQUIRED SOUND ATTENUATION STANDARDS.
2. THE PROPERTY OWNERS, OR ANY SUBSEQUENT OWNERS SHALL NOT PROCEED WITH ANY ON SITE GRADING OR EXCAVATION WITHOUT FIRST OBTAINING A PERMIT FROM THE CITY OF BUCKEYE.
3. IN ACCORDANCE WITH ARS §9-461.07, THE CITY OF BUCKEYE HAS DETERMINED THAT ALL DEDICATIONS OCCURRING WITH THIS PLAT ARE IN CONFORMANCE WITH THE GENERAL PLAN.
4. PURSUANT TO A.R.S. §42-11102, THE CITY OF BUCKEYE, A POLITICAL SUBDIVISION OF THE STATE OF ARIZONA, IS EXEMPT FROM ALL TAXES AND ASSESSMENTS BASED ON ASSESSED VALUE EXCEPT FOR SPECIAL DISTRICTS #14751 AND 14710, WHEN APPLICABLE.
5. THIS SITE CONSISTS OF A TOTAL OF 85 LOTS, 12 TRACTS, IN THE "PC" PLANNED COMMUNITY ZONING DISTRICT.
6. THIS FINAL PLAT IS IN SUBSTANTIAL CONFORMANCE WITH THE PRELIMINARY PLAT APPROVED ON JULY 13TH, 2004 UNDER CASE #PP04-09.
7. THIS SUBDIVISION WAS ISSUED A CERTIFICATE OF ASSURED WATER SUPPLY BY ARIZONA DEPARTMENT OF WATER RESOURCES ON OCTOBER 19TH, 2007 WITH ADWR CERTIFICATE #31-402138.0001.
8. NO STRUCTURE OF ANY KIND SHALL BE CONSTRUCTED OR ANY VEGETATION TO BE PLANTED OR BE ALLOWED TO GROW WITHIN ANY DRAINAGE EASEMENT WHICH WOULD IMPEDE THE FLOW OF WATER OVER, UNDER, OR THROUGH EASEMENTS.
9. FINAL PLAT APPROVAL BY THE CITY IS CONDITIONAL AND SUBJECT TO FINANCIAL ASSURANCES BEING IN PLACE FOR ALL IMPROVEMENTS AS SHOWN ON THE APPROVED PLANS. THE CITY WILL NOT RECORD ANY PLATS UNTIL SUCH TIME FINANCIAL ASSURANCES ARE IN PLACE. IF AFTER ONE YEAR FROM CITY COUNCIL APPROVAL THE FINAL PLAT HAS NOT BEEN RECORDED, THEN IT SHALL BE NULL AND VOID. A VALID PRELIMINARY PLAT NEEDS TO BE IN PLACE PRIOR TO APPROVAL OF ANY FINAL PLAT ASSOCIATED WITHIN THE PROJECT IN ACCORDANCE WITH THE DEVELOPMENT CODE. THE SIGNED PLAT WILL NOT BE SUBMITTED TO THE CITY FOR SIGNATURE AND RECORDING UNTIL THE FINANCIAL ASSURANCES ARE IN PLACE.
10. ALL NEW OR RELOCATED UTILITIES WILL BE PLACED UNDERGROUND EXCEPT POWER LINES 69KV AND LARGER.
11. IT IS ACKNOWLEDGED THAT THIS PROPERTY WILL BE PART OF A PARKWAY MAINTENANCE IMPROVEMENT DISTRICT (MID) AND STREET LIGHTING IMPROVEMENT DISTRICT (SLID) AT THE TIME THAT IT IS DEVELOPED, IN ACCORDANCE WITH BUCKEYE ORDINANCES 43-05 AND 42-06.
12. THE WATER EASEMENT DEDICATED HEREON WITHIN TRACT W8 IS INTENDED FOR FUTURE INSTALLATION OF WATER LINES. PRIOR TO THE INSTALLATION OF ANY FACILITIES WITHIN THE EASEMENT AREA, THE EXISTING DRAINAGE CHANNEL IN TRACT W8 SHALL BE RECONSTRUCTED IN A MANNER THAT PROVIDES A WATER EASEMENT CONFORMING TO THE REQUIREMENTS OF THE MOST RECENTLY ADOPTED CITY OF BUCKEYE ENGINEERING DESIGN STANDARDS.

FLOODZONE DESIGNATION

THE PROPERTY IS LOCATED WITHIN AN AREA DESIGNATED AS HAVING FLOOD ZONE X BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, ON FLOOD INSURANCE RATE MAP NO 04013C2115L, WITH A REVISION DATE OF OCTOBER 16TH, 2013 FOR COMMUNITY NO. 2115, IN THE CITY OF BUCKEYE, COUNTY OF MARICOPA, STATE OF ARIZONA, WHICH IS THE CURRENT FLOOD INSURANCE RATE MAP FOR THE COMMUNITY IN WHICH SAID PROPERTY IS SITUATED.

100 YEAR ASSURED WATER SUPPLY

THIS SUBDIVISION IS WITHIN THE CITY OF BUCKEYE WATER SERVICE AREA AND HAS OBTAINED A CERTIFICATE OF 100 YEAR ASSURED WATER SUPPLY FROM THE ARIZONA DEPARTMENT OF WATER RESOURCES, CERTIFICATE #31-402138.0001.

ZONING DESIGNATION

"PC" PLANNED COMMUNITY

SURVEYOR'S CERTIFICATION:

I, JAMES G. SPRING, HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR IN THE STATE OF ARIZONA, THAT THIS PLAT CONSISTING OF SIX SHEETS CORRECTLY REPRESENTS A BOUNDARY SURVEY MADE BY ME DURING THE MONTH OF JULY, 2024. THAT THE SURVEY IS TRUE AND CORRECT AS SHOWN, THAT ALL MONUMENTS EXIST OR WILL BE SET AND, THAT THEIR POSITIONS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

JAMES G. SPRING, PLS 22282
ATWELL, LLC
4700 E. SOUTHERN AVENUE
MESA, ARIZONA 85206

PROFESSIONAL LAND SURVEYOR CERTIFICATE NO. 22282 JAMES G. SPRING 7/31/24 Date Signed ARIZONA, U.S.A. Expires 6-30-25

NOTE:

A.R.S. § 32-151 STATES THAT THE USE OF THE WORD "CERTIFY" OR "CERTIFICATION" BY A PERSON OR FIRM THAT IS REGISTERED OR CERTIFIED BY THE BOARD IS AN EXPRESSION OF PROFESSIONAL OPINION REGARDING FACTS OR FINDINGS THAT ARE SUBJECT OF THE CERTIFICATION AND DOES NOT CONSTITUTE AN EXPRESS OR IMPLIED WARRANTY OR GUARANTEE.

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT
WESTPARK PHASE 2.2
"PARCEL 8"
CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

ATWELL

PM. J. SPRING
DR. R. GILES
JOB NO. 21001100
N.T.S.
21001100 WESTPARK P8 FP.DWG
SHEET NO. 1 OF 6

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 8\21001100 WESTPARK P8 FP.DWG SAVEDATE:8/5/2024 8:14 AM PLOTDATE:8/5/2024 8:29 AM

COPYRIGHT © 2024 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC

TRACT TABLE

TRACT TABLE			
TRACT	AREA SQ FT	AREA ACRES	USAGES
TRACT A9	23,332	0.54	LANDSCAPE, OPEN SPACE & DRAINAGE
TRACT B9	426	0.01	LANDSCAPE & OPEN SPACE
TRACT C9	48,495	1.10	LANDSCAPE, OPEN SPACE & DRAINAGE
TRACT D9	927	0.02	LANDSCAPE & OPEN SPACE
TRACT F9	464	0.01	LANDSCAPE & OPEN SPACE
TRACT G7	2,271	0.05	LANDSCAPE & OPEN SPACE
TRACT G9	466	0.01	LANDSCAPE & OPEN SPACE
TRACT H9	7,295	0.17	LANDSCAPE & OPEN SPACE
TRACT W8	54,018	1.25	LANDSCAPE, OPEN SPACE & DRAINAGE
TRACT X8	915	0.02	LANDSCAPE & OPEN SPACE
TRACT Y8	445	0.01	LANDSCAPE & OPEN SPACE
TRACT Z8	989	0.02	LANDSCAPE & OPEN SPACE
TOTAL	140,043	3.21	

LEGAL DESCRIPTION

LOCATED IN A PORTION OF THE NORTHWEST QUARTER OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 4 WEST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN MARICOPA COUNTY, ARIZONA

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND STONE IN HANDHOLE, ACCEPTED AS THE SOUTH QUARTER CORNER OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 4 WEST FROM WHICH A FOUND MONUMENT IN HANDHOLE, ACCEPTED AS THE SOUTHEAST CORNER OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 4 WEST, THEREOF BEARS S89°39'26"E A DISTANCE OF 2670.94 FEET;

THENCE, ALONG THE SOUTH LINE OF SAID SECTION 24, N89°39'13"W A DISTANCE OF 1051.60' FEET;

THENCE, LEAVING THE SOUTH LINE OF SAID SECTION 24, N00°00'00"E A DISTANCE OF 3324.39' FEET TO THE POINT OF BEGINNING;

THENCE, N23°23'47"W A DISTANCE OF 691.00 FEET;

THENCE, N21°22'55"W A DISTANCE OF 30.38 FEET;

THENCE, N00°01'42"W A DISTANCE OF 261.02 FEET;

THENCE, S89°13'42"E A DISTANCE OF 449.65 FEET;

THENCE, S86°04'55"E A DISTANCE OF 55.00 FEET;

THENCE, S86°02'34"E A DISTANCE OF 515.00 FEET;

THENCE, S00°00'00"E A DISTANCE OF 53.91 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE LEFT;

THENCE, SOUTHERLY ALONG SAID CURVE AN ARC LENGTH OF 377.36 FEET, WITH A RADIUS OF 780.00 FEET AND A CENTRAL ANGLE OF 27°43'09" TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE RIGHT;

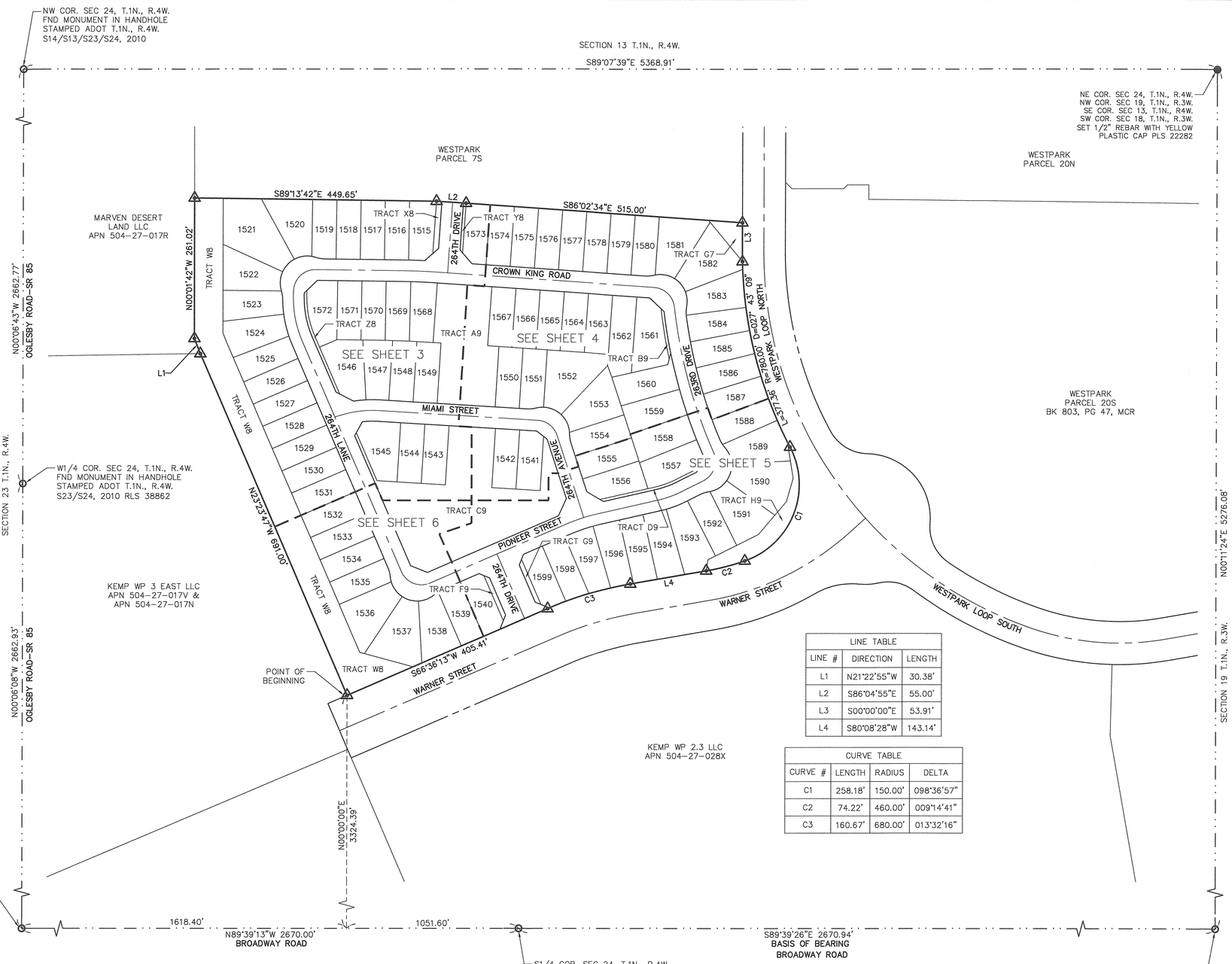
THENCE, SOUTHERLY ALONG SAID CURVE AN ARC LENGTH OF 258.18 FEET, WITH A RADIUS OF 150.00 FEET AND A CENTRAL ANGLE OF 98°36'57" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE TO THE RIGHT;

THENCE, WESTERLY ALONG SAID CURVE AN ARC LENGTH OF 74.22 FEET, WITH A RADIUS OF 460.00 FEET AND A CENTRAL ANGLE OF 09°14'41";

THENCE, S80°08'28"W A DISTANCE OF 143.14 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE LEFT;

THENCE, WESTERLY ALONG SAID CURVE AN ARC LENGTH OF 160.67 FEET, WITH A RADIUS OF 680.00 FEET AND A CENTRAL ANGLE OF 13°32'16";

THENCE, S66°36'13"W A DISTANCE OF 405.41 FEET TO THE POINT OF BEGINNING.



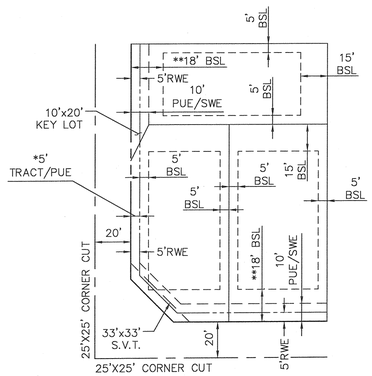
LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	N21°22'55"W	30.38'
L2	S86°04'55"E	55.00'
L3	S00°00'00"E	53.91'
L4	S80°08'28"W	143.14'

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C1	258.18'	150.00'	098°36'57"
C2	74.22'	460.00'	009°14'41"
C3	160.67'	680.00'	013°32'16"

LOT DETAIL

TYPICAL LOT DETAIL – 45' WIDTH

LOT COVERAGE 65% AS PER DEVELOPMENT STANDARDS



VARIED CONDITIONS:
* = 5' MIN. – 10' MAX.
(DEPENDENT ON 10' PUE ON OPPOSITE SIDE OF STREET)

** = 10' TO SIDE ENTRY GARAGE
= 12' TO LIVABLE AREA
= 18' TO GARAGE

SPECIAL NOTES:
1) SETBACKS MEASURED FROM PROPERTY LINE.
2) FRONT YARD SETBACKS TO BE STAGGERED 3' SO NO TWO CONSECUTIVE FRONTAGES MATCH.
3) DRIVEWAY SHALL NOT BE LESS THAN 20 FEET IN LENGTH FROM FACE OF GARAGE TO BACK OF THE SIDEWALK OR TO CURRENT DEVELOPMENT CODE STANDARDS
4) RWE = ROADWAY ACCESS EASEMENT

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT

WESTPARK PHASE 2.2 "PARCEL 8"

CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

ATWELL

PM. J. SPRING
DR. R. GILES
JOB NO. 21001100

SCALE 0 50 100
1" = 100 FEET

21001100 WESTPARK PB FP.DWG

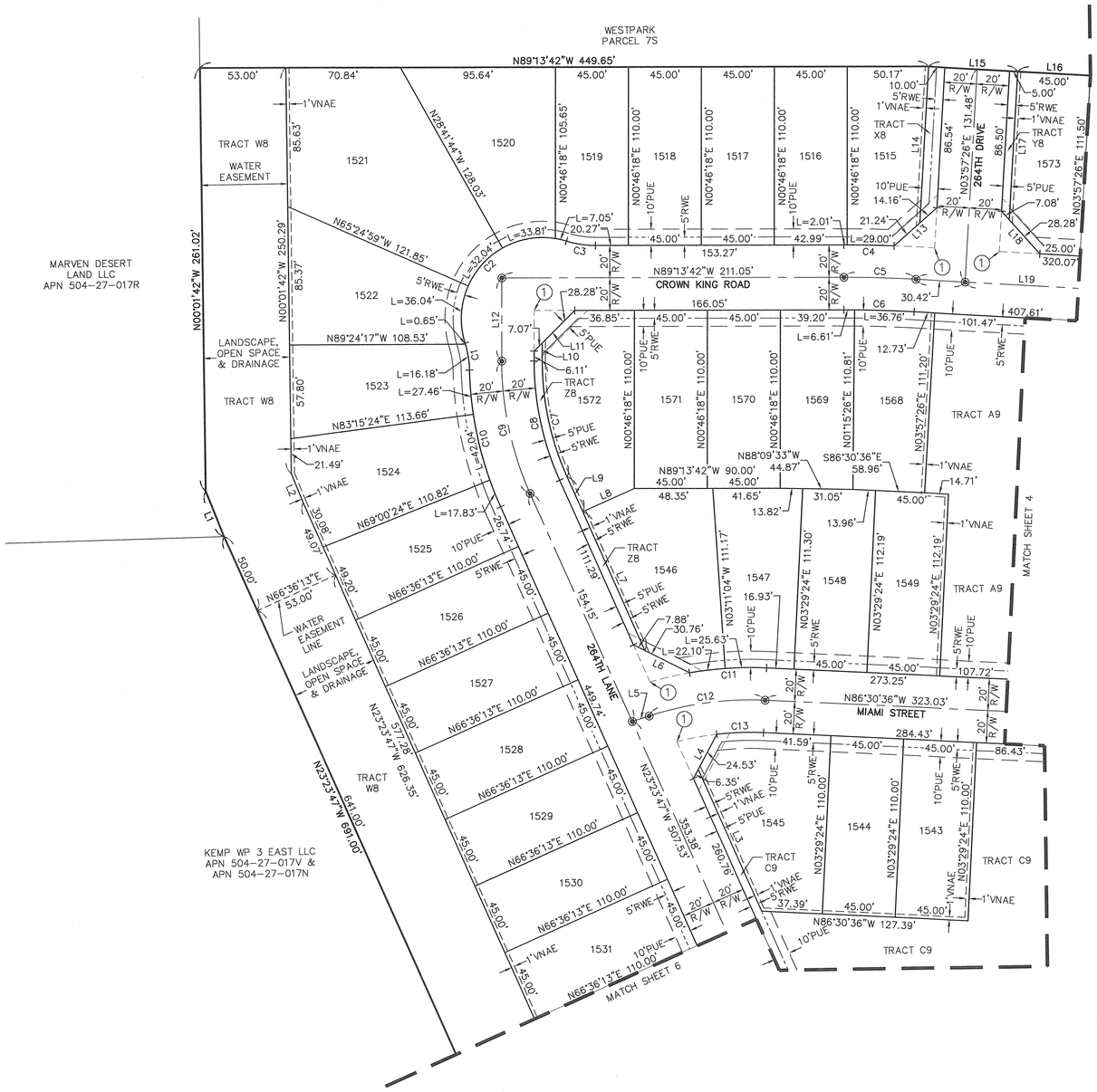
SHEET NO. 2 OF 6

PROFESSIONAL LAND SURVEYOR
CERTIFICATE NO.
22282
JAMES G. SPRING
Date Signed 7/31/24
ARIZONA U.S.A.
Expires 6-30-25

CITY OF BUCKEYE PLANNING NO. PLZS 23-00017

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 8\21001100 WESTPARK PB FP.DWG SAVEDATE:7/31/2024 12:31 PM PLOTDATE:7/31/2024 12:33 PM

COPYRIGHT © 2024 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC



LOT TABLE			LOT TABLE		
LOT	AREA SQ FT	AREA ACRES	LOT	AREA SQ FT	AREA ACRES
1515	5091	0.117	1530	4950	0.114
1516	4950	0.114	1531	4950	0.114
1517	4950	0.114	1543	4950	0.114
1518	4950	0.114	1544	4950	0.114
1519	4909	0.113	1545	6867	0.158
1520	6993	0.161	1546	6934	0.159
1521	11378	0.261	1547	5427	0.125
1522	6593	0.151	1548	5035	0.116
1523	5625	0.129	1549	5049	0.116
1524	6412	0.147	1568	5211	0.120
1525	5162	0.119	1569	5006	0.115
1526	4950	0.114	1570	4950	0.114
1527	4950	0.114	1571	4950	0.114
1528	4950	0.114	1572	5845	0.134
1529	4950	0.114	1573	4817	0.111

LINE TABLE			LINE TABLE		
LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH
L1	N21°22'55"W	30.38'	L11	N45°46'18"E	35.36'
L2	N21°22'55"W	19.46'	L12	N00°46'18"E	51.11'
L3	N23°23'47"W	95.80'	L13	N48°53'04"E	35.40'
L4	N28°27'19"E	30.88'	L14	N03°57'26"E	96.55'
L5	S72°42'39"W	10.95'	L15	S86°04'55"E	55.00'
L6	N62°47'51"W	38.64'	L16	N86°02'34"W	515.00'
L7	N23°23'47"W	93.76'	L17	N03°57'26"E	91.50'
L8	S66°36'13"W	34.91'	L18	N41°02'34"W	35.36'
L9	N23°23'47"W	23.61'	L19	S86°02'34"E	449.10'
L10	N00°46'18"E	11.11'			

CURVE TABLE				CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA	CURVE #	LENGTH	RADIUS	DELTA
C1	16.83'	60.00'	016°04'06"	C8	75.93'	180.00'	024°10'05"
C2	108.94'	50.00'	124°50'00"	C9	84.36'	200.00'	024°10'05"
C3	18.16'	60.00'	017°20'29"	C10	87.33'	220.00'	022°44'41"
C4	31.01'	820.00'	002°10'00"	C11	47.73'	220.00'	012°25'52"
C5	44.48'	800.00'	003°11'08"	C12	72.53'	200.00'	020°46'45"
C6	43.37'	780.00'	003°11'08"	C13	28.91'	180.00'	009°12'04"
C7	73.82'	175.00'	024°10'05"				

(1)=SVT 33'X33' TYPICAL

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT
WESTPARK PHASE 2.2
"PARCEL 8"
CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

ATWELL

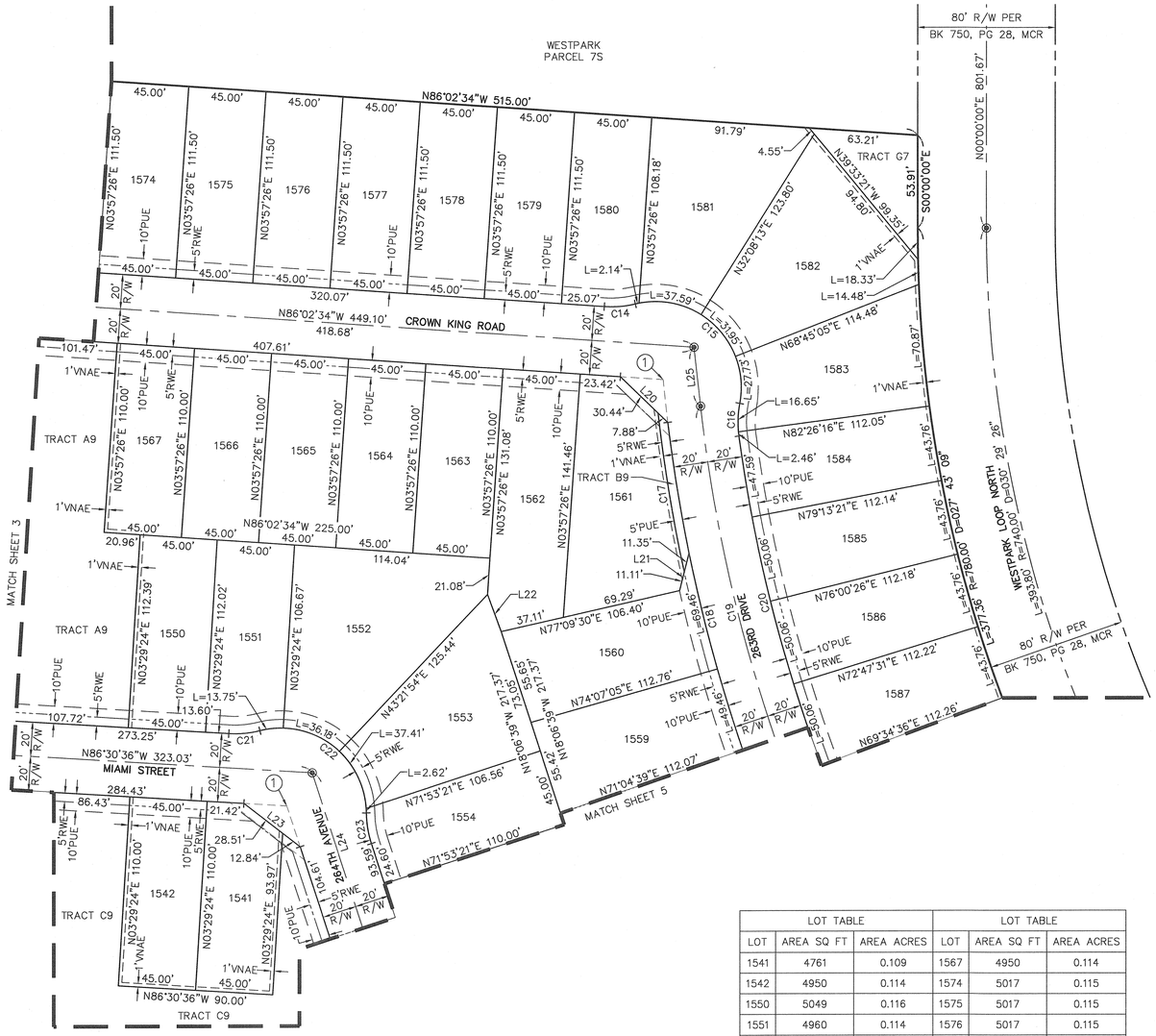
PM. J. SPRING
DR. R. GILES
JOB NO. 21001100
SCALE 0 20 40
1" = 40 FEET
21001100 WESTPARK P8 FP.DWG
SHEET NO. 3 OF 6

PROFESSIONAL LAND SURVEYOR
CERTIFICATE NO.
22282
JAMES G. SPRING
1/31/24
Date Signed
ARIZONA U.S.A.
Expires 6-30-25

CITY OF BUCKEYE PLANNING NO. PLZS 23-00017

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 8\21001100 WESTPARK P8 FP.DWG SAVEDATE:7/31/2024 12:31 PM PLOTDATE:7/31/2024 12:33 PM

COPYRIGHT © 2024 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC



(1)=SVT 33'X33' TYPICAL

LOT TABLE			LOT TABLE		
LOT	AREA SQ FT	AREA ACRES	LOT	AREA SQ FT	AREA ACRES
1541	4761	0.109	1567	4950	0.114
1542	4950	0.114	1574	5017	0.115
1550	5049	0.116	1575	5017	0.115
1551	4960	0.114	1576	5017	0.115
1552	9275	0.213	1577	5018	0.115
1553	7204	0.165	1578	5017	0.115
1554	4926	0.113	1579	5018	0.115
1559	5882	0.135	1580	4995	0.115
1560	6101	0.140	1581	7314	0.168
1561	7246	0.166	1582	8145	0.187
1562	6558	0.151	1583	6243	0.143
1563	4950	0.114	1584	5259	0.121
1564	4950	0.114	1585	5261	0.121
1565	4950	0.114	1586	5263	0.121
1566	4950	0.114	1587	5265	0.121

LINE TABLE		
LINE #	DIRECTION	LENGTH
L20	N46°05'00"W	38.32'
L21	N14°12'52"E	22.46'
L22	N20°13'42"W	23.13'
L23	N52°18'37"W	41.35'
L24	N18°06'39"W	188.25'
L25	S06°27'01"E	34.51'

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C14	18.16'	60.00'	017°20'29"
C15	99.41'	50.00'	113°54'52"
C16	19.11'	60.00'	018°15'03"
C17	93.51'	937.00'	005°43'05"
C18	274.33'	932.00'	016°51'54"
C19	319.52'	912.00'	020°04'24"
C20	235.80'	892.00'	015°08'47"
C21	18.16'	60.00'	017°20'29"
C22	89.96'	50.00'	103°04'55"
C23	18.16'	60.00'	017°20'29"

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT

WESTPARK PHASE 2.2
"PARCEL 8"
CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

ATWELL

PM. J. SPRING
DR. R. GILES
JOB NO.
21001100

SCALE 0 20 40
1" = 40 FEET

21001100 WESTPARK P8 FP.DWG

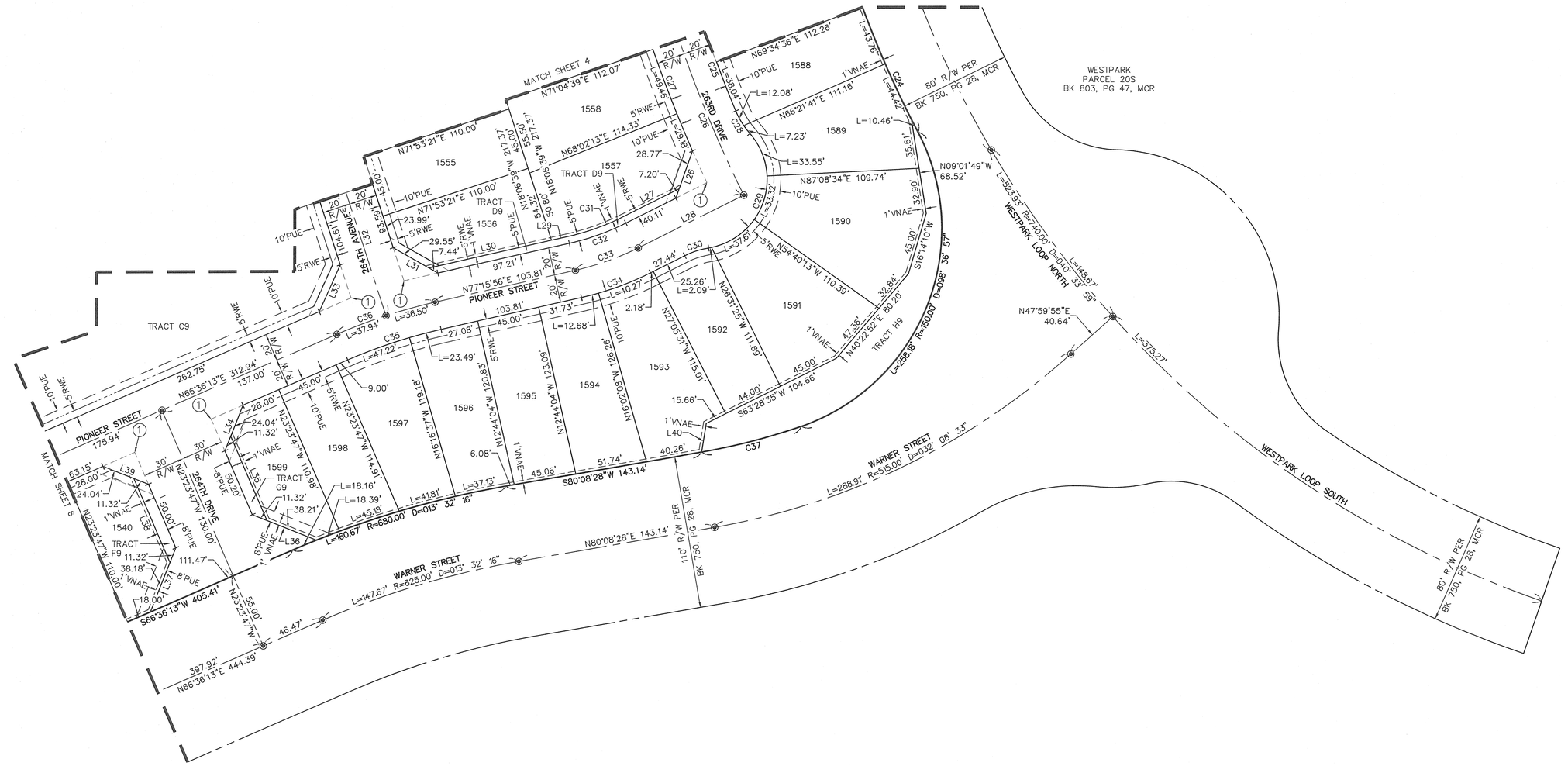
SHEET NO.
4 OF 6

PROFESSIONAL LAND SURVEYOR
CERTIFICATE NO.
22282
JAMES G. SPRING
Date Signed 7/31/24
ARIZONA, U.S.A.
Expires 6-30-25

CITY OF BUCKEYE PLANNING NO. PLZS 23-00017

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 8\21001100 WESTPARK P8 FP.DWG SAVEDATE:7/31/2024 12:31 PM PLOTDATE:7/31/2024 12:33 PM

COPYRIGHT © 2024 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC



LOT TABLE			LOT TABLE		
LOT	AREA SQ FT	AREA ACRES	LOT	AREA SQ FT	AREA ACRES
1540	4441	0.102	1592	5104	0.117
1555	4950	0.114	1593	6809	0.156
1556	5207	0.120	1594	5974	0.137
1557	5941	0.136	1595	5488	0.126
1558	5925	0.136	1596	5623	0.129
1588	5262	0.121	1597	5740	0.132
1589	6533	0.150	1598	5071	0.116
1590	8115	0.186	1599	4458	0.102
1591	7163	0.164			

LINE TABLE			LINE TABLE		
LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH
L26	N19°28'31"E	35.97'	L34	N21°36'13"E	35.36'
L27	N63°28'35"E	45.29'	L35	N23°23'47"W	66.21'
L28	N63°28'35"E	84.89'	L36	N68°21'11"W	49.53'
L29	S77°15'56"W	12.20'	L37	N21°36'13"E	49.50'
L30	N77°15'56"E	90.51'	L38	N23°23'47"W	66.00'
L31	N60°25'21"W	36.97'	L39	N68°23'47"W	35.36'
L32	N18°06'39"W	188.25'	L40	S08°56'11"W	20.90'
L33	N24°14'47"E	36.95'			

CURVE TABLE				CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA	CURVE #	LENGTH	RADIUS	DELTA
C24	377.36'	780.00'	027°43'09"	C31	42.12'	175.00'	013°47'21"
C25	235.80'	892.00'	015°08'47"	C32	43.32'	180.00'	013°47'21"
C26	319.52'	912.00'	020°04'24"	C33	48.13'	200.00'	013°47'21"
C27	274.33'	932.00'	016°51'54"	C34	52.95'	220.00'	013°47'21"
C28	19.31'	60.00'	018°26'13"	C35	70.71'	380.00'	010°39'43"
C29	106.57'	50.00'	122°07'18"	C36	74.44'	400.00'	010°39'43"
C30	18.16'	60.00'	017°20'29"	C37	74.22'	460.00'	009°14'41"

(1) = SVT 33'X33' TYPICAL

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT

WESTPARK PHASE 2.2 "PARCEL 8"

CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

ATWELL

PM. J. SPRING
DR. R. GILES
JOB NO. 21001100

SCALE 0 20 40
1" = 40 FEET

21001100 WESTPARK P8 FP.DWG

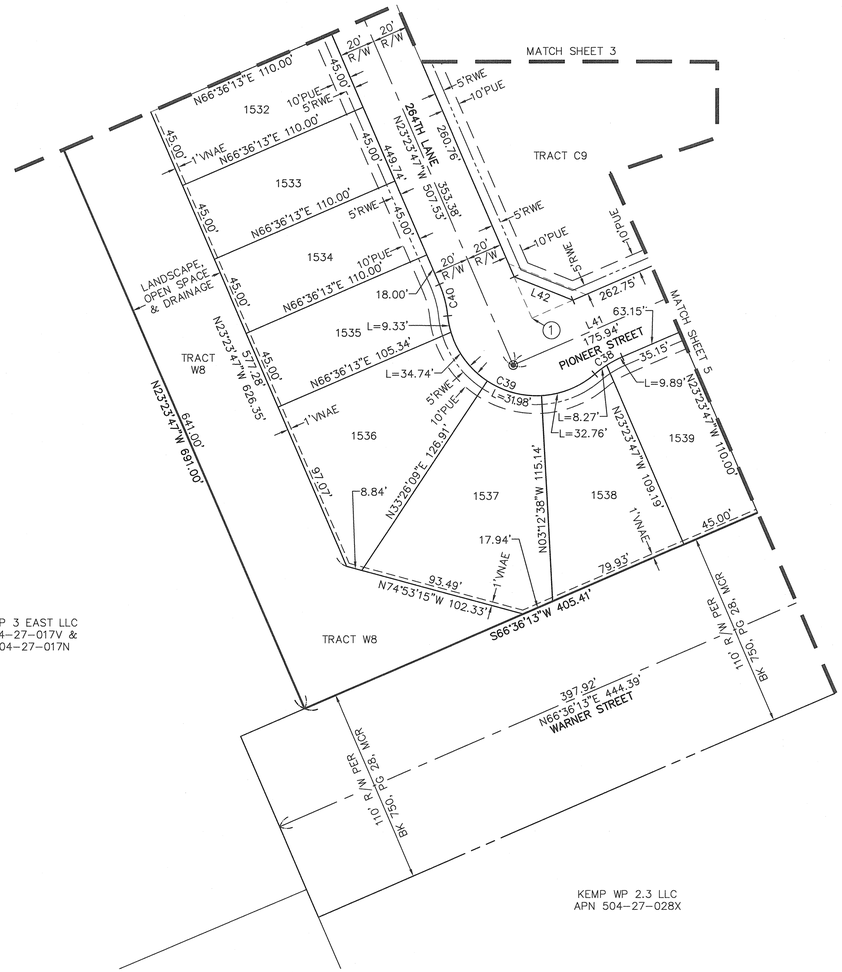
SHEET NO. 5 OF 6

PROFESSIONAL LAND SURVEYOR CERTIFICATE NO. 22282 JAMES G. SPRING Date Signed 7/31/24 ARIZONA U.S.A. Expires 6-30-25

CITY OF BUCKEYE PLANNING NO. PLZS 23-00017

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 8\21001100 WESTPARK P8 FP.DWG SAVEDATE:7/31/2024 12:31 PM PLOTDATE:7/31/2024 12:33 PM

COPYRIGHT © 2024 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC



LOT TABLE		
LOT	AREA SQ FT	AREA ACRES
1532	4950	0.114
1533	4950	0.114
1534	4950	0.114
1535	4899	0.112
1536	7701	0.177
1537	8442	0.194
1538	6423	0.147
1539	4947	0.114

LINE TABLE		
LINE #	DIRECTION	LENGTH
L41	N66°36'13"E	312.94'
L42	N68°23'47"W	35.36'

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C38	18.16'	60.00'	017°20'29"
C39	108.81'	50.00'	124°40'58"
C40	18.16'	60.00'	017°20'29"

1 =SVT 33'X33' TYPICAL

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT

WESTPARK PHASE 2.2
"PARCEL 8"

CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

ATWELL

PM. J. SPRING
DR. R. GILES
JOB NO. 21001100
SCALE 0 20 40
1" = 40 FEET

21001100 WESTPARK PB FP.DWG

SHEET NO. 6 OF 6

PROFESSIONAL LAND SURVEYOR
CERTIFICATE NO.
22282
JAMES G. SPRING
Date Signed 7/31/24
ARIZONA U.S.A.
Expires 6-30-25

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 8\21001100 WESTPARK PB FP.DWG SAVEDATE:7/31/2024 12:31 PM PLOTDATE:7/31/2024 12:33 PM

CITY OF BUCKEYE PLANNING NO. PLZS 23-00017

6R PLZS-23-00017 RECEIVED AUG 01 2024 WD

STATE OF ARIZONA
DEPARTMENT OF WATER RESOURCES
CERTIFICATE OF ASSURED WATER SUPPLY

This is to certify that

KEMF WP 2.2, LLC, an Arizona limited liability company, Owner, D.R.Horton, Inc., a Delaware corporation, Buyer, Century Communities of Arizona , an Arizona limited liability company, Buyer and GDC WP 2.2, LLC, an Arizona limited liability company, Buyer,

have met the requirements of A.R.S. §§ 45-576 and A.A.C.R12-15-701 et. seq., and

By powers vested in the Director of the Arizona Department of Water Resources by the State of Arizona, and subject to the conditions contained in A.A.C. R12-15-701 et seq.,

Are issued this Certificate of Assured Water Supply for

Westpark Phase 2.2 Parcels 7N, 7S, 8, 19 and 20N
Township 1 North, Range 4 West, Sections 13 and 24
GSRB&M Maricopa County, PHOENIX AMA

The referenced subdivision consists of **446 lots** as described in the preliminary plat on file with the Department, and has an estimated water demand of **199.52 acre-feet per year.** The subdivision will be served **groundwater** by **the City of Buckeye.**

This Certificate is invalid as to any entity not named above.
This Certificate may be assigned pursuant to A.A.C. R12-15-705.

Certificate Number: 31-402138.0001
Original Issue Date: October 19, 2007

ARIZONA DEPARTMENT OF WATER RESOURCES

Carol M. Ward

Assistant Director

July 29, 2024
Date

TYPE A CERTIFICATE

CITY OF BUCKEYE
Regular Council Meeting
COUNCIL ACTION REPORT

MEETING DATE: 09/03/24	**AGENDA ITEM:** 4.H. DS - Westpark Phase 2.2 "Parcel 19" - Final Plat - PLZS-23-00019
DATE PREPARED: 08/29/24	**DISTRICT NO.:** Council District 3
STAFF LIAISON: Patricia Cooley, Planner 1, pcooley@buckeyeaz.gov, (623) 349-6233	
DEPARTMENT: Development Services	**AGENDA ITEM TYPE:** Consent Agenda Items / New Business

ACTION/MOTION: (This language identifies the formal motion to be made by the Council)
Council to take action on a Final Plat of Westpark Phase 2.2 "Parcel 19," a subdivision located northeast of the intersection of West Westpark Loop North and West Warner Street.

SUMMARY

PROJECT DESCRIPTION:
Barry Lindner from Atwell, Inc, on behalf of DR Horton Inc, is requesting approval of a Final Plat of Westpark Phase 2.2 "Parcel 19," a subdivision located northeast of the intersection of W. Westpark Loop North and W. Warner Street. The project encompasses approximately 21.8 acres and includes 105 single-family lots,12 tracts and approximately 2.73 acres of open space with an overall density of approximately 4.82 dwelling units per acre. Approximately 3.79 acres of Right-of-way (ROW) is being dedicated to the City of Buckeye through this Final Plat. The proposal is in substantial conformance with the Preliminary Plat. The Final Plat is accompanied by a Certificate of Assured Water Supply from the Department of Water Resources, per A.R.S. 9-463.01(I).

BENEFITS:
The subject Final Plat will allow continued development of traditional single-family residences within the City of Buckeye.

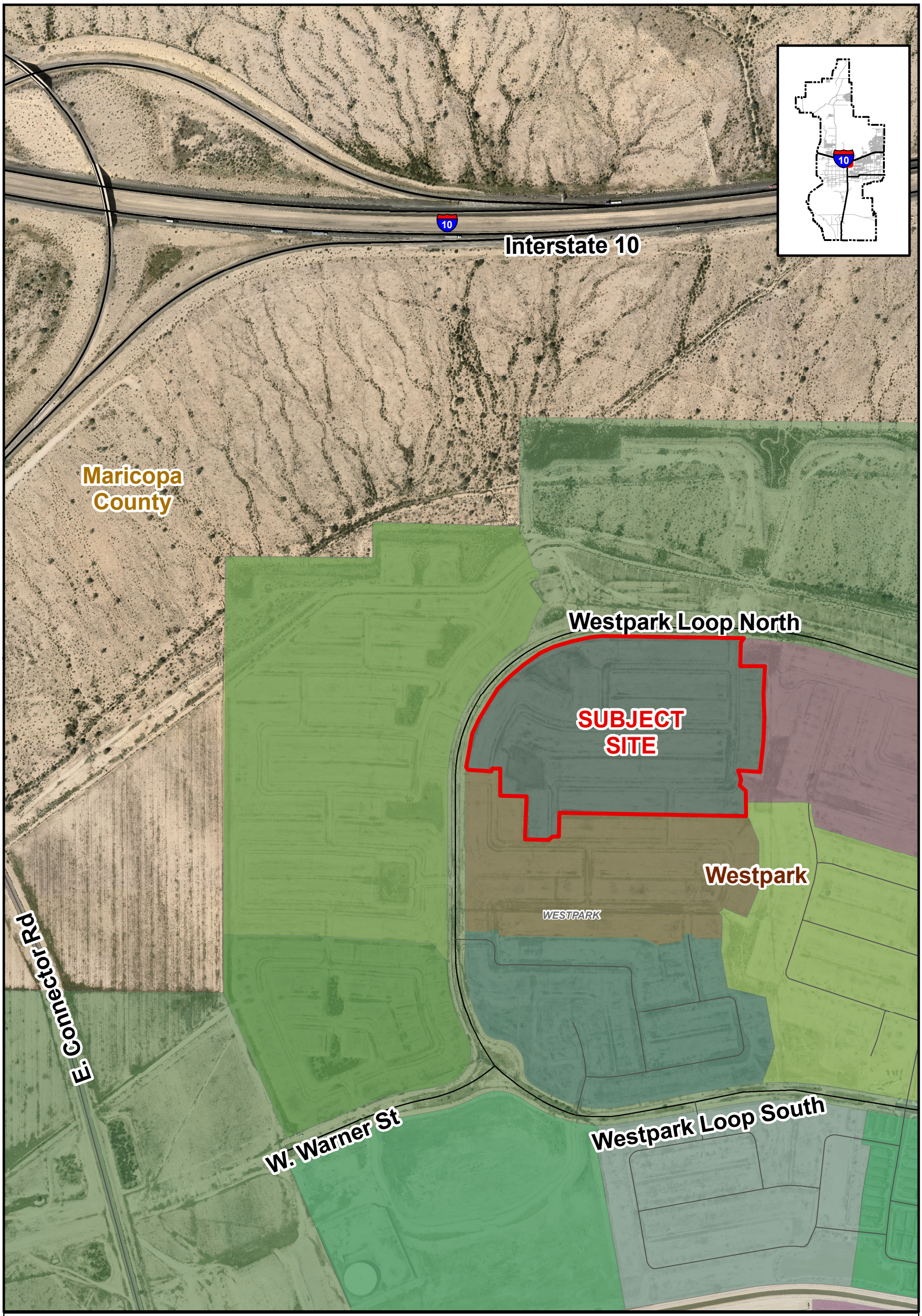
FINANCIAL IMPACT STATEMENT:
Although a fiscal impact analysis has not been conducted on this specific project, all new development will have an ongoing fiscal impact on the city. The development is responsible for construction of all infrastructure necessary to serve the site and will generate one-time revenue for the city such as permit fees, construction sales tax and development impact fees. Longer term fiscal impacts include increased demands for municipal services, the costs of which may or may not be offset by increased property values/tax levies, city sales tax, state shared revenues and the increased demand for commercial and retail development. Any areas that will be maintained by the city are constructed by the developer and then conveyed to the city two (2) years after construction.

FINANCIAL IMPACT STATEMENT:
Although a fiscal impact analysis has not been conducted on this specific project, all new development will have an ongoing fiscal impact on the city. The development is responsible for construction of all infrastructure necessary to serve the site and will generate one-time revenue for the city such as permit fees, construction sales tax and development impact fees. Longer term fiscal impacts include increased demands for municipal services, the costs of which may or may not be offset by increased property values/tax levies, city sales tax, state shared revenues and the increased demand for commercial and retail development. Any areas that will be maintained by the city are constructed by the developer and then conveyed to the city two years after construction.

Items related to a project or facility location must include an attached vicinity map for Council Review.

ATTACHMENTS:

Exhibit A - PLZS-23-00019 - Westpark Parcel 19 - Final Plat - Vicinity Map.pdf
Exhibit B - PLZS-23-00019 - Westpark Parcel 19 - Final Plat - Narrative.pdf
Exhibit C - PLZS-23-00019 - Westpark Parcel 19 - Final Plat -Final Plat.pdf
Exhibit D - PLZS-23-00019 - Westpark Parcel 19 - Final Plat - CAWS.pdf



VICINITY MAP

PLZS-23-00019
Westpark Phase 2.2 Parcel 19 Final Plat
City Council District 3

BUCKEYE, AZ

N W E S

3R PLZS-23-00019 RECEIVED DEC 13 2023 WD

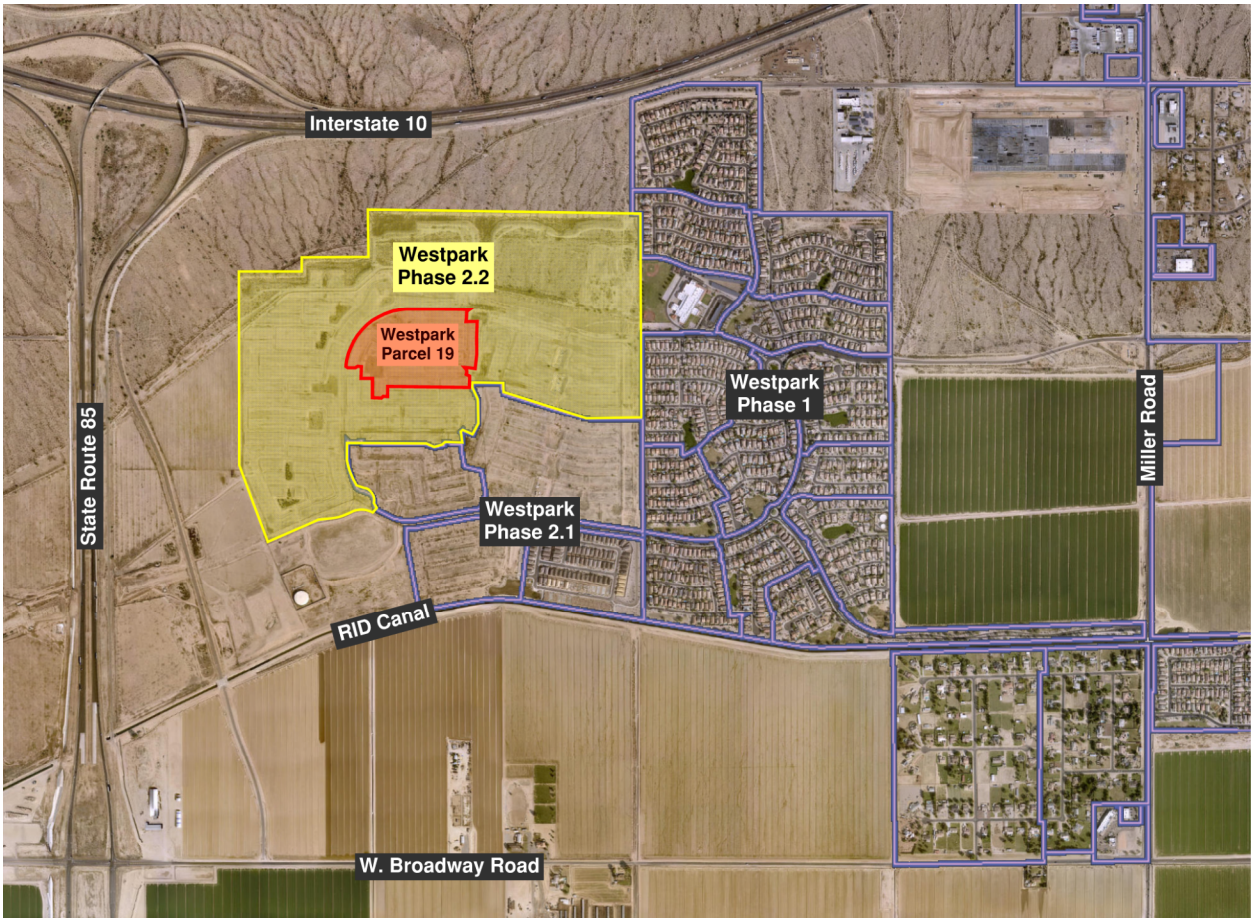
Final Plat Narrative Report

For

Westpark – Phase 2.2
Parcel 19

PLZS-23-00019

SEC of I-10 & SR-85
Buckeye, AZ



4700 E. Southern Avenue, Mesa, AZ 85206 Tel: 480.218.8831 Fax: 480.830.4888
www.atwell-group.com

Purpose of Request

The primary purpose of the subject Final Plat submittals is to fulfill prior project entitlements and to complete site development of Phase 2.2 for the existing Westpark residential subdivision. This current phase of the project will focus on completing the remaining portions of the Westpark Loop Road and Warner Street infrastructure, as well as continue with final development approvals to permit full construction of Parcels 5, 6, 7N, 7S, 8, 18N, 19 and 20N. The improvements for the remaining portions of the West Park Loop Road and Warner Street will be completed under a separate cover specific to only off-site improvements while each of the different parcels will be constructed under individual on-site covers. Refer to the Development Standards section of this narrative for a table of the approved and proposed development zoning conditions. Developer is expecting to commence construction of Westpark Loop North before the end of the year. Agreements with builders and other developers affect the schedule with the intent to construct Westpark Loop North first, then Parcels 8, 7S & 19. The development schedule of the remaining parcels is not certain at this time.

Project Background & Current Conditions

The overall Westpark subdivision is located at the southeast corner of the intersection of Interstate 10 (I-10) and State Route 85 (SR-85) in Buckeye, Arizona. As it sits today, the overall subdivision is mostly surrounded by undeveloped desert and agricultural farmlands with an existing development directly southeast. It is bordered to the south by the RID Canal but is not necessarily served by those irrigation facilities. Public vehicular access is currently only provided from Miller Road to the East. There are two access points to Miller Road, and they are the North and South Westpark Loop Road connections. A tertiary access road identified as E. Connector Road was constructed in 2010. This road connects to W. Broadway Road to the south, bridges the RID Canal, then stops at a point along the old SR-85 frontage road just south of the intersection with I-10. There are future plans by Developers to connect this over to the existing end of W. Durango Street, just north of Phase 1. Eventually, additional interior street connections with Westpark will be made to aide in overall vehicular circulation and connectivity with local roadways.

The subdivision was originally planned as “Roston/Buckeye” and received approval of its Community Master Plan (CMP) in October of 2000 since it was consistent with the City’s General Plan Land Use Designation of “Master Planned Community” (MPC). Several amendments have occurred over the years since it’s initial approval to enact minor updates to better suit the changing needs of the City and surrounding area. A Preliminary Plat of Westpark Phase 2, Project No. PP04-09, was approved in mid-2004 and is the basis for the scope of work proposed with the subject project submittals. Parcel 19 is proposing 105 lots over a total of 21.80 acres, which equates to a density of 4.82 dwelling units per acre. The minimum lot size proposed is 53’x115’. While the parcel has an overlying zoning of Planned Community (PC), the development standards remain consistent with the City’s underlying applicable residential zoning standards and maintain the initial intent and approvals of the CMP.

Construction of Phase 1 began around 2004 and met full build-out in 2007. With Phase 1 nearing completion and the need for further expansion, Phase 2 began construction in 2006 but stalled out after mass grading and some portions of infrastructure work. The mass grading covered a predominance of the Phase 2 area, but a small portion of the northerly parcels was left in a natural state due to an irrigation supply ditch that was necessary to remain in service at the time. Since then, the subject ditch has been decommissioned and is no longer needed. The site has remained in a partially completed state until the southeasterly portion of it (identified as Phase 2.1 and consisting of platted Parcels 13, 14, 18S and 20S) was resurrected recently in 2019 by a separate ownership entity. These four parcels are continuing development pursuit by said owner on a parallel track to the subject Phase 2.2 work. Currently, Parcel 14 is complete, Parcel 18S has approved plans, and improvement plans for Parcels 13 and 20S are in progress.

The mass grading work established large offsite drainage attenuating basins along the entire northerly portion of the property. These basins intercept offsite runoff then route them accordingly and discharge in the historic courses. Individual parcels will maintain the necessary offsite routing as well as provide for the required onsite stormwater management addressing the 100-year design conditions as typical. Existing ground conditions have been maintained over the years to keep unwanted vegetation growth at bay and to ensure the in-place network of surface basins and drainageways function as needed. Natural terrain falling from northeast to southwest remains as the overall condition.

Utilities and Services

Water and sewer are both provided to and serving the Westpark subdivision by the City of Buckeye. Westpark falls within the limits of the City's water pressure Zone 2. This zone is primarily supplied by a facility identified as the North Airport Road Water Campus (NARWC), which is located approximately 8-miles northeast of Westpark. The primary supply of water is brought to the subdivision by offsite 16" transmission mains located within W. Durango Street and Miller Road. Phase 1 contains distribution mains throughout which vary in size from 6" through 16" which stop at Phase 2 for continuation. Phase 2 will install the same type and sizes of potable distribution throughout and a new 16" connection to the offsite main in W. Durango Street to help bolster the overall system's capabilities. A 16" main line stub exists at the west end of Warner Street for future connection and further continuation of the water system. Parcel 19's potable water distribution is mostly comprised of 8" mains and connects to the 16" main within the Weskpark Loop Road at one location, an 8" stub in S 261st Lane. Parcel 19 also connects to Parcel 20N in S. 263rd Avenue, S. 262nd Lane and S. 262nd Avenue.

Similar to the water distribution, sewage collection is provided throughout the existing subdivision utilizing a network of 8" through 10" public collection gravity main lines. Due to the gravity design of the sewer following the natural terrain, the individual parcels within Phase 2 cascade through one another as the site sewerage flows from north to south. Infrastructure for the Phase 2.2 parcels will be constructed in a manner that starts with the lower end of the system so that dependent parcels are able to discharge once flow demands come online. Parcel 19's system is at a mid point in the overall system and consists of 8" sewer lines that ultimately drain to Parcel 20N in S. 263rd Avenue and S. 262nd Lane. Existing Westpark Phase 1 discharges at its southwest corner and Phase 2 discharges at its southeast corner, meeting at an existing 18" main on the north side of the RID Canal at the intersection with the Rooks Road alignment. From there, the existing 18" main heads south, crosses the canal, then continues roughly 5 miles southeast where it ends up at the Beloat Wastewater Treatment Plant facility (which is located just south of downtown Buckeye, southeast of the intersection of S. Miller Road and E. Irwin Avenue). The plant currently has capacity to serve the Westpark Phase 2.2 build-out.

Other public utilities and service providers include Arizona Public Service (APS) for electrical with cable and telephone provided by both CenturyLink and Cox. Additionally, refuse/recycle service is handled by the City of Buckeye for typical residential collection services.

Emergency services are handled within the City's jurisdictional limits and are provided by Buckeye Fire Department and Buckeye Police Department. The nearest Fire Station to serve Phase 2.2 already exists within the Phase 1 limits. Buckeye Fire Station #706 is located just east of Parcel 5, on the north side of the adjacent Westpark Elementary School. An additional future Fire Station site has been slated for a vacant parcel within the Phase 2.2 limits but is not yet defined for construction. The primary Buckeye Police Station dispatches from their home base located at 100 N. Apache Road, which is south of Downtown Buckeye on the east side of the MC85/Monroe Avenue curve.

Education services are provided through the local school districts. Students start off in the Buckeye Elementary School District which handles grades K-8. The nearest elementary school is Westpark Elementary, which happens to be adjacent east to Parcel 5. The school was completed and has been serving the neighborhood since 2007. Once students are ready to move on, they migrate to the Buckeye

Union High School District. The nearest public school is Youngker High School, which is approximately 1-mile due east of Westpark, at the northwest corner of S. Apache Road and W. Lower Buckeye Road.

Landscaping, Parks & Open Space

Overall, the new Phase 2.2 landscape design will match and mesh with the existing Westpark Phase 1 theme, continuing to provide appropriate green spaces that soften the development appearance while maintaining strict standards for a low water-use plant palette and maintenance. With 20.6% of open space allocated in Phase 2.2, there is a meaningful natural appearance offering an array of outdoor uses that tie the subdivision together. Overall, this equates to roughly 41 +/- acres of common area open space and amenities for the residents. Each parcel is proposed to include a “pocket park” for safe family activities as well as harnessing the various remaining open spaces for activity opportunities. Parcel 19 specifically has multiple dual-use basins located throughout the site, with a playground, shade structure, and activity area located at one of the more centralized basins. These areas help make up the 2.73 acres of parks and open space, which is about 12.5% of the Parcel. The Westpark trail network will ensure all the open/green spaces are connected to one another as well as providing a safe and continuous accessway throughout the entire subdivision. This network and other access means will be extended to each of the future phases as well, completing the harmonious nature of the development and general community feel. Although not part of this current plan of development, a large format regional park and recreation facility is designed and slated for one of the remaining undeveloped parcels of Phase 2.2. It is adjacent south of Warner Street and will be a substantial amenity benefit to the area. When developed, it will add an additional 25 +/- acres of high-quality recreational facilities of varied substance.

Development Schedule

Currently, the anticipated development schedule is somewhat dependent on the timing of all jurisdictional reviews and approvals. As mentioned prior, the entirety of Phase 2 (with the exception of portions of the northerly parcels) was mass-graded in 2006, with some primary utility infrastructure placed as well. The utility work was focused on the southern leg of the Loop Road, and the adjacent four Parcels 13, 14, 18S and 20S. This prior work reduces some of the longer field processes associated with site development, but there is still plenty to do once field work commences.

In general, it is expected that the first portion of new development will be to construct the remaining segments of Westpark Loop Road, Warner Street and the offsite water main connection north to Durango Street. Once work begins, it is projected to be completed in approximately 5-8 months. Individual parcel construction will commence once approvals are obtained and home builders have committed to parcels accordingly. Since this is not yet clearly defined, some speculation is necessary to forecast the development progress. It is anticipated that individual parcel development would take an initial 3-6 months to complete site improvements and begin constructing homes. With construction varying both regionally and throughout the industry, we would anticipate first homes coming online for sale within the following 4-6 months. Currently home builders are averaging anywhere from 5 to 8 home closings per month once they are in full swing (after site work). As identified prior, since there are some infrastructure limitations for several parcels, the progression of development is expected to proceed in the following order: Loop Road/Offsite Infrastructure, then Parcels 8, 7S, 19, 20N, 7N, 6, 18N & 5. This order will ensure that suitable utilities and drainage facilities are maintained to support the construction and new residents of Buckeye accordingly. Parcel 20N Sewer must be approved as part of Parcel 19

Tract Table

TRACT TABLE			
TRACT	AREA SQ FT	AREA ACRES	USAGES
TRACT C7	463	0.01	LANDSCAPE, PUE & OPEN SPACE
TRACT H7	61,846	1.42	LANDSCAPE, DRAINAGE, PUE & OPEN SPACE
TRACT I7	548	0.01	LANDSCAPE, PUE & OPEN SPACE
TRACT I8	570	0.01	LANDSCAPE, PUE & OPEN SPACE
TRACT K7	925	0.02	LANDSCAPE, PUE & OPEN SPACE
TRACT L7	925	0.02	LANDSCAPE, PUE & OPEN SPACE
TRACT M7	51,028	1.17	LANDSCAPE, DRAINAGE, PUE & OPEN SPACE
TRACT N7	929	0.02	LANDSCAPE, PUE & OPEN SPACE
TRACT O7	462	0.01	LANDSCAPE, PUE & OPEN SPACE
TRACT P7	462	0.01	LANDSCAPE, PUE & OPEN SPACE
TRACT Q7	462	0.01	LANDSCAPE, PUE & OPEN SPACE
TRACT R7	462	0.01	LANDSCAPE, PUE & OPEN SPACE
TOTAL	119,082	2.73	

Development Standards

Parcel No.	Gross Parcel Area (Acres)	Lot Count	Lot Size (Min.)	Gross Density (DU/Acre)	Open Space (Acre)
5	42.85	153	53' x 120'	3.57	12.85
6	22.06	84	58' x 115'	3.81	5.01
7N	22.52	77	58' x 115'	3.42	6.41
7S	25.31	109	53' x 115'	4.31	4.29
8	17.30	85	45' x 110'	4.91	3.23
18N	30.84	164	45' x 110'	5.32	6.35
19	21.80	105	53' x 115'	4.82	2.73
20N	17.16	70	65' x 120'	4.08	0.45
Totals:	**199.84**	**847**	--	**4.28**	**41.32**

Parcel No.	Lot Count	Lot Size (Min.)	Lot Coverage (Max.)	Front Setback	Rear Setback	Side Setbacks
5	153	53' x 120'	65%	*	20'	5' / 8'
6	84	58' x 115'	50%	*	20'	5' / 8'
7N	77	58' x 115'	50%	*	20'	5' / 8'
7S	109	53' x 115'	65%	*	20'	5' / 8'
8	85	45' x 110'	65%	*	15'	5' / 5'
18N	164	45' x 110'	65%	*	15'	5' / 5'
19	105	53' x 115'	65%	*	20'	5' / 8'
20N	70	65' x 120'	50%	*	20'	5' / 10'

* = 10' to side entry garage
12' to living area
18' to garage

RESIDENTIAL PARCEL TABLE

PARCEL	LOT SIZE	UNIT COUNT
5	53' X 120'	153
6	58' X 115'	84
7N	58' X 115'	77
7S	53' X 115'	109
8	45' X 110'	85
18N	45' X 110'	164
19	53' X 115'	105
20N	65' X 120'	70
	TOTAL LOTS:	847

(NOT A PART)

(NOT A PART)

NARRATIVE REPORT PERTAINS TO PARCEL 19 ONLY

(NOT A PART)

PARCEL 6
58' x 115'
84 LOTS

PARCEL 5
53' x 120'
153 LOTS

EXISTING PHASE 1
(NOT A PART)

PARCEL 7N
58' x 115'
77 LOTS

WESTPARK LOOP NORTH

PARCEL 19
53' x 115'
105 LOTS

PARCEL 18N
45' x 110'
164 LOTS

PARCEL 7S
53' x 115'
109 LOTS

PARCEL 20N
65' x 120'
70 LOTS

FUTURE PHASE 3
(NOT A PART)

PARCEL 8
45' x 110'
85 LOTS

PARCEL 18S
NOT A PART

PARCEL 20S
NOT A PART

EAST CONNECTOR ROAD

FUTURE PHASE 3
(NOT A PART)

WARNER STREET

WESTPARK LOOP SOUTH

EXISTING PHASE 1
(NOT A PART)

PARK
NOT A PART

PARCEL 13
NOT A PART

PARCEL 14
NOT A PART

FUTURE PHASE 3
(NOT A PART)

R.I.D. CANAL

WESTPARK - PHASE 2.2

200 0 200 400

SEPTEMBER 16, 2021

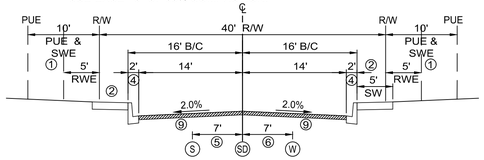
ATWELL
866.850.4200 www.atwell-group.com

k:\21001100 – westpark phases 2.2\dwg\presentation\21001100_marketing map.dwg

COPYRIGHT © 2021 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC

GENERAL NOTES

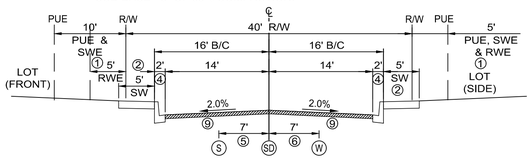
① PUE / LPPUE / LANDSCAPE - 8:1 MAX SLOPE.
② 5' S / W PER MAG STD DTL 230.
③ ROW / LANDSCAPE AREA, 1.5% SLOPE. FIRE HYDRANTS, TREES & STREET LIGHTS LOCATED 2' BACK OF SIDEWALK.
④ CURB & GUTTER PER MAG STD DTL 220-1, TYPE 'A' OR C'.
⑤ SANITARY SEWER MAINS SHALL BE PLACED 7' SOUTH OR WEST OF CL.
⑥ WATER MAINS SHALL BE PLACED 7' NORTH OR EAST OF CL.
⑦ NO PARKING SHALL BE SIGNED ON BOTH SIDES OF THE STREET.
⑧ STORM DRAIN SHALL BE PLACED ON THE CL OF STREET.
⑨ PAVEMENT REQUIREMENTS:
AC - 2.5" OF R12.5MM MARSHALL.
BASE - 8" OF ABC. PER MAG STD SPEC 702.2.
SUB-BASE - 8" OF 95% COMPACTION.



LOCAL STREET - MODIFIED COB DTL 63170
(FRONT LOADED LOTS)
SCALE: 1"=10'

GENERAL NOTES

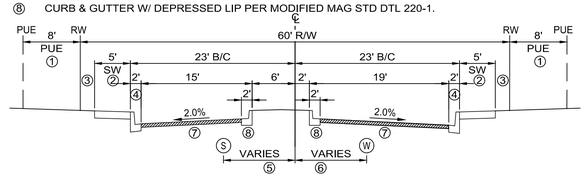
① PUE / LPPUE / LANDSCAPE - 8:1 MAX SLOPE.
② 5' S / W PER MAG STD DTL 230.
③ ROW / LANDSCAPE AREA, 1.5% SLOPE. FIRE HYDRANTS, TREES & STREET LIGHTS LOCATED 2' BACK OF SIDEWALK.
④ CURB & GUTTER PER MAG STD DTL 220-1, TYPE 'A' OR C'.
⑤ SANITARY SEWER MAINS SHALL BE PLACED 7' SOUTH OR WEST OF CL.
⑥ WATER MAINS SHALL BE PLACED 7' NORTH OR EAST OF CL.
⑦ NO PARKING SHALL BE SIGNED ON BOTH SIDES OF THE STREET.
⑧ STORM DRAIN SHALL BE PLACED ON THE CL OF STREET.
⑨ PAVEMENT REQUIREMENTS:
AC - 2.5" OF R12.5MM MARSHALL.
BASE - 8" OF ABC. PER MAG STD SPEC 702.2.
SUB-BASE - 8" OF 95% COMPACTION.



LOCAL STREET - MODIFIED COB DTL 63170
(FRONT & SIDE LOADED LOTS)
SCALE: 1"=10'

GENERAL NOTES

① PUE / LPPUE / LANDSCAPE - 8:1 MAX SLOPE.
② 5' ATTACHED S / W PER MAG STD DTL 230.
③ LANDSCAPE AREA, SREET LIGHTS CENTERED IN MEDIAN
④ CURB & GUTTER PER MAG STD DTL 220-1, TYPE 'A' OR C'.
⑤ WATER MAINS SHALL BE PLACED 7' NORTH OR EAST OF CL, CENTERED IN DRIVING LANE
⑥ SANITARY SEWER MAINS SHALL BE PLACED 7' SOUTH OR WEST OF CL, CENTERED IN DRIVING LANE
⑦ PAVEMENT REQUIREMENTS:
AC - 3" OF R12.5MM MARSHALL.
BASE - 8" OF ABC. PER MAG STD SPEC 702.2.
SUB-BASE - 8" OF 95% COMPACTION.
⑧ CURB & GUTTER W/ DEPRESSED LIP PER MODIFIED MAG STD DTL 220-1.



RESIDENTIAL ENTRANCE - COB DTL 63190
SCALE: 1"=10'

DATE: 09/10/2021

THE LOCATIONS OF EXISTING UNDERGROUND UTILITIES ARE SHOWN IN AN APPROXIMATE WAY ONLY AND HAVE NOT BEEN INDEPENDENTLY VERIFIED BY THE OWNER OR ITS REPRESENTATIVE. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING WORK, AND AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MIGHT BE OCCASIONED BY THE CONTRACTOR'S FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL UNDERGROUND UTILITIES.

NOTICE:
CONSTRUCTION SITE SAFETY IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR; NEITHER THE OWNER NOR THE ENGINEER SHALL BE EXPECTED TO ASSUME ANY RESPONSIBILITY FOR SAFETY OF THE WORK, OF PERSONS ENGAGED IN THE WORK, OF ANY NEARBY STRUCTURES, OR OF ANY OTHER PERSONS.

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8531

SITE PLAN

PROJECT:
WESTPARK PHASE 2.2
BUCKEYE, AZ

811 Know what's below. Call before you dig.

REVISIONS:

PRELIMINARY
NOT FOR
CONSTRUCTION
OR
RECORDING

PM. CAP
DR. C. PARENT
JOB NO. 21001100
FILE NO. SITE LAYOUT

SHEET NO.
2 OF 5

k:\21001100 - westpark phases 2.2\dwg\lot fifsite layout exhibit.dwg Savedate:9/14/2021 11:00 AM Plotdate:8/10/2022 5:34 PM

5R PLZDR-24-0019 RECEIVED AUG 06 2024 AL

COPYRIGHT © 2024 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC

FINAL PLAT OF WESTPARK PHASE 2.2 "PARCEL 19"

LOCATED IN A PORTION OF THE SOUTH HALF OF SECTION 13 AND THE NORTH HALF OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 4 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN MARICOPA COUNTY, ARIZONA

DEDICATION

STATE OF ARIZONA }
}SS
COUNTY OF MARICOPA }

KNOW ALL PERSONS BY THESE PRESENTS: D.R. HORTON INC, A DELAWARE CORPORATION ("OWNER"), HAS SUBDIVIDED UNDER THE NAME WESTPARK PHASE 2.2 "PARCEL 19", A SUBDIVISION LOCATED IN A PORTION OF THE SOUTH HALF OF SECTION 13 AND THE NORTH HALF OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 4 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN MARICOPA COUNTY, ARIZONA AS SHOWN AND PLATTED HEREON AND DOES HEREBY PUBLISH THIS PLAT AS AND FOR THE PLAT OF WESTPARK PHASE 2.2 "PARCEL 19" AND DECLARES THAT THIS PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF EACH LOT, TRACT, STREET, AND EASEMENTS CONSTITUTING SAME, AND THAT EACH LOT, TRACT, STREET, AND EASEMENT SHALL BE KNOWN BY THE NUMBER, LETTER, AND/OR NAME GIVEN TO EACH RESPECTIVELY AS SHOWN ON THIS PLAT.

OWNER HEREBY DEDICATES TO THE CITY OF BUCKEYE FEE TITLE TO ALL PUBLIC RIGHTS-OF-WAY AS SHOWN ON THIS PLAT.

OWNER HEREBY GRANTS TO THE CITY OF BUCKEYE A NON-EXCLUSIVE EASEMENT OVER, UPON AND ACROSS THE AREAS DESIGNATED AS PUBLIC UTILITY EASEMENTS AS SHOWN ON THE PLAT FOR THE PURPOSE OF INSTALLING, CONSTRUCTING, MAINTAINING, REPAIRING, REPLACING AND UTILIZING PUBLIC UTILITIES.

OWNER HEREBY GRANTS TO THE CITY OF BUCKEYE, A NON-EXCLUSIVE EASEMENT OVER, UPON AND ACROSS THE AREAS DESIGNATED AS SITE VISIBILITY TRIANGLES FOR THE PURPOSE OF ENSURING THAT THESE AREAS REMAIN FREE OF SITE VISIBILITY OBSTRUCTIONS AS PER THE ENGINEERING DESIGN STANDARDS.

OWNER HEREBY GRANTS TO THE UNITED STATES OF AMERICA DEPARTMENT OF THE AIR FORCE ("USAF") AN AVIGATION EASEMENT OVER AND ACROSS THIS PLAT AND EVERY LOT AND PARCEL THEREOF, WHICH EASEMENT SHALL INCLUDE, BUT NOT BE LIMITED TO; THE RIGHT OF FLIGHT OF AIRCRAFT OVER THIS PLAT, TOGETHER WITH ITS ATTENDANT NOISE, VIBRATIONS, FUMES, DUST, FUEL AND LUBRICANT PARTICLES, AND ALL OTHER EFFECTS THAT MAY BE CAUSED BY THE OPERATION OF AIRCRAFT LANDING AT, OR TAKING OFF FROM, OR OPERATING AT OR ON LUKE AIR FORCE BASE AND AUXILIARY FIELD.

D.R. HORTON INC, A DELAWARE CORPORATION, AS OWNER DOES HEREBY (1) RELEASE AND DISCHARGE THE USAF AND THE CITY OF BUCKEYE, AND (2) INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF BUCKEYE, OF AND FROM ANY LIABILITY FOR ANY AND ALL CLAIMS FOR DAMAGES OF ANY KIND TO PERSONS OR PROPERTY THAT MAY ARISE AT ANY TIME IN THE FUTURE OVER, OR IN CONNECTION WITH AIRCRAFT OVERFLIGHTS FROM AIRCRAFT UTILIZING LUKE AIR FORCE BASE, WHETHER SUCH DAMAGE SHALL ORIGINATE FROM NOISE, VIBRATION, FUMES, DUST, FUEL AND LUBRICANT PARTICLES, AND ALL OTHER EFFECTS THAT MAY BE CAUSED BY THE OPERATION OF AIRCRAFT LANDING AT, OR TAKING OFF FROM, OR OPERATING AT OR ON LUKE AIR FORCE BASE. THIS INSTRUMENT SHALL RUN WITH THE LAND AND BE BINDING UPON OWNER AND ITS HEIRS, ASSIGNS, AND SUCCESSORS IN INTEREST TO THIS PLAT OR ANY PARCEL OR LOT THEREOF. THIS INSTRUMENT DOES NOT RELEASE THE USAF FROM LIABILITY FOR DAMAGE OR INJURY TO PERSON OR PROPERTY CAUSED BY FALLING AIRCRAFT OR FALLING PHYSICAL OBJECTS FROM AIRCRAFT, EXCEPT AS STATED HEREIN WITH RESPECT TO NOISE, FUMES, DUST, FUEL, AND LUBRICANT PARTICLES.

D.R. HORTON INC, A DELAWARE CORPORATION, AS OWNER DOES HEREBY; (1) RELEASE AND DISCHARGE THE CITY OF BUCKEYE, AND (2) INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF BUCKEYE, OF AND FROM ANY LIABILITY FOR ANY AND ALL CLAIMS FOR DAMAGES OF ANY KIND TO PERSONS OR PROPERTY THAT MAY ARISE AT ANY TIME IN THE FUTURE OVER, OR IN CONNECTION WITH THE AREAS LOCATED WITHIN THE NEWLY DEDICATED RIGHT-OF-WAY AS DEPICTED ON THIS PLAT UNTIL SUCH TIME THE RIGHT-OF-WAY IS IMPROVED TO CITY STANDARDS AND THOSE IMPROVEMENTS ARE APPROVED AND ACCEPTED BY THE CITY OF BUCKEYE. THE MAINTENANCE OF THE AREA WITHIN ANY NEWLY DEDICATED RIGHT-OF-WAY AS SHOWN ON THIS PLAT SHALL BE THE RESPONSIBILITY OF THE ADJACENT OWNER/OR SUBSEQUENT ADJACENT OWNERS WITHIN THE BOUNDARY OF SAID PLAT UNTIL SUCH TIME THAT THE AREA WITHIN THE RIGHT-OF-WAY IS IMPROVED TO CITY STANDARD AND ACCEPTED BY THE CITY OF BUCKEYE.

ALL IMPROVEMENTS, FOR STREETS AND PUBLIC UTILITIES OWNED AND OPERATED BY THE CITY, INSTALLED OR CONSTRUCTED BY OWNER WITHIN THE PUBLIC RIGHT-OF-WAYS, THE EASEMENTS, OR ANY TRACTS OR PARCELS HEREBY DEDICATED TO THE CITY OF BUCKEYE SHALL BE DEEMED TO HAVE BEEN DEDICATED BY OWNER TO THE CITY UPON THEIR COMPLETION; HOWEVER, SUCH TRANSFER SHALL NOT OCCUR UNTIL THE CITY OF BUCKEYE MANIFESTS ITS ACCEPTANCE BY SEPARATE FORMAL ACTION.

THE EASEMENTS GRANTED WITHIN THIS DEDICATION ARE PERMANENT AND PERPETUAL AND SHALL RUN WITH THE LAND AND BE BINDING UPON OWNER AND ITS HEIRS, ASSIGNS, AND SUCCESSORS AND INTEREST TO THIS PLAT OR ANY PARCEL OR LOT THEREOF.

TRACTS H7 & M7 ARE DECLARED TO BE FOR LANDSCAPE, OPEN SPACE, DRAINAGE AND PUBLIC ACCESS, AS SHOWN IN THE TRACT TABLE INCLUDED HEREON.

TRACTS C7, I7, I8, K7, L7, N7, O7, P7, Q7 AND R7 ARE DECLARED TO BE FOR LANDSCAPE AND OPEN SPACE, AS SHOWN IN THE TRACT TABLE INCLUDED HEREON.

ALL TRACTS ARE TO BE OWNED AND MAINTAINED BY THE WESTPARK PHASE 2.2 COMMUNITY ASSOCIATION. THERE HAS BEEN OR IS BEING RECORDED HEREWITH A DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (CC&R'S) FOR "WESTPARK PHASE 2.2, PARCEL 19"

OWNER HEREBY GRANTS TO THE PUBLIC A NON-EXCLUSIVE EASEMENT FOR RECREATION OVER UPON AND ACROSS THOSE AREAS DESIGNATED AS RECREATION TRAILS OR AREAS FOR THE PURPOSE OF ALLOWING PUBLIC ACCESS TO THE TRAIL SYSTEM.

NOTHING CONTAINED HEREIN SHALL BE DEEMED TO DEDICATE ANY PORTION OF THE TRACTS FOR PUBLIC USE OTHER THAN FOR EASEMENTS SPECIFICALLY GRANTED TO THE PUBLIC HEREIN.

OWNER HEREBY GRANTS TO THE CITY OF BUCKEYE A NON-EXCLUSIVE EASEMENT OVER, UPON, AND ACROSS THE AREAS DESIGNATED AS "ROADWAY EASEMENTS" AS SHOWN ON THE PLAT FOR THE PURPOSE OF INSTALLING, CONSTRUCTION, MAINTAINING, REPAIRING AND UTILIZING STREET AS PER THE CITY OF BUCKEYE ENGINEERING DESIGN STANDARDS.

OWNER WARRANTS AND REPRESENTS TO THE CITY OF BUCKEYE TO BE THE SOLE OWNER OF THE PROPERTY COVERED HEREBY AND THAT EVERY LENDER, EASEMENT HOLDER, OR OTHER PERSON, OR ENTITY, HAVING ANY INTEREST IN THE LAND ADVERSE TO OR INCONSISTENT WITH THE DEDICATION, CONVEYANCES OR OTHER REAL PROPERTY INTEREST CREATED OR TRANSFERRED BY THIS PLAT HAS CONSENTED TO, OR JOINED IN THE PLAT, AS EVIDENCED BY INSTRUMENTS WHICH ARE RECORDED WITH THE MARICOPA COUNTY RECORDERS OFFICE, OR WHICH OWNER WILL RECORD NOT LATER THAN THE DATE ON WHICH THIS PLAT IS RECORDED.

THE MAINTENANCE OF LANDSCAPING WITHIN THE OPEN SPACES, LANDSCAPED TRACTS, RETENTION BASINS AND PARKS SHALL BE THE RESPONSIBILITY OF THE OWNER OR THE ASSOCIATION FORMED BY THE OWNER.

THE MAINTENANCE OF LANDSCAPING WITHIN THE ADJACENT PUBLIC RIGHT-OF-WAYS, INCLUDING; LANDSCAPED MEDIANS WITHIN COLLECTORS AND LOCAL STREETS AND LANDSCAPED AREAS BETWEEN THE CURB AND THE DETACHED SIDEWALK, SHALL BE THE RESPONSIBILITY OF THE ADJACENT PROPERTY OWNER OR THE PROPERTY ASSOCIATION FORMED BY THE ADJACENT PROPERTY.

IN WITNESS WHEREOF, OWNER HAS HEREUNTO CAUSED ITS CORPORATE NAME TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY THE UNDERSIGNED, DULY AUTHORIZED OFFICER THIS _____ DAY OF _____, 2024.

D.R. HORTON INC, A DELAWARE CORPORATION

BY: _____
PATRICK BROWN, VICE PRESIDENT

ACKNOWLEDGMENT

STATE OF ARIZONA }
}SS
COUNTY OF MARICOPA }

ON THIS, THE _____ DAY OF _____, 2024, BEFORE ME THE UNDERSIGNED NOTARY, PATRICK BROWN PERSONALLY APPEARED WHO ACKNOWLEDGED HIMSELF TO BE THE VICE PRESIDENT AND ACKNOWLEDGED THAT HE, BEING DULY AUTHORIZED SO TO DO, EXECUTED THIS INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF:

I HEREUNTO SET MY HAND AND OFFICIAL SEAL:

_____ _____
NOTARY PUBLIC MY COMMISSION EXPIRES

RATIFICATION

KNOW ALL PERSONS BY THESE PRESENTS:

THE UNDERSIGNED, DULY AUTHORIZED OF THE WESTPARK PHASE 2.2, COMMUNITY ASSOCIATION, AN ARIZONA NON-PROFIT CORPORATION, HEREBY RATIFIES THE RECORDATION OF THIS FINAL PLAT OF WESTPARK PHASE 2.2, PARCEL 19 AND ACKNOWLEDGES THE RESPONSIBILITIES SET FORTH THEREIN.

WESTPARK PHASE 2.2 COMMUNITY ASSOCIATION, AN ARIZONA NON-PROFIT CORPORATION

BY: _____ DATE: _____

ITS: _____

ACKNOWLEDGMENT

STATE OF ARIZONA }
}SS
COUNTY OF MARICOPA }

ON THIS, THE _____ DAY OF _____, 2024, BEFORE ME THE UNDERSIGNED NOTARY, _____ PERSONALLY APPEARED WHO ACKNOWLEDGED HIMSELF/HERSELF TO BE THE _____ AND ACKNOWLEDGED THAT HE/SHE, BEING DULY AUTHORIZED SO TO DO, EXECUTED THIS INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF:

I HEREUNTO SET MY HAND AND OFFICIAL SEAL:

_____ _____
NOTARY PUBLIC MY COMMISSION EXPIRES

APPROVALS

APPROVED BY THE CITY COUNCIL OF THE CITY OF BUCKEYE ON THIS _____ DAY OF _____, 2024.

BY: _____
MAYOR

ATTEST: _____
CITY CLERK

I CERTIFY THAT ALL ENGINEERING CONDITIONS AND REQUIREMENTS HAVE BEEN COMPLIED WITH.

BY: _____
BUCKEYE CITY ENGINEER DATE

BY: _____
DEVELOPMENT SERVICES DIRECTOR DATE

BASIS OF BEARING

BASIS OF BEARING IS ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 24, T.1N., R.4W. BEING N89°39'26"W WITH A DISTANCE OF 2670.94 FEET.

BENCHMARK

BENCHMARK DATUM:
HORIZONTAL LOCATION= SE COR SEC 24, T.1N., R.4W. FOUND BRASS CAP IN HANDHOLE.
ELEVATION = 967.84' NORTH AMERICAN VERTICAL DATUM 1988

AREA CALCULATIONS

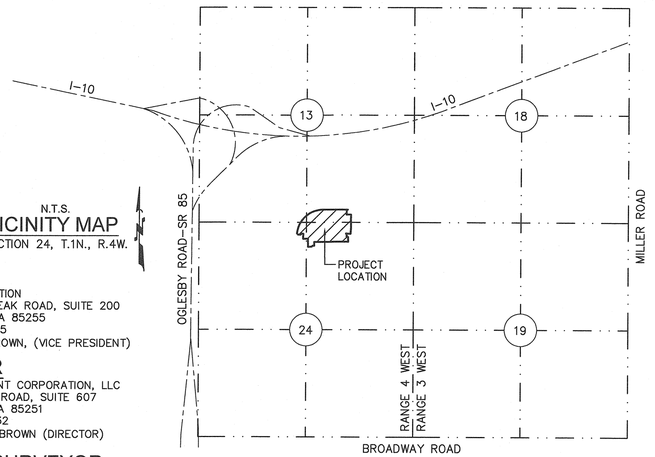
TRACTS	119,082 SQ.FT.	2.73 AC
LOTS = 105	665,681 SQ.FT.	15.28 AC
RIGHT OF WAY	164,981 SQ.FT.	3.79 AC
TOTAL	949,744 SQ.FT.	21.80 AC

RIGHT OF WAY TABLE

RIGHT OF WAY TABLE		
TRACT	AREA SQ FT	AREA ACRES
261ST LANE	34,514	0.79
262ND AVENUE	5,225	0.12
262ND DRIVE	13,091	0.30
262ND LANE	11,666	0.27
263RD AVENUE	14,731	0.34
PAYSON ROAD	20,763	0.48
WINSLOW AVENUE	37,014	0.85
CORDES ROAD	27,977	0.64
TOTAL	164,981	3.79

LEGEND

◬	SUBDIVISION CORNER TO BE SET
○	FOUND MONUMENT AS NOTED
◉	CENTERLINE MONUMENT (BRASS CAP)
PUE	PUBLIC UTILITY EASEMENT
MCR	MARICOPA COUNTY RECORDS
D	DELTA
R/W	RIGHT-OF-WAY
C1	CURVE TABLE NUMBER
L1	LINE TABLE NUMBER
①	33'x33' SIGHT VISIBILITY EASEMENT
VNAE	VEHICULAR NON-ACCESS EASEMENT
	SUBDIVISION BOUNDARY
	RIGHT OF WAY LINE
	CENTERLINE
	EXISTING EASEMENT LINE
	NEW EASEMENT LINE
	SECTION LINE
	5' ROADWAY ACCESS EASEMENT ADJACENT RIGHT OF WAY (RWE)



N.T.S.
VICINITY MAP
SECTION 24, T.1N., R.4W.

OWNER

D.R. HORTON INC,
A DELAWARE CORPORATION
7689 E. PINNACLE PEAK ROAD, SUITE 200
SCOTTSDALE, ARIZONA 85255
PHONE: 480-368-1065
CONTACT: PATRICK BROWN, (VICE PRESIDENT)

DEVELOPER

GARRETT DEVELOPMENT CORPORATION, LLC
6900 E. CAMELBACK ROAD, SUITE 607
SCOTTSDALE, ARIZONA 85251
PHONE: 480-907-7332
CONTACT: WYATT P. BROWN (DIRECTOR)

ENGINEER/SURVEYOR

ATWELL, LLC
4700 E. SOUTHERN AVENUE
MESA, ARIZONA 85206
PHONE 480-218-8831
CONTACT: MICHAEL J. PARK (PE)
CONTACT: JAMES G. SPRING (PLS)

SHEET INDEX

DESCRIPTION	SHEET NO
COVER SHEET	1
KEY MAP, TRACT TABLE, LOT DETAIL AND LEGAL DESCRIPTION	2
PLAT SHEETS	3-6

NOTES

1. THE LOTS DEPICTED ON THIS PLAT ARE LOCATED WITHIN THE VICINITY OF LUKE AIR FORCE BASE AND MAY BE SUBJECT TO OVERFLIGHTS BY JET AIRCRAFT. ALL STRUCTURES WITHIN THIS PLAT SHALL BE CONSTRUCTED IN COMPLIANCE WITH THE STATUTORILY REQUIRED SOUND ATTENUATION STANDARDS.
2. THE PROPERTY OWNERS, OR ANY SUBSEQUENT OWNERS SHALL NOT PROCEED WITH ANY ON SITE GRADING OR EXCAVATION WITHOUT FIRST OBTAINING A PERMIT FROM THE CITY OF BUCKEYE.
3. IN ACCORDANCE WITH ARS § 9-461.07, THE CITY OF BUCKEYE HAS DETERMINED THAT ALL DEDICATIONS OCCURRING WITH THIS PLAT ARE IN CONFORMANCE WITH THE GENERAL PLAN.
4. PURSUANT TO A.R.S. § 42-11102, THE CITY OF BUCKEYE, A POLITICAL SUBDIVISION OF THE STATE OF ARIZONA, IS EXEMPT FROM ALL TAXES AND ASSESSMENTS BASED ON ASSESSED VALUE EXCEPT FOR SPECIAL DISTRICTS #14751 AND 14710, WHEN APPLICABLE.
5. THIS SITE CONSISTS OF A TOTAL OF 105 LOTS, 12 TRACTS, AND 1 PARCEL IN THE "PC" PLANNED COMMUNITY ZONING DISTRICT.
6. THIS FINAL PLAT IS IN SUBSTANTIAL CONFORMANCE WITH THE PRELIMINARY PLAT APPROVED ON JULY 13TH, 2004 UNDER CASE #PP04-09.
7. THIS SUBDIVISION WAS ISSUED A CERTIFICATE OF ASSURED WATER SUPPLY BY ARIZONA DEPARTMENT OF WATER RESOURCES ON OCTOBER 19TH, 2007 WITH ADWR CERTIFICATE #31-402138.0001.
8. NO STRUCTURE OF ANY KIND SHALL BE CONSTRUCTED OR ANY VEGETATION TO BE PLANTED OR BE ALLOWED TO GROW WITHIN ANY DRAINAGE EASEMENT WHICH WOULD IMPEDE THE FLOW OF WATER OVER, UNDER, OR THROUGH EASEMENTS.
9. FINAL PLAT APPROVAL BY THE CITY IS CONDITIONAL AND SUBJECT TO FINANCIAL ASSURANCES BEING IN PLACE FOR ALL IMPROVEMENTS AS SHOWN ON THE APPROVED PLANS. THE CITY WILL NOT RECORD ANY PLATS UNTIL SUCH TIME FINANCIAL ASSURANCES ARE IN PLACE. IF AFTER ONE YEAR FROM CITY COUNCIL APPROVAL THE FINAL PLAT HAS NOT BEEN RECORDED, THEN IT SHALL BE NULL AND VOID. A VALID PRELIMINARY PLAT NEEDS TO BE IN PLACE PRIOR TO APPROVAL OF ANY FINAL PLAT ASSOCIATED WITHIN THE PROJECT IN ACCORDANCE WITH THE DEVELOPMENT CODE. THE SIGNED PLAT WILL NOT BE SUBMITTED TO THE CITY FOR SIGNATURE AND RECORDING UNTIL THE FINANCIAL ASSURANCES ARE IN PLACE.
10. ALL NEW OR RELOCATED UTILITIES WILL BE PLACED UNDERGROUND EXCEPT POWER LINES 69KV AND LARGER.
11. IT IS ACKNOWLEDGED THAT THIS PROPERTY WILL BE PART OF A PARKWAY MAINTENANCE IMPROVEMENT DISTRICT (MID) AND STREET LIGHTING IMPROVEMENT DISTRICT (SLID) AT THE TIME THAT IT IS DEVELOPED, IN ACCORDANCE WITH BUCKEYE ORDINANCES 43-05 AND 42-06.

FLOODZONE DESIGNATION

THE PROPERTY IS LOCATED WITHIN AN AREA DESIGNATED AS HAVING FLOOD ZONE X BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, ON FLOOD INSURANCE RATE MAP NO 04013C2115L, WITH A REVISION DATE OF OCTOBER 16TH, 2013 FOR COMMUNITY NO. 2115, IN THE CITY OF BUCKEYE, COUNTY OF MARICOPA, STATE OF ARIZONA, WHICH IS THE CURRENT FLOOD INSURANCE RATE MAP FOR THE COMMUNITY IN WHICH SAID PROPERTY IS SITUATED.

100 YEAR ASSURED WATER SUPPLY

THIS SUBDIVISION IS WITHIN THE CITY OF BUCKEYE WATER SERVICE AREA AND HAS OBTAINED A CERTIFICATE OF 100 YEAR ASSURED WATER SUPPLY FROM THE ARIZONA DEPARTMENT OF WATER RESOURCES, CERTIFICATE #31-402138.0001.

ZONING DESIGNATION

"PC" PLANNED COMMUNITY

SURVEYOR'S CERTIFICATION:

I, JAMES G. SPRING, HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR IN THE STATE OF ARIZONA, THAT THIS PLAT CONSISTING OF SIX SHEETS CORRECTLY REPRESENTS A BOUNDARY SURVEY MADE BY ME DURING THE MONTH OF JULY, 2024. THAT THE SURVEY IS TRUE AND CORRECT AS SHOWN, THAT ALL MONUMENTS EXIST OR WILL BE SET AND, THAT THEIR POSITIONS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

JAMES G. SPRING, PLS 22282
ATWELL, LLC
4700 E. SOUTHERN AVE
MESA, AZ 85206



NOTE:

A.R.S. § 32-151 STATES THAT THE USE OF THE WORD "CERTIFY" OR "CERTIFICATION" BY A PERSON OR FIRM THAT IS REGISTERED OR CERTIFIED BY THE BOARD IS AN EXPRESSION OF PROFESSIONAL OPINION REGARDING FACTS OR FINDINGS THAT ARE SUBJECT OF THE CERTIFICATION AND DOES NOT CONSTITUTE AN EXPRESS OR IMPLIED WARRANTY OR GUARANTEE.

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 13 & 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT
WESTPARK PHASE 2.2
"PARCEL 19"
CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

ATWELL

PM. J. SPRING
DR. R. GILES
JOB NO. 21001100
N.T.S.
21001100 WESTPARK 19 FP.DWG
SHEET NO. 1 OF 6

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 19\21001100 WESTPARK 19 FP.DWG SAVEDATE:8/5/2024 6:48 AM PLOTDATE:8/5/2024 8:32 AM

COPYRIGHT © 2024 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC

LEGAL DESCRIPTION

LOCATED IN A PORTION OF THE SOUTH HALF OF SECTION 13 AND THE NORTH HALF OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 4 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN MARICOPA COUNTY, ARIZONA

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND BRASS CAP IN HANDHOLE, ACCEPTED AS THE SOUTHEAST CORNER OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 4 WEST FROM WHICH A FOUND STONE IN HANDHOLE, ACCEPTED AS THE SOUTH QUARTER CORNER OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 4 WEST, THEREOF BEARS N89°39'26"W A DISTANCE OF 2670.94 FEET;

THENCE, ALONG THE SOUTH LINE OF SAID SECTION 24, N89°39'26"W A DISTANCE OF 1628.35 FEET;

THENCE, LEAVING THE SOUTH LINE OF SAID SECTION 24, N00°00'00"E A DISTANCE OF 4805.13 FEET TO THE POINT OF BEGINNING;

THENCE, N89°19'59"W A DISTANCE OF 850.00 FEET;

THENCE, S00°40'01"W A DISTANCE OF 95.00 FEET;

THENCE, N89°19'59"W A DISTANCE OF 40.00 FEET;

THENCE, S45°40'01"W A DISTANCE OF 35.36 FEET;

THENCE, N89°19'59"W A DISTANCE OF 90.00 FEET;

THENCE, N00°40'01"E A DISTANCE OF 200.00 FEET;

THENCE, N89°19'59"W A DISTANCE OF 120.00 FEET;

THENCE, N00°40'01"E A DISTANCE OF 74.27 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE RIGHT;

THENCE, NORTHERLY ALONG SAID CURVE AN ARC LENGTH OF 50.15 FEET, WITH A RADIUS OF 500.00 FEET AND A CENTRAL ANGLE OF 05°44'46";

THENCE, N82°09'16"W A DISTANCE OF 40.01 FEET;

THENCE, S48°08'13"W A DISTANCE OF 36.60 FEET;

THENCE, N88°55'10"W A DISTANCE OF 63.22 FEET;

THENCE, N41°57'56"W A DISTANCE OF 40.96 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE RIGHT;

THENCE, NORTHEASTERLY ALONG SAID CURVE AN ARC LENGTH OF 971.95 FEET, WITH A RADIUS OF 660.00 FEET AND THE RADIAL BEARING OF S83°42'34"E AND A CENTRAL ANGLE OF 84°22'35";

THENCE, S89°19'59"E A DISTANCE OF 517.37 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE RIGHT;

THENCE, EASTERLY ALONG SAID CURVE AN ARC LENGTH OF 97.69 FEET, WITH A RADIUS OF 1960.00 FEET AND A CENTRAL ANGLE OF 02°51'20";

THENCE, S46°32'31"W A DISTANCE OF 41.27 FEET;

THENCE, S00°00'00"E A DISTANCE OF 50.00 FEET;

THENCE, S06°01'38"W A DISTANCE OF 47.10 FEET;

THENCE, N90°00'00"E A DISTANCE OF 113.95 FEET;

THENCE, S00°00'00"E A DISTANCE OF 53.00 FEET;

THENCE, S04°18'59"W A DISTANCE OF 53.15 FEET;

THENCE, S00°00'00"E A DISTANCE OF 232.60 FEET;

THENCE, S05°48'13"W A DISTANCE OF 149.00 FEET;

THENCE, N84°11'47"W A DISTANCE OF 113.14 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE LEFT;

THENCE, SOUTHEASTERLY ALONG SAID CURVE AN ARC LENGTH OF 10.56 FEET, WITH A RADIUS OF 20.00 FEET AND THE RADIAL BEARING OF N70°54'13"E AND A CENTRAL ANGLE OF 30°15'00" TO THE BEGINNING OF A REVERSE CURVE CONCAVE TO THE RIGHT;

THENCE, SOUTHERLY ALONG SAID CURVE AN ARC LENGTH OF 68.84 FEET, WITH A RADIUS OF 50.00 FEET AND A CENTRAL ANGLE OF 78°53'08";

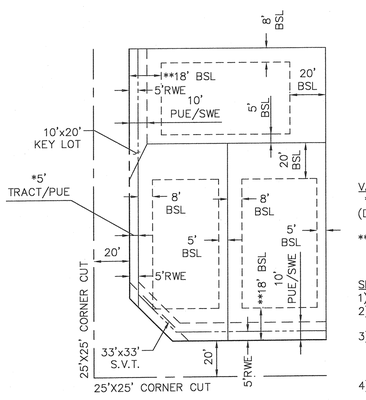
THENCE, S60°27'39"E A DISTANCE OF 41.38 FEET;

THENCE, S00°40'01"W A DISTANCE OF 115.88 FEET TO THE POINT OF BEGINNING.

LOT DETAIL

TYPICAL LOT DETAIL – 53' WIDTH

LOT COVERAGE 65% AS PER DEVELOPMENT STANDARDS



VARIED CONDITIONS:
* = 5' MIN. – 10' MAX.
(DEPENDENT ON 10' PUE ON OPPOSITE SIDE OF STREET)

** = 10' TO SIDE ENTRY GARAGE
= 12' TO LIVABLE AREA
= 18' TO GARAGE

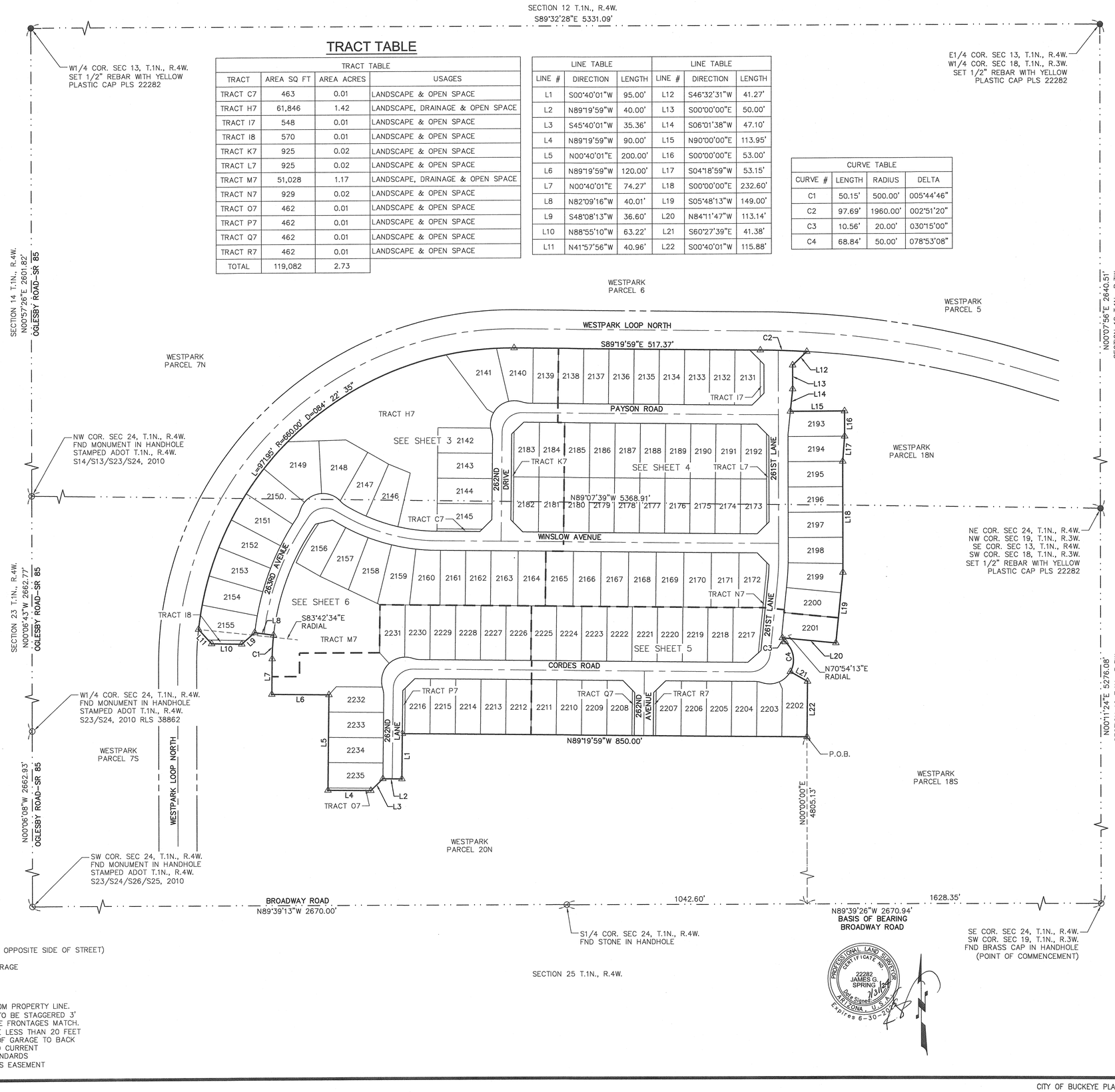
SPECIAL NOTES:
1) SETBACKS MEASURED FROM PROPERTY LINE.
2) FRONT YARD SETBACKS TO BE STAGGERED 3' SO NO TWO CONSECUTIVE FRONTAGES MATCH.
3) DRIVEWAY SHALL NOT BE LESS THAN 20 FEET IN LENGTH FROM FACE OF GARAGE TO BACK OF THE SIDEWALK OR TO CURRENT DEVELOPMENT CODE STANDARDS
4) RWE = ROADWAY ACCESS EASEMENT

TRACT TABLE

TRACT TABLE			
TRACT	AREA SQ FT	AREA ACRES	USAGES
TRACT C7	463	0.01	LANDSCAPE & OPEN SPACE
TRACT H7	61,846	1.42	LANDSCAPE, DRAINAGE & OPEN SPACE
TRACT I7	548	0.01	LANDSCAPE & OPEN SPACE
TRACT I8	570	0.01	LANDSCAPE & OPEN SPACE
TRACT K7	925	0.02	LANDSCAPE & OPEN SPACE
TRACT L7	925	0.02	LANDSCAPE & OPEN SPACE
TRACT M7	51,028	1.17	LANDSCAPE, DRAINAGE & OPEN SPACE
TRACT N7	929	0.02	LANDSCAPE & OPEN SPACE
TRACT O7	462	0.01	LANDSCAPE & OPEN SPACE
TRACT P7	462	0.01	LANDSCAPE & OPEN SPACE
TRACT Q7	462	0.01	LANDSCAPE & OPEN SPACE
TRACT R7	462	0.01	LANDSCAPE & OPEN SPACE
TOTAL	119,082	2.73	

LINE TABLE			LINE TABLE		
LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH
L1	S00°40'01"W	95.00'	L12	S46°32'31"W	41.27'
L2	N89°19'59"W	40.00'	L13	S00°00'00"E	50.00'
L3	S45°40'01"W	35.36'	L14	S06°01'38"W	47.10'
L4	N89°19'59"W	90.00'	L15	N90°00'00"E	113.95'
L5	N00°40'01"E	200.00'	L16	S00°00'00"E	53.00'
L6	N89°19'59"W	120.00'	L17	S04°18'59"W	53.15'
L7	N00°40'01"E	74.27'	L18	S00°00'00"E	232.60'
L8	N82°09'16"W	40.01'	L19	S05°48'13"W	149.00'
L9	S48°08'13"W	36.60'	L20	N84°11'47"W	113.14'
L10	N88°55'10"W	63.22'	L21	S60°27'39"E	41.38'
L11	N41°57'56"W	40.96'	L22	S00°40'01"W	115.88'

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C1	50.15'	500.00'	005°44'46"
C2	97.69'	1960.00'	002°51'20"
C3	10.56'	20.00'	030°15'00"
C4	68.84'	50.00'	078°53'08"



PROFESSIONAL LAND SURVEYOR CERTIFICATE NO. 22282 JAMES G. SPRING Date Signed 7/31/24 ARIZONA U.S.A. Expires 6-30-2025

CITY OF BUCKEYE PLANNING NO. PLZS 23-00019

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 13 & 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT

WESTPARK PHASE 2.2 "PARCEL 19"

CITY OF BUCKEYE, ARIZONA

JULY 2024

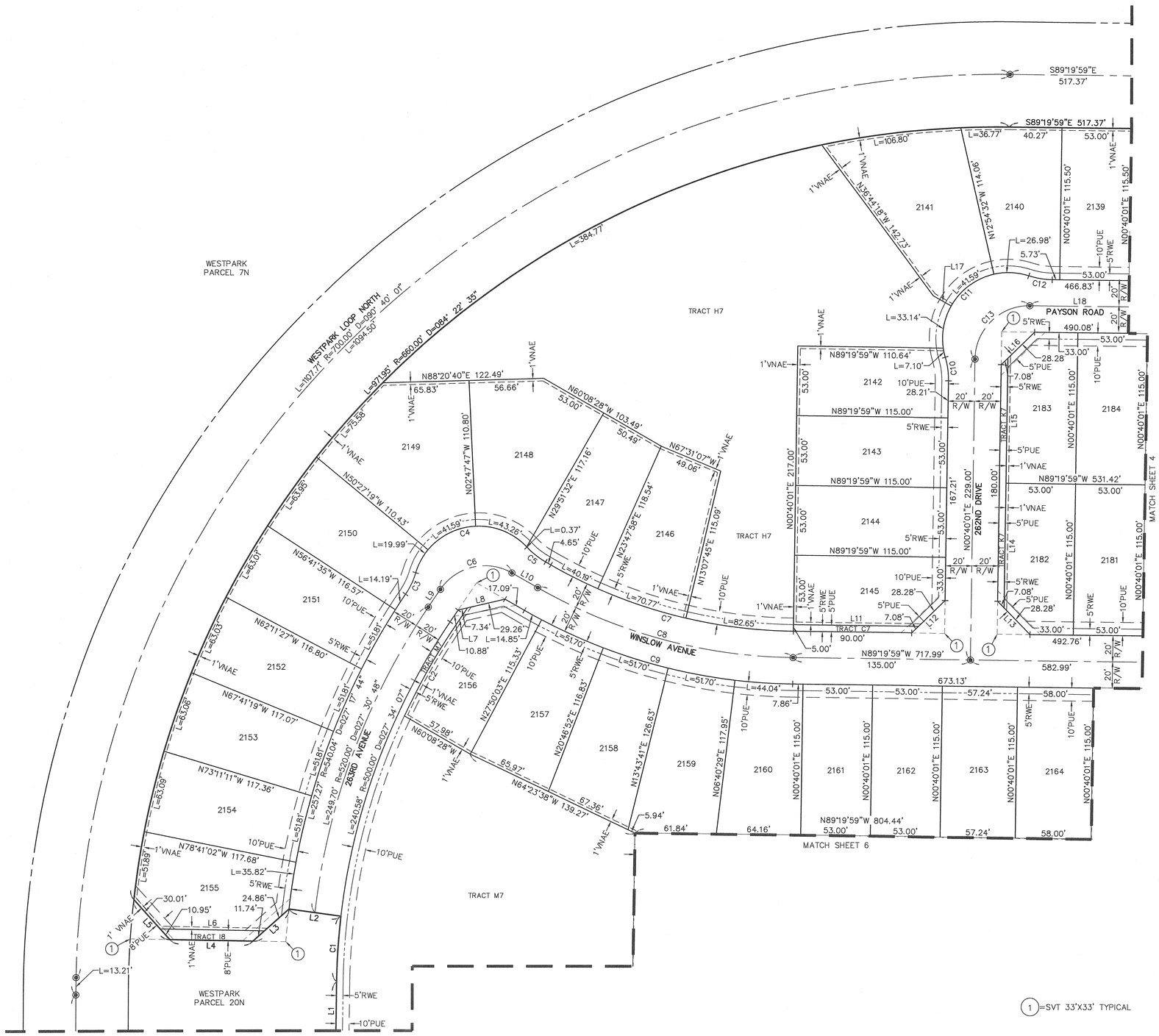
REVISIONS:

ATWELL

PM.	J. SPRING
DR.	R. GILES
JOB NO.	21001100
SCALE	0 50 100
	1" = 100 FEET
	21001100 WESTPARK 19 FP.DWG
SHEET NO.	2 OF 6

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 19\21001100 WESTPARK 19 FP.DWG SAVEDATE:7/31/2024 11:10 AM PLOTDATE:7/31/2024 11:57 AM

COPYRIGHT © 2024 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC



LOT TABLE			LOT TABLE		
LOT	AREA SQ FT	AREA ACRES	LOT	AREA SQ FT	AREA ACRES
2139	6122	0.141	2154	6751	0.155
2140	7170	0.165	2156	6318	0.145
2141	9712	0.223	2157	6786	0.156
2142	6054	0.139	2158	7159	0.164
2143	6095	0.140	2159	7274	0.167
2144	6095	0.140	2160	6717	0.154
2145	5895	0.135	2161	6095	0.140
2146	7034	0.161	2162	6095	0.140
2147	6778	0.156	2163	6582	0.151
2148	8698	0.200	2164	6670	0.153
2149	10362	0.238	2181	6095	0.140
2150	6593	0.151	2182	5895	0.135
2151	6698	0.154	2183	5895	0.135
2152	6714	0.154	2184	6095	0.140
2153	6732	0.155			

LINE TABLE			LINE TABLE		
LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH
L1	N00°40'01"E	74.27'	L10	S60°08'28"E	22.55'
L2	S82°09'16"E	40.01'	L11	N89°19'59"W	95.00'
L3	S48°08'13"W	36.60'	L12	N45°40'01"E	35.36'
L4	N88°55'10"W	63.22'	L13	N44°19'59"W	35.36'
L5	N41°57'56"W	40.96'	L14	N00°40'01"E	95.00'
L6	N88°55'10"W	79.28'	L15	N00°40'01"E	95.00'
L7	N33°58'54"E	16.26'	L16	N45°40'01"E	35.36'
L8	N76°55'13"E	36.60'	L17	S60°34'04"E	15.59'
L9	N33°58'54"E	16.34'	L18	S89°19'59"E	538.85'

CURVE TABLE				CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA	CURVE #	LENGTH	RADIUS	DELTA
C1	50.15'	500.00'	005°44'46"	C8	203.80'	400.00'	029°11'31"
C2	78.94'	495.00'	009°08'12"	C9	213.99'	420.00'	029°11'31"
C3	18.16'	60.00'	017°20'29"	C10	18.16'	60.00'	017°20'29"
C4	105.21'	50.00'	120°33'36"	C11	108.81'	50.00'	124°40'58"
C5	18.16'	60.00'	017°20'29"	C12	18.16'	60.00'	017°20'29"
C6	61.45'	41.00'	085°52'38"	C13	64.40'	41.00'	090°00'00"
C7	193.61'	380.00'	029°11'31"				

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 13 & 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT
WESTPARK PHASE 2.2
"PARCEL 19"
CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

ATWELL

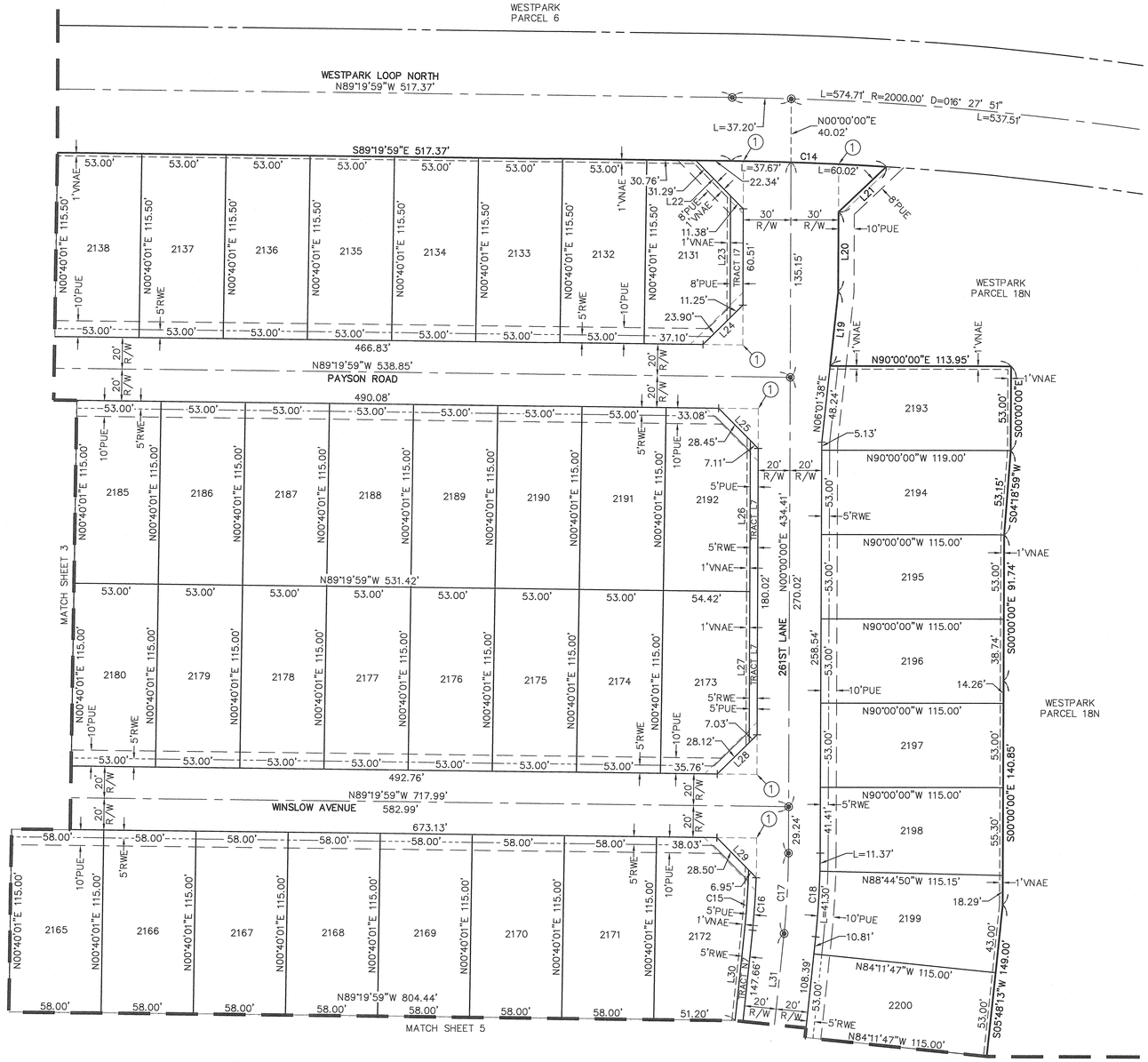
PM. J. SPRING
DR. R. GILES
JOB NO. 21001100
SCALE 0 20 40
1" = 40 FEET
21001100 WESTPARK 19 FP.DWG
SHEET NO. 3 OF 6

PROFESSIONAL LAND SURVEYOR
CERTIFICATE NO.
22282
JAMES G. SPRING
7/31/24
Date Signed
ARIZONA U.S.A.
Expires 6-30

CITY OF BUCKEYE PLANNING NO. PLZS 23-00019

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 19\21001100 WESTPARK 19 FP.DWG SAVEDATE:7/31/2024 11:10 AM PLOTDATE:7/31/2024 11:57 AM

COPYRIGHT © 2024 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC



LOT TABLE			LOT TABLE		
LOT	AREA SQ FT	AREA ACRES	LOT	AREA SQ FT	AREA ACRES
2131	5785	0.133	2177	6095	0.140
2132	6121	0.141	2178	6095	0.140
2133	6122	0.141	2179	6095	0.140
2134	6122	0.141	2180	6095	0.140
2135	6122	0.141	2185	6095	0.140
2136	6121	0.141	2186	6095	0.140
2137	6121	0.141	2187	6095	0.140
2138	6122	0.141	2188	6095	0.140
2165	6670	0.153	2189	6095	0.140
2166	6670	0.153	2190	6095	0.140
2167	6670	0.153	2191	6095	0.140
2168	6670	0.153	2192	5981	0.137
2169	6670	0.153	2193	6186	0.142
2170	6670	0.153	2194	6201	0.142
2171	6670	0.153	2195	6095	0.140
2172	6213	0.143	2196	6095	0.140
2173	6135	0.141	2197	6095	0.140
2174	6095	0.140	2198	6215	0.143
2175	6095	0.140	2199	6535	0.150
2176	6095	0.140	2200	6095	0.140

LINE TABLE		
LINE #	DIRECTION	LENGTH
L19	S06°01'38"W	47.10'
L20	S00°00'00"E	50.00'
L21	S46°32'31"W	41.27'
L22	N44°39'59"W	42.67'
L23	N00°00'00"E	76.51'
L24	N45°20'01"E	35.15'
L25	N44°39'59"W	35.56'
L26	N00°00'00"E	95.01'
L27	N00°00'00"E	95.01'
L28	N45°20'01"E	35.15'
L29	N44°29'09"W	35.45'
L30	N05°48'13"E	57.64'
L31	N05°48'13"E	153.46'

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C14	97.69'	1960.00'	002°51'20"
C15	37.54'	475.00'	004°31'43"
C16	33.09'	480.00'	003°57'01"
C17	50.65'	500.00'	005°48'13"
C18	52.67'	520.00'	005°48'13"

(1)=SVT 33'X33' TYPICAL

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 13 & 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT
WESTPARK PHASE 2.2
"PARCEL 19"
CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

ATWELL

PM. J. SPRING
DR. R. GILES
JOB NO. 21001100
SCALE 0 20 40
1" = 40 FEET

21001100 WESTPARK 19 FP.DWG

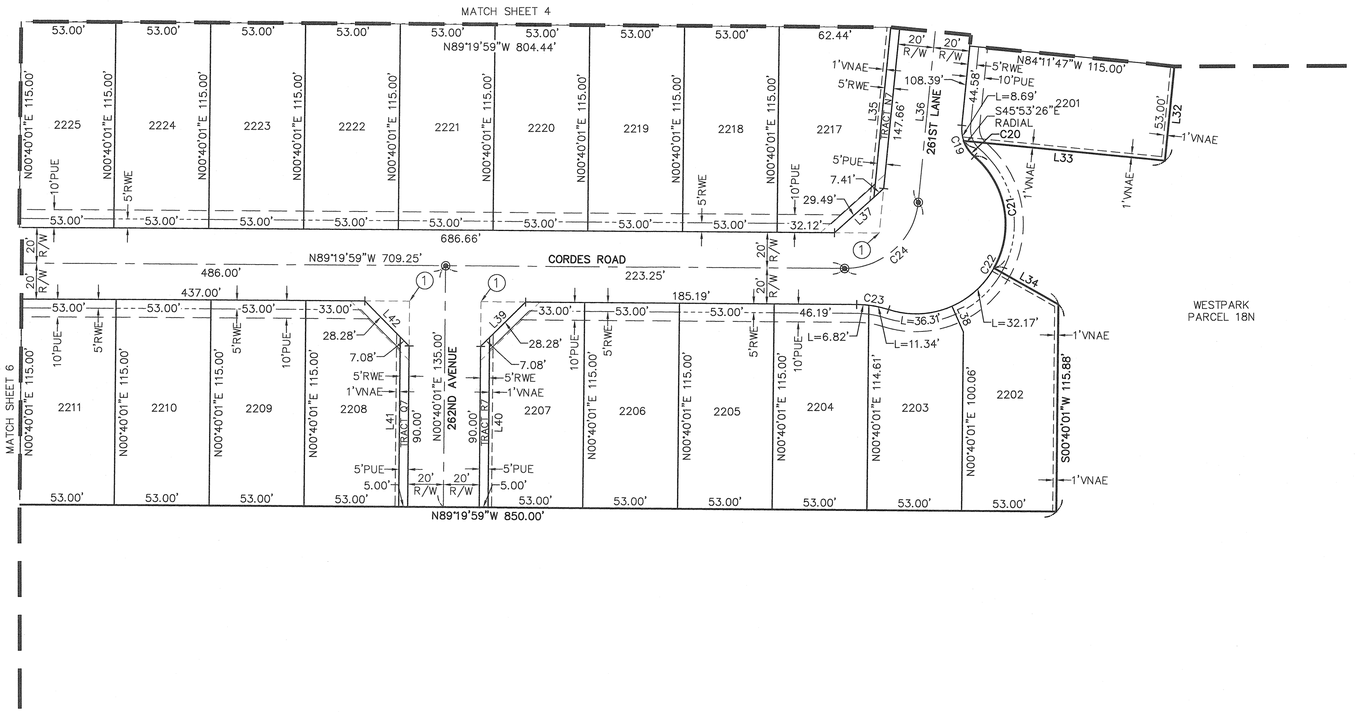
SHEET NO. 4 OF 6

PROFESSIONAL LAND SURVEYOR CERTIFICATE NO. 22282 JAMES G. SPRING Date Signed 7/31/24 ARIZONA U.S.A. Expires 6-30-2026

CITY OF BUCKEYE PLANNING NO. PLZS 23-00019

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 19\21001100 WESTPARK 19 FP.DWG SAVEDATE:7/31/2024 11:10 AM PLOTDATE:7/31/2024 11:57 AM

COPYRIGHT © 2024 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC



LOT TABLE		
LOT	AREA SQ FT	AREA ACRES
2201	6090	0.140
2202	6720	0.154
2203	5893	0.135
2204	6094	0.140
2205	6095	0.140
2206	6095	0.140
2207	5895	0.135
2208	5895	0.135
2209	6095	0.140
2210	6095	0.140
2211	6095	0.140
2217	6387	0.147
2218	6095	0.140
2219	6095	0.140
2220	6095	0.140
2221	6095	0.140
2222	6095	0.140
2223	6095	0.140
2224	6095	0.140
2225	6095	0.140

LINE TABLE		
LINE #	DIRECTION	LENGTH
L32	S05°48'13"W	149.00'
L33	N84°11'47"W	113.14'
L34	S60°27'39"E	41.38'
L35	N05°48'13"E	95.48'
L36	N05°48'13"E	153.46'
L37	N48°14'07"E	36.90'
L38	N23°35'49"W	15.75'
L39	N45°40'01"E	35.36'
L40	N00°40'01"E	95.00'
L41	N00°40'01"E	95.00'
L42	N44°19'59"W	35.36'

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C19	19.25'	20.00'	055°09'00"
C20	10.56'	20.00'	030°15'00"
C21	68.84'	50.00'	078°53'08"
C22	137.32'	50.00'	157°21'17"
C23	18.16'	60.00'	017°20'29"
C24	60.73'	41.00'	084°51'48"

1 =SVT 33'X33' TYPICAL

PROFESSIONAL LAND SURVEYOR CERTIFICATE NO. 22282 JAMES G. SPRING Date Signed 7/31/24 ARIZONA U.S.A. Expires 6-30-2025

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 13 & 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT
WESTPARK PHASE 2.2 "PARCEL 19"
CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

ATWELL

PM. J. SPRING
DR. R. GILES
JOB NO. 21001100
SCALE 0 20 40
1" = 40 FEET

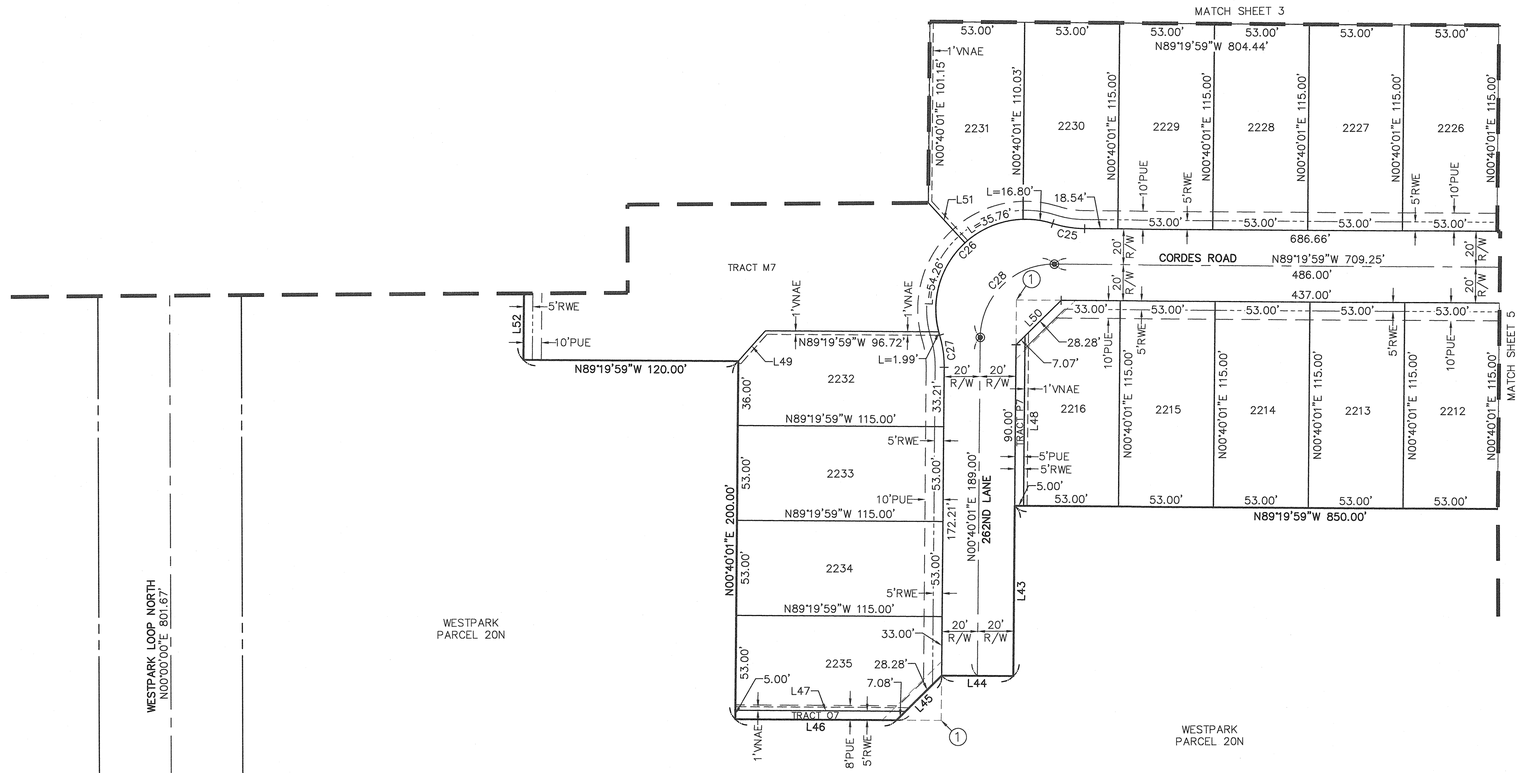
21001100 WESTPARK 19 FP.DWG

SHEET NO. 5 OF 6

CITY OF BUCKEYE PLANNING NO. PLZS 23-00019

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 19\21001100 WESTPARK 19 FP.DWG SAVEDATE:7/31/2024 11:10 AM PLOTDATE:7/31/2024 11:57 AM

COPYRIGHT © 2024 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC



LOT TABLE		
LOT	AREA SQ FT	AREA ACRES
2212	6095	0.140
2213	6095	0.140
2214	6095	0.140
2215	6095	0.140
2216	5895	0.135
2226	6095	0.140
2227	6095	0.140
2228	6095	0.140
2229	6095	0.140
2230	6007	0.138
2231	6019	0.138
2232	5946	0.136
2233	6095	0.140
2234	6095	0.140
2235	5895	0.135

LINE TABLE		
LINE #	DIRECTION	LENGTH
L43	S00°40'01"W	95.00'
L44	N89°19'59"W	40.00'
L45	S45°40'01"W	35.36'
L46	N89°19'59"W	90.00'
L47	N89°19'59"W	95.00'
L48	N00°40'01"E	95.00'
L49	N42°05'26"E	22.67'
L50	N45°40'01"E	35.36'
L51	N42°13'23"W	30.33'
L52	N00°40'01"E	74.27'

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C25	18.16'	60.00'	017°20'29"
C26	108.81'	50.00'	124°40'58"
C27	18.16'	60.00'	017°20'29"
C28	64.40'	41.00'	090°00'00"

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 13 & 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT

WESTPARK PHASE 2.2
"PARCEL 19"

CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

ATWELL

PM. J. SPRING
DR. R. GILES
JOB NO. 21001100

SCALE 0 20 40
1" = 40 FEET

21001100 WESTPARK 19 FP.DWG

SHEET NO. 6 OF 6

PROFESSIONAL LAND SURVEYOR
CERTIFICATE NO.
22282
JAMES G. SPRING
Date Signed 7/31/24
ARIZONA, U.S.A.
Expires 6-30-2025

CITY OF BUCKEYE PLANNING NO. PLZS 23-00019

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 19\21001100 WESTPARK 19 FP.DWG SAVEDATE:7/31/2024 11:10 AM PLOTDATE:7/31/2024 11:57 AM

5R PLZS-23-00019 RECEIVED AUG 01 2024 AL

STATE OF ARIZONA
DEPARTMENT OF WATER RESOURCES
CERTIFICATE OF ASSURED WATER SUPPLY

This is to certify that

KEMF WP 2.2, LLC, an Arizona limited liability company, Owner, D.R.Horton, Inc., a Delaware corporation, Buyer, Century Communities of Arizona , an Arizona limited liability company, Buyer and GDC WP 2.2, LLC, an Arizona limited liability company, Buyer,

have met the requirements of A.R.S. §§ 45-576 and A.A.C.R12-15-701 et. seq., and

By powers vested in the Director of the Arizona Department of Water Resources by the State of Arizona, and subject to the conditions contained in A.A.C. R12-15-701 et seq.,

Are issued this Certificate of Assured Water Supply for

Westpark Phase 2.2 Parcels 7N, 7S, 8, 19 and 20N
Township 1 North, Range 4 West, Sections 13 and 24
GSRB&M Maricopa County, PHOENIX AMA

The referenced subdivision consists of **446 lots** as described in the preliminary plat on file with the Department, and has an estimated water demand of **199.52 acre-feet per year.** The subdivision will be served **groundwater** by **the City of Buckeye.**

This Certificate is invalid as to any entity not named above.
This Certificate may be assigned pursuant to A.A.C. R12-15-705.

Certificate Number: 31-402138.0001
Original Issue Date: October 19, 2007

ARIZONA DEPARTMENT OF WATER RESOURCES

Carol M. Ward

Assistant Director

July 29, 2024
Date

TYPE A CERTIFICATE

CITY OF BUCKEYE
Regular Council Meeting
COUNCIL ACTION REPORT

MEETING DATE: 09/03/24	**AGENDA ITEM:** 4.I. DS - Westpark Phase 2.2 "Parcel 20N" - Final Plat - PLZS-23-00020
DATE PREPARED: 08/29/24	**DISTRICT NO.:** Council District 3
STAFF LIAISON: Patricia Cooley, Planner 1, pcooley@buckeyeaz.gov, (623) 349-6233	
DEPARTMENT: Development Services	**AGENDA ITEM TYPE:** Consent Agenda Items / New Business

ACTION/MOTION: (This language identifies the formal motion to be made by the Council)
Council to take action on a Final Plat titled Westpark Phase 2.2 "Parcel 20N," a subdivision located northeast of the intersection of West Westpark Loop North and West Warner Street.

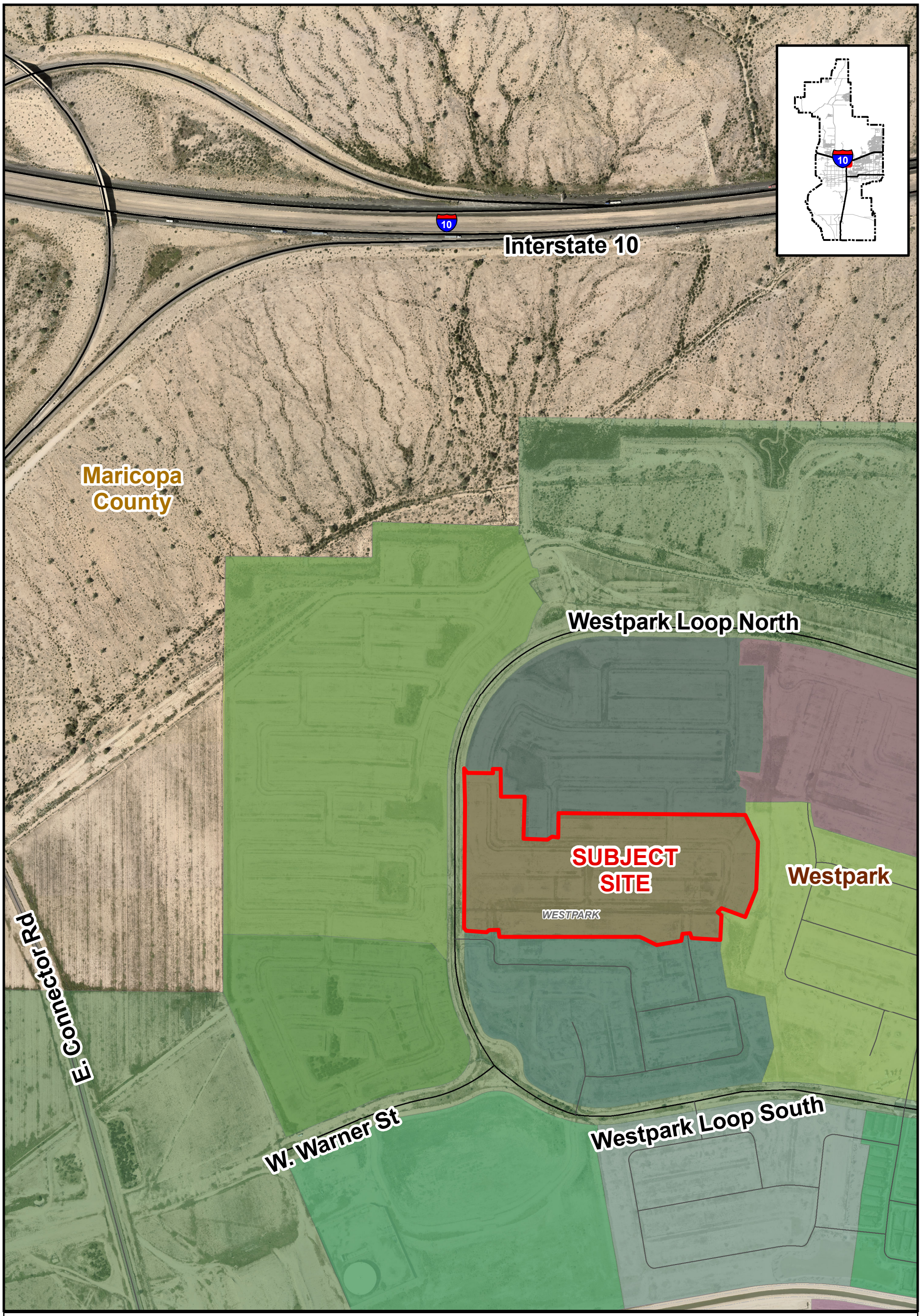
SUMMARY

PROJECT DESCRIPTION:
Barry Lindner from Atwell, Inc, on behalf of DR Horton Inc, is requesting approval of a Final Plat of Westpark Phase 2.2 "Parcel 20N," located northeast of the intersection of W. Westpark Loop North and W. Warner Street. The Final Plat encompasses approximately 17.16 acres and includes 70 single-family lots,12 tracts and 0.44 acres of open space with an overall density of approximately 4.08 dwelling units per acre. Approximately 3.34 acres of Right-of-way (ROW) is being dedicated to the City of Buckeye through this Final Plat. The proposal is in substantial conformance with the Preliminary Plat. The Final Plat is accompanied by a Certificate of Assured Water Supply from the Department of Water Resources, per A.R.S. 9-463.01(I).

BENEFITS:
The subject Final Plat will allow continued development of traditional single-family residences within the City of Buckeye.

FINANCIAL IMPACT STATEMENT:
Although a fiscal impact analysis has not been conducted on this specific project, all new development will have an ongoing fiscal impact on the city. The development is responsible for construction of all infrastructure necessary to serve the site and will generate one-time revenue for the city such as permit fees, construction sales tax and development impact fees. Longer term fiscal impacts include increased demands for municipal services, the costs of which may or may not be offset by increased property values/tax levies, city sales tax, state shared revenues and the increased demand for commercial and retail development. Any areas that will be maintained by the city are constructed by the developer and then conveyed to the city two years after construction.

Items related to a project or facility location must include an attached vicinity map for Council Review.
ATTACHMENTS:
Exhibit A - PLZS-23000020 - Westpark Parcel 20N - Final Plat - Vicinity Map.pdf
Exhibit B - PLZS-23-00020 - Westpark Parcel 20N - Final Plat - Narrative.pdf
Exhibit C - PLZS-23-00020 - Westpark Parcel 20N - Final Plat - Final Plat.pdf
Exhibit D - PLZS-23-00020 - Westpark Parcel 20N - Final Plat - CAWS.pdf



VICINITY MAP

BUCKEYE, AZ

PLZS-23-00020
Westpark Phase 2.2 Parcel 20N Final Plat
City Council District 3

N
W E
S

3R PLZS-23-00020 RECEIVED JUNE 6 2024 AL

Final Plat Narrative Report

For

Westpark – Phase 2.2
Parcel 20N

PLZS-23-00020

SEC of I-10 & SR-85
Buckeye, AZ



4700 E. Southern Avenue, Mesa, AZ 85206 Tel: 480.218.8831 Fax: 480.830.4888
www.atwell-group.com

Purpose of Request

The primary purpose of the subject Final Plat submittals is to fulfill prior project entitlements and to complete site development of Phase 2.2 for the existing Westpark residential subdivision. This current phase of the project will focus on completing the remaining portions of the Westpark Loop Road and Warner Street infrastructure, as well as continue with final development approvals to permit full construction of Parcels 5, 6, 7N, 7S, 8, 18N, 19 and 20N. The improvements for the remaining portions of the West Park Loop Road and Warner Street will be completed under a separate cover specific to only off-site improvements while each of the different parcels will be constructed under individual on-site covers. Refer to the Development Standards section of this narrative for a table of the approved and proposed development zoning conditions. Developer is expecting to commence construction of Westpark Loop North before the end of the year. Agreements with builders and other developers affect the schedule with the intent to construct Westpark Loop North first, then Parcels 8, 7S & 19. The development schedule of the remaining parcels is not certain at this time.

Project Background & Current Conditions

The overall Westpark subdivision is located at the southeast corner of the intersection of Interstate 10 (I-10) and State Route 85 (SR-85) in Buckeye, Arizona. As it sits today, the overall subdivision is mostly surrounded by undeveloped desert and agricultural farmlands with an existing development directly southeast. It is bordered to the south by the RID Canal but is not necessarily served by those irrigation facilities. Public vehicular access is currently only provided from Miller Road to the East. There are two access points to Miller Road, and they are the North and South Westpark Loop Road connections. A tertiary access road identified as E. Connector Road was constructed in 2010. This road connects to W. Broadway Road to the south, bridges the RID Canal, then stops at a point along the old SR-85 frontage road just south of the intersection with I-10. There are future plans by Developers to connect this over to the existing end of W. Durango Street, just north of Phase 1. Eventually, additional interior street connections with Westpark will be made to aide in overall vehicular circulation and connectivity with local roadways.

The subdivision was originally planned as “Roston/Buckeye” and received approval of its Community Master Plan (CMP) in October of 2000 since it was consistent with the City’s General Plan Land Use Designation of “Master Planned Community” (MPC). Several amendments have occurred over the years since it’s initial approval to enact minor updates to better suit the changing needs of the City and surrounding area. A Preliminary Plat of Westpark Phase 2, Project No. PP04-09, was approved in mid-2004 and is the basis for the scope of work proposed with the subject project submittals. Parcel 20N is proposing 70 lots over a total of 17.16 acres, which equates to a density of 4.08 dwelling units per acre. The minimum lot size proposed is 65’x120’. While the parcel has an overlying zoning of Planned Community (PC), the development standards remain consistent with the City’s underlying applicable residential zoning standards and maintain the initial intent and approvals of the CMP.

Construction of Phase 1 began around 2004 and met full build-out in 2007. With Phase 1 nearing completion and the need for further expansion, Phase 2 began construction in 2006 but stalled out after mass grading and some portions of infrastructure work. The mass grading covered a predominance of the Phase 2 area, but a small portion of the northerly parcels was left in a natural state due to an irrigation supply ditch that was necessary to remain in service at the time. Since then, the subject ditch has been decommissioned and is no longer needed. The site has remained in a partially completed state until the southeasterly portion of it (identified as Phase 2.1 and consisting of platted Parcels 13, 14, 18S and 20S) was resurrected recently in 2019 by a separate ownership entity. These four parcels are continuing development pursuit by said owner on a parallel track to the subject Phase 2.2 work. Currently, Parcel 14 is complete, Parcel 18S has approved plans, and improvement plans for Parcels 13 and 20S are in progress.

The mass grading work established large offsite drainage attenuating basins along the entire northerly portion of the property. These basins intercept offsite runoff then route them accordingly and discharge in the historic courses. Individual parcels will maintain the necessary offsite routing as well as provide for the required onsite stormwater management addressing the 100-year design conditions as typical. Existing ground conditions have been maintained over the years to keep unwanted vegetation growth at bay and to ensure the in-place network of surface basins and drainageways function as needed. Natural terrain falling from northeast to southwest remains as the overall condition.

Utilities and Services

Water and sewer are both provided to and serving the Westpark subdivision by the City of Buckeye. Westpark falls within the limits of the City's water pressure Zone 2. This zone is primarily supplied by a facility identified as the North Airport Road Water Campus (NARWC), which is located approximately 8-miles northeast of Westpark. The primary supply of water is brought to the subdivision by offsite 16" transmission mains located within W. Durango Street and Miller Road. Phase 1 contains distribution mains throughout which vary in size from 6" through 16" which stop at Phase 2 for continuation. Phase 2 will install the same type and sizes of potable distribution throughout and a new 16" connection to the offsite main in W. Durango Street to help bolster the overall system's capabilities. A 16" main line stub will be placed at the west end of Warner Street for future connection and further continuation of the water system. Parcel 20N's potable water distribution is mostly comprised of 8" mains and connects to the 8" main in Parcel 19 at two locations, an 8" stub in S 262nd Avenue and an 8" stub in S. 263rd Avenue. Parcel 20N also connects to Parcel 20S at two locations, an 8" stub in S. 262nd Avenue and an 8" stub in S. 263rd Avenue. Parcel 20N will be connected to the 16-inch main in Westpark Loop North via Florence Avenue in Parcel 20S and Cordes Road within Parcel 20N.

Similar to the water distribution, sewage collection is provided throughout the existing subdivision utilizing a network of 8" through 10" public collection gravity main lines. Due to the gravity design of the sewer following the natural terrain, the individual parcels within Phase 2 cascade through one another as the site sewerage flows from north to south. Infrastructure for the Phase 2.2 parcels will be constructed in a manner that starts with the lower end of the system so that dependent parcels are able to discharge once flow demands come online. Parcel 20N's system is at a mid point in the overall system and consists of 8" sewer lines that ultimately drain to Parcel 20S in S. 262nd Avenue and S. 263rd Avenue. Parcel 20 also connects to Parcel 19 in S. 263rd Avenue. Existing Westpark Phase 1 discharges at its southwest corner and Phase 2 discharges at its southeast corner, meeting at an existing 18" main on the north side of the RID Canal at the intersection with the Rooks Road alignment. From there, the existing 18" main heads south, crosses the canal, then continues roughly 5 miles southeast where it ends up at the Beloat Wastewater Treatment Plant facility (which is located just south of downtown Buckeye, southeast of the intersection of S. Miller Road and E. Irwin Avenue). The plant currently has capacity to serve the Westpark Phase 2.2 build-out.

Other public utilities and service providers include Arizona Public Service (APS) for electrical with cable and telephone provided by both CenturyLink and Cox. Additionally, refuse/recycle service is handled by the City of Buckeye for typical residential collection services.

Emergency services are handled within the City's jurisdictional limits and are provided by Buckeye Fire Department and Buckeye Police Department. The nearest Fire Station to serve Phase 2.2 already exists within the Phase 1 limits. Buckeye Fire Station #706 is located just east of Parcel 5, on the north side of the adjacent Westpark Elementary School. An additional future Fire Station site has been slated for a vacant parcel within the Phase 2.2 limits but is not yet defined for construction. The primary Buckeye Police Station dispatches from their home base located at 100 N. Apache Road, which is south of Downtown Buckeye on the east side of the MC85/Monroe Avenue curve.

Education services are provided through the local school districts. Students start off in the Buckeye Elementary School District which handles grades K-8. The nearest elementary school is Westpark

Elementary, which happens to be adjacent east to Parcel 5. The school was completed and has been serving the neighborhood since 2007. Once students are ready to move on, they migrate to the Buckeye Union High School District. The nearest public school is Youngker High School, which is approximately 1-mile due east of Westpark, at the northwest corner of S. Apache Road and W. Lower Buckeye Road.

Landscaping, Parks & Open Space

Overall, the new Phase 2.2 landscape design will match and mesh with the existing Westpark Phase 1 theme, continuing to provide appropriate green spaces that soften the development appearance while maintaining strict standards for a low water-use plant palette and maintenance. With 20.6% of open space allocated in Phase 2.2, there is a meaningful natural appearance offering an array of outdoor uses that tie the subdivision together. Overall, this equates to roughly 41 +/- acres of common area open space and amenities for the residents. Each parcel is proposed to include a “pocket park” for safe family activities as well as harnessing the various remaining open spaces for activity opportunities. Parcel 20N specifically has no multi-use basins, instead drainage is managed on adjacent parcel basins. These areas help make up the 0.44 acres of parks and open space, which is about 3% of the Parcel. This trail network will ensure all the open/green spaces are connected to one another as well as providing a safe and continuous accessway throughout the entire subdivision. This network and other access means will be extended to each of the future phases as well, completing the harmonious nature of the development and general community feel. Although not part of this current plan of development, a large format regional park and recreation facility is designed and slated for one of the remaining undeveloped parcels of Phase 2.2. It is adjacent south of Warner Street and will be a substantial amenity benefit to the area. When developed, it will add an additional 25 +/- acres of high-quality recreational facilities of varied substance.

Development Schedule

Currently, the anticipated development schedule is somewhat dependent on the timing of all jurisdictional reviews and approvals. As mentioned prior, the entirety of Phase 2 (with the exception of portions of the northerly parcels) was mass-graded in 2006, with some primary utility infrastructure placed as well. The utility work was focused on the southern leg of the Loop Road, and the adjacent four Parcels 13, 14, 18S and 20S. This prior work reduces some of the longer field processes associated with site development, but there is still plenty to do once field work commences.

In general, it is expected that the first portion of new development will be to construct the remaining segments of Westpark Loop Road, Warner Street and the offsite water main connection north to Durango Street. Once work begins, it is projected to be completed in approximately 5-8 months. Individual parcel construction will commence once approvals are obtained and home builders have committed to parcels accordingly. Since this is not yet clearly defined, some speculation is necessary to forecast the development progress. It is anticipated that individual parcel development would take an initial 3-6 months to complete site improvements and begin constructing homes. With construction varying both regionally and throughout the industry, we would anticipate first homes coming online for sale within the following 4-6 months. Currently home builders are averaging anywhere from 5 to 8 home closings per month once they are in full swing (after site work). As identified prior, since there are some infrastructure limitations for several parcels, the progression of development is expected to proceed in the following order: Loop Road/Offsite Infrastructure, then Parcels 8, 7S, 20N, 7N, 19 and 6. This order will ensure that suitable utilities and drainage facilities are maintained to support the construction and new residents of Buckeye accordingly.

Tract Table

TRACT TABLE			
TRACT	AREA SQ FT	AREA ACRES	USAGES
TRACT K8	568	0.01	LANDSCAPE & OPEN SPACE
TRACT L8	488	0.01	LANDSCAPE & OPEN SPACE
TRACT M8	488	0.01	LANDSCAPE & OPEN SPACE
TRACT N8	488	0.01	LANDSCAPE & OPEN SPACE
TRACT O8	488	0.01	LANDSCAPE & OPEN SPACE
TRACT P8	6,833	0.17	LANDSCAPE & OPEN SPACE
TRACT Q8	975	0.02	LANDSCAPE & OPEN SPACE
TRACT R8	975	0.02	LANDSCAPE & OPEN SPACE
TRACT S8	1,009	0.02	LANDSCAPE & OPEN SPACE
TRACT T8	5,323	0.13	LANDSCAPE, OPEN SPACE & PUBLIC ACCESS
TRACT U8	979	0.02	LANDSCAPE & OPEN SPACE
TRACT V8	412	0.01	LANDSCAPE & OPEN SPACE
TOTAL	19,026	0.44	

Development Standards

Parcel No.	Gross Parcel Area (Acres)	Lot Count	Lot Size (Min.)	Gross Density (DU/Acre)	Open Space (Acre)
5	42.85	153	53' x 120'	3.57	12.85
6	22.06	84	58' x 115'	3.81	5.01
7N	22.52	77	58' x 115'	3.42	6.41
7S	25.31	109	53' x 115'	4.31	4.29
8	17.30	85	45' x 110'	4.91	3.23
18N	30.84	164	45' x 110'	5.32	6.35
19	21.80	106	53' x 115'	4.86	2.54
20N	17.16	70	65' x 120'	4.08	0.44
Totals:	**199.84**	**847**	--	**4.28**	**41.12**

Parcel No.	Lot Count	Lot Size (Min.)	Lot Coverage (Max.)	Front Setback	Rear Setback	Side Setbacks
5	153	53' x 120'	65%	*	20'	5' / 8'
6	84	58' x 115'	50%	*	20'	5' / 8'
7N	77	58' x 115'	50%	*	20'	5' / 8'
7S	109	53' x 115'	65%	*	20'	5' / 8'
8	85	45' x 110'	65%	*	15'	5' / 5'
18N	164	45' x 110'	65%	*	15'	5' / 5'
19	105	53' x 115'	65%	*	20'	5' / 8'
20N	70	65' x 120'	50%	*	20'	5' / 10'

* = 10' to side entry garage
15' to living area
18' to garage

WESTPARK - PHASE 2.2

RESIDENTIAL PARCEL TABLE		
PARCEL	LOT SIZE	UNIT COUNT
5	53' X 120'	153
6	58' X 115'	84
7N	58' X 115'	77
7S	53' X 115'	109
8	45' X 110'	85
18N	45' X 110'	164
19	53' X 115'	105
20N	65' X 120'	70
	TOTAL LOTS:	847

(NOT A PART)

(NOT A PART)

(NOT A PART)

PARCEL 6
58' x 115'
84 LOTS

PARCEL 5
53' x 120'
153 LOTS

EXISTING PHASE 1
(NOT A PART)

PARCEL 7N
58' x 115'
77 LOTS

WESTPARK LOOP NORTH

PARCEL 19
53' x 115'
105 LOTS

PARCEL 18N
45' x 110'
164 LOTS

FUTURE PHASE 3
(NOT A PART)

PARCEL 7S
53' x 115'
109 LOTS

PARCEL 20N
65' x 120'
70 LOTS

NARRATIVE REPORT PERTAINS
TO PARCEL 20N ONLY

PARCEL 8
45' x 110'
85 LOTS

PARCEL 18S
NOT A PART

PARCEL 20S
NOT A PART

EAST CONNECTOR ROAD

FUTURE PHASE 3
(NOT A PART)

WARNER STREET

WESTPARK LOOP SOUTH

EXISTING PHASE 1
(NOT A PART)

PARK
NOT A PART

PARCEL 13
NOT A PART

PARCEL 14
NOT A PART

FUTURE PHASE 3
(NOT A PART)

R.I.D. CANAL

200 0 200 400

SEPTEMBER 16, 2021

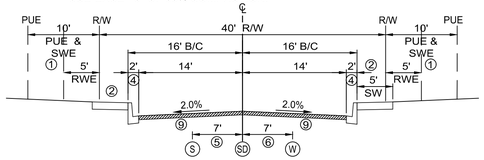
ATWELL
866.850.4200 www.atwell-group.com

k:\21001100 - westpark phases 2.2\dwg\presentation\21001100_marketing map.dwg

COPYRIGHT © 2021 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC

GENERAL NOTES

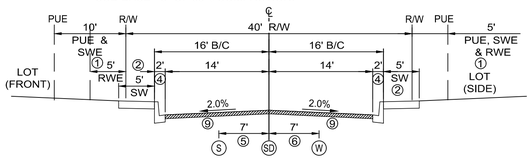
① PUE / LPPUE / LANDSCAPE - 8:1 MAX SLOPE.
② 5' S / W PER MAG STD DTL 230.
③ ROW / LANDSCAPE AREA, 1.5% SLOPE. FIRE HYDRANTS, TREES & STREET LIGHTS LOCATED 2' BACK OF SIDEWALK.
④ CURB & GUTTER PER MAG STD DTL 220-1, TYPE 'A' OR C'.
⑤ SANITARY SEWER MAINS SHALL BE PLACED 7' SOUTH OR WEST OF CL.
⑥ WATER MAINS SHALL BE PLACED 7' NORTH OR EAST OF CL.
⑦ NOT USED
⑧ STORM DRAIN SHALL BE PLACED ON THE CL OF STREET.
⑨ PAVEMENT REQUIREMENTS:
AC - 2.5" OF R12.5MM MARSHALL.
BASE - 8" OF ABC. PER MAG STD SPEC 702.2.
SUB-BASE - 8" OF 95% COMPACTION.



LOCAL STREET - MODIFIED COB DTL 63170
(FRONT LOADED LOTS)
SCALE: 1"=10'

GENERAL NOTES

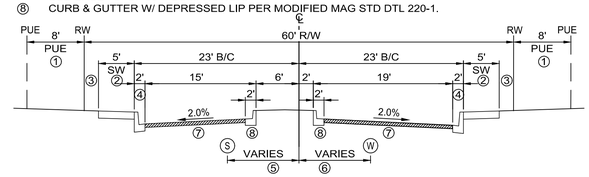
① PUE / LPPUE / LANDSCAPE - 8:1 MAX SLOPE.
② 5' S / W PER MAG STD DTL 230.
③ ROW / LANDSCAPE AREA, 1.5% SLOPE. FIRE HYDRANTS, TREES & STREET LIGHTS LOCATED 2' BACK OF SIDEWALK.
④ CURB & GUTTER PER MAG STD DTL 220-1, TYPE 'A' OR C'.
⑤ SANITARY SEWER MAINS SHALL BE PLACED 7' SOUTH OR WEST OF CL.
⑥ WATER MAINS SHALL BE PLACED 7' NORTH OR EAST OF CL.
⑦ NOT USED
⑧ STORM DRAIN SHALL BE PLACED ON THE CL OF STREET.
⑨ PAVEMENT REQUIREMENTS:
AC - 2.5" OF R12.5MM MARSHALL.
BASE - 8" OF ABC. PER MAG STD SPEC 702.2.
SUB-BASE - 8" OF 95% COMPACTION.



LOCAL STREET - MODIFIED COB DTL 63170
(FRONT & SIDE LOADED LOTS)
SCALE: 1"=10'

GENERAL NOTES

① PUE / LPPUE / LANDSCAPE - 8:1 MAX SLOPE.
② 5' ATTACHED S / W PER MAG STD DTL 230.
③ LANDSCAPE AREA, SREET LIGHTS CENTERED IN MEDIAN
④ CURB & GUTTER PER MAG STD DTL 220-1, TYPE 'A' OR C'.
⑤ WATER MAINS SHALL BE PLACED 7' NORTH OR EAST OF CL, CENTERED IN DRIVING LANE
⑥ SANITARY SEWER MAINS SHALL BE PLACED 7' SOUTH OR WEST OF CL, CENTERED IN DRIVING LANE
⑦ PAVEMENT REQUIREMENTS:
AC - 3" OF R12.5MM MARSHALL.
BASE - 8" OF ABC. PER MAG STD SPEC 702.2.
SUB-BASE - 8" OF 95% COMPACTION.
⑧ CURB & GUTTER W/ DEPRESSED LIP PER MODIFIED MAG STD DTL 220-1.



RESIDENTIAL ENTRANCE - COB DTL 63190
SCALE: 1"=10'

THE LOCATIONS OF EXISTING UNDERGROUND UTILITIES ARE SHOWN IN AN APPROXIMATE WAY ONLY AND HAVE NOT BEEN INDEPENDENTLY VERIFIED BY THE OWNER OR ITS REPRESENTATIVE. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING WORK, AND AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MIGHT BE OCCASIONED BY THE CONTRACTOR'S FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL UNDERGROUND UTILITIES.

NOTICE:
CONSTRUCTION SITE SAFETY IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR; NEITHER THE OWNER NOR THE ENGINEER SHALL BE EXPECTED TO ASSUME ANY RESPONSIBILITY FOR SAFETY OF THE WORK, OF PERSONS ENGAGED IN THE WORK, OF ANY NEARBY STRUCTURES, OR OF ANY OTHER PERSONS.

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8531

SITE PLAN

PROJECT: WESTPARK PHASE 2.2
BUCKEYE, AZ

811 Know what's **below.** **Call** before you dig.

REVISIONS:

PRELIMINARY
NOT FOR
CONSTRUCTION
OR
RECORDING

PM.	CAP
DR.	C. PARENT
JOB NO.	21001100
FILE NO.	SITE LAYOUT

SHEET NO.
2 OF 5

DATE: 09/10/2021

k:\21001100 - westpark phases 2.2\dwg\lot fifsale layout exhibit.dwg Savedate:9/14/2021 11:00 AM Plotdate:8/10/2022 5:34 PM

5R PLZDR-24-0020 RECEIVED AUG 06 2024 AL

COPYRIGHT © 2023 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC

FINAL PLAT OF WESTPARK PHASE 2.2 "PARCEL 20N"

LOCATED IN A PORTION OF THE NORTH HALF OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 4 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN MARICOPA COUNTY, ARIZONA

DEDICATION

STATE OF ARIZONA }
}SS
COUNTY OF MARICOPA }

KNOW ALL PERSONS BY THESE PRESENTS: D.R. HORTON INC, A DELAWARE CORPORATION ("OWNER"), HAS SUBDIVIDED UNDER THE NAME WESTPARK PHASE 2.2 "PARCEL 20N", A SUBDIVISION LOCATED IN A PORTION OF THE NORTH HALF OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 4 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN MARICOPA COUNTY, ARIZONA AS SHOWN AND PLATTED HEREON AND DOES HEREBY PUBLISH THIS PLAT AS AND FOR THE PLAT OF WESTPARK PHASE 2.2 "PARCEL 20N" AND DECLARES THAT THIS PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF EACH LOT, TRACT, STREET, AND EASEMENTS CONSTITUTING SAME, AND THAT EACH LOT, TRACT, STREET, AND EASEMENT SHALL BE KNOWN BY THE NUMBER, LETTER, AND/OR NAME GIVEN TO EACH RESPECTIVELY AS SHOWN ON THIS PLAT.

OWNER HEREBY DEDICATES TO THE CITY OF BUCKEYE FEE TITLE TO ALL PUBLIC RIGHTS-OF-WAY AS SHOWN ON THIS PLAT.

OWNER HEREBY GRANTS TO THE CITY OF BUCKEYE A NON-EXCLUSIVE EASEMENT OVER, UPON AND ACROSS THE AREAS DESIGNATED AS PUBLIC UTILITY EASEMENTS AS SHOWN ON THE PLAT FOR THE PURPOSE OF INSTALLING, CONSTRUCTING, MAINTAINING, REPAIRING, REPLACING AND UTILIZING PUBLIC UTILITIES.

OWNER HEREBY GRANTS TO THE CITY OF BUCKEYE, A NON-EXCLUSIVE EASEMENT OVER, UPON AND ACROSS THE AREAS DESIGNATED AS SITE VISIBILITY TRIANGLES FOR THE PURPOSE OF ENSURING THAT THESE AREAS REMAIN FREE OF SITE VISIBILITY OBSTRUCTIONS AS PER THE ENGINEERING DESIGN STANDARDS.

OWNER HEREBY GRANTS TO THE UNITED STATES OF AMERICA DEPARTMENT OF THE AIR FORCE ("USAF") AN AVIGATION EASEMENT OVER AND ACROSS THIS PLAT AND EVERY LOT AND PARCEL THEREOF, WHICH EASEMENT SHALL INCLUDE, BUT NOT BE LIMITED TO; THE RIGHT OF FLIGHT OF AIRCRAFT OVER THIS PLAT, TOGETHER WITH ITS ATTENDANT NOISE, VIBRATIONS, FUMES, DUST, FUEL AND LUBRICANT PARTICLES, AND ALL OTHER EFFECTS THAT MAY BE CAUSED BY THE OPERATION OF AIRCRAFT LANDING AT, OR TAKING OFF FROM, OR OPERATING AT OR ON LUKE AIR FORCE BASE AND AUXILIARY FIELD.

D.R. HORTON INC, A DELAWARE CORPORATION, AS OWNER DOES HEREBY; (1) RELEASE AND DISCHARGE THE USAF AND THE CITY OF BUCKEYE, AND (2) INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF BUCKEYE, OF AND FROM ANY LIABILITY FOR ANY AND ALL CLAIMS FOR DAMAGES OF ANY KIND TO PERSONS OR PROPERTY THAT MAY ARISE AT ANY TIME IN THE FUTURE OVER, OR IN CONNECTION WITH AIRCRAFT OVERFLIGHTS FROM AIRCRAFT UTILIZING LUKE AIR FORCE BASE, WHETHER SUCH DAMAGE SHALL ORIGINATE FROM NOISE, VIBRATION, FUMES, DUST, FUEL AND LUBRICANT PARTICLES, AND ALL OTHER EFFECTS THAT MAY BE CAUSED BY THE OPERATION OF AIRCRAFT LANDING AT, OR TAKING OFF FROM, OR OPERATING AT OR ON LUKE AIR FORCE BASE. THIS INSTRUMENT SHALL RUN WITH THE LAND AND BE BINDING UPON OWNER AND ITS HEIRS, ASSIGNS, AND SUCCESSORS IN INTEREST TO THIS PLAT OR ANY PARCEL OR LOT THEREOF. THIS INSTRUMENT DOES NOT RELEASE THE USAF FROM LIABILITY FOR DAMAGE OR INJURY TO PERSON OR PROPERTY CAUSED BY FALLING AIRCRAFT OR FALLING PHYSICAL OBJECTS FROM AIRCRAFT, EXCEPT AS STATED HEREIN WITH RESPECT TO NOISE, FUMES, DUST, FUEL, AND LUBRICANT PARTICLES.

D.R. HORTON INC, A DELAWARE CORPORATION, AS OWNER DOES HEREBY; (1) RELEASE AND DISCHARGE THE CITY OF BUCKEYE, AND (2) INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF BUCKEYE, OF AND FROM ANY LIABILITY FOR ANY AND ALL CLAIMS FOR DAMAGES OF ANY KIND TO PERSONS OR PROPERTY THAT MAY ARISE AT ANY TIME IN THE FUTURE OVER, OR IN CONNECTION WITH THE AREAS LOCATED WITHIN THE NEWLY DEDICATED RIGHT-OF-WAY AS DEPICTED ON THIS PLAT UNTIL SUCH TIME THE RIGHT-OF-WAY IS IMPROVED TO CITY STANDARDS AND THOSE IMPROVEMENTS ARE APPROVED AND ACCEPTED BY THE CITY OF BUCKEYE. THE MAINTENANCE OF THE AREA WITHIN ANY NEWLY DEDICATED RIGHT-OF-WAY AS SHOWN ON THIS PLAT SHALL BE THE RESPONSIBILITY OF THE ADJACENT OWNER/OR SUBSEQUENT ADJACENT OWNERS WITHIN THE BOUNDARY OF SAID PLAT UNTIL SUCH TIME THAT THE AREA WITHIN THE RIGHT-OF-WAY IS IMPROVED TO CITY STANDARD AND ACCEPTED BY THE CITY OF BUCKEYE.

ALL IMPROVEMENTS, FOR STREETS AND PUBLIC UTILITIES OWNED AND OPERATED BY THE CITY, INSTALLED OR CONSTRUCTED BY OWNER WITHIN THE PUBLIC RIGHT-OF-WAYS, THE EASEMENTS, OR ANY TRACTS OR PARCELS HEREBY DEDICATED TO THE CITY OF BUCKEYE SHALL BE DEEMED TO HAVE BEEN DEDICATED BY OWNER TO THE CITY UPON THEIR COMPLETION; HOWEVER, SUCH TRANSFER SHALL NOT OCCUR UNTIL THE CITY OF BUCKEYE MANIFESTS ITS ACCEPTANCE BY SEPARATE FORMAL ACTION.

THE EASEMENTS GRANTED WITHIN THIS DEDICATION ARE PERMANENT AND PERPETUAL AND SHALL RUN WITH THE LAND AND BE BINDING UPON OWNER AND ITS HEIRS, ASSIGNS, AND SUCCESSORS AND INTEREST TO THIS PLAT OR ANY PARCEL OR LOT THEREOF.

TRACT T8 IS DECLARED TO BE FOR LANDSCAPE, OPEN SPACE AND PUBLIC ACCESS, AS SHOWN IN THE TRACT TABLE INCLUDED HEREON.

TRACTS K8, L8, M8, N8, O8, P8, Q8, R8, S8, U8 AND V8 ARE DECLARED TO BE FOR LANDSCAPE AND OPEN SPACE, AS SHOWN IN THE TRACT TABLE INCLUDED HEREON.

ALL TRACTS ARE TO BE OWNED AND MAINTAINED BY THE WESTPARK PHASE 2.2 COMMUNITY ASSOCIATION. THERE HAS BEEN OR IS BEING RECORDED HEREWITH A DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (CC&R'S) FOR "WESTPARK PHASE 2.2, PARCEL 20N"

OWNER HEREBY GRANTS TO THE PUBLIC A NON-EXCLUSIVE EASEMENT FOR RECREATION OVER UPON AND ACROSS THOSE AREAS DESIGNATED AS RECREATION TRAILS OR AREAS FOR THE PURPOSE OF ALLOWING PUBLIC ACCESS TO THE TRAIL SYSTEM.

NOTHING CONTAINED HEREIN SHALL BE DEEMED TO DEDICATE ANY PORTION OF THE TRACTS FOR PUBLIC USE OTHER THAN FOR EASEMENTS SPECIFICALLY GRANTED TO THE PUBLIC HEREIN.

OWNER HEREBY GRANTS TO THE CITY OF BUCKEYE A NON-EXCLUSIVE EASEMENT OVER, UPON, AND ACROSS THE AREAS DESIGNATED AS "ROADWAY EASEMENTS" AS SHOWN ON THE PLAT FOR THE PURPOSE OF INSTALLING, CONSTRUCTION, MAINTAINING, REPAIRING AND UTILIZING STREET AS PER THE CITY OF BUCKEYE ENGINEERING DESIGN STANDARDS.

OWNER WARRANTS AND REPRESENTS TO THE CITY OF BUCKEYE TO BE THE SOLE OWNER OF THE PROPERTY COVERED HEREBY AND THAT EVERY LENDER, EASEMENT HOLDER, OR OTHER PERSON, OR ENTITY, HAVING ANY INTEREST IN THE LAND ADVERSE TO OR INCONSISTENT WITH THE DEDICATION, CONVEYANCES OR OTHER REAL PROPERTY INTEREST CREATED OR TRANSFERRED BY THIS PLAT HAS CONSENTED TO, OR JOINED IN THE PLAT, AS EVIDENCED BY INSTRUMENTS WHICH ARE RECORDED WITH THE MARICOPA COUNTY RECORDERS OFFICE, OR WHICH OWNER WILL RECORD NOT LATER THAN THE DATE ON WHICH THIS PLAT IS RECORDED.

THE MAINTENANCE OF LANDSCAPING WITHIN THE OPEN SPACES, LANDSCAPED TRACTS, RETENTION BASINS AND PARKS SHALL BE THE RESPONSIBILITY OF THE OWNER OR THE ASSOCIATION FORMED BY THE OWNER.

THE MAINTENANCE OF LANDSCAPING WITHIN THE ADJACENT PUBLIC RIGHT-OF-WAYS, INCLUDING; LANDSCAPED MEDIANS WITHIN COLLECTORS AND LOCAL STREETS AND LANDSCAPED AREAS BETWEEN THE CURB AND THE DETACHED SIDEWALK, SHALL BE THE RESPONSIBILITY OF THE ADJACENT PROPERTY OWNER OR THE PROPERTY ASSOCIATION FORMED BY THE ADJACENT PROPERTY.

IN WITNESS WHEREOF, OWNER HAS HEREUNTO CAUSED ITS CORPORATE NAME TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY THE UNDERSIGNED, DULY AUTHORIZED OFFICER THIS _____ DAY OF _____, 2024.

D.R. HORTON INC, A DELAWARE CORPORATION

BY: _____
PATRICK BROWN, VICE PRESIDENT

ACKNOWLEDGMENT

STATE OF ARIZONA }
}SS
COUNTY OF MARICOPA }

ON THIS, THE _____ DAY OF _____, 2024, BEFORE ME THE UNDERSIGNED NOTARY, PATRICK BROWN PERSONALLY APPEARED WHO ACKNOWLEDGED HIMSELF TO BE THE VICE PRESIDENT AND ACKNOWLEDGED THAT HE, BEING DULY AUTHORIZED SO TO DO, EXECUTED THIS INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF:

I HEREUNTO SET MY HAND AND OFFICIAL SEAL:

_____ _____
NOTARY PUBLIC MY COMMISSION EXPIRES

RATIFICATION

KNOW ALL PERSONS BY THESE PRESENTS:

THE UNDERSIGNED, DULY AUTHORIZED OF THE WESTPARK PHASE 2.2, COMMUNITY ASSOCIATION, AN ARIZONA NON-PROFIT CORPORATION, HEREBY RATIFIES THE RECORDATION OF THIS FINAL PLAT OF WESTPARK PHASE 2.2, PARCEL 20N AND ACKNOWLEDGES THE RESPONSIBILITIES SET FORTH THEREIN.

WESTPARK PHASE 2.2 COMMUNITY ASSOCIATION, AN ARIZONA NON-PROFIT CORPORATION

BY: _____ DATE: _____

ITS: _____

ACKNOWLEDGMENT

STATE OF ARIZONA }
}SS
COUNTY OF MARICOPA }

ON THIS, THE _____ DAY OF _____, 2024, BEFORE ME THE UNDERSIGNED NOTARY, _____ PERSONALLY APPEARED WHO ACKNOWLEDGED HIMSELF/HERSELF TO BE THE _____ AND ACKNOWLEDGED THAT HE/SHE, BEING DULY AUTHORIZED SO TO DO, EXECUTED THIS INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF:

I HEREUNTO SET MY HAND AND OFFICIAL SEAL:

_____ _____
NOTARY PUBLIC MY COMMISSION EXPIRES

APPROVALS

APPROVED BY THE CITY COUNCIL OF THE CITY OF BUCKEYE ON THIS _____ DAY OF _____ 2024.

BY: _____
MAYOR

ATTEST: _____
CITY CLERK

I CERTIFY THAT ALL ENGINEERING CONDITIONS AND REQUIREMENTS HAVE BEEN COMPLIED WITH.

BY: _____
BUCKEYE CITY ENGINEER DATE

BY: _____
DEVELOPMENT SERVICES DIRECTOR DATE

BASIS OF BEARING

BASIS OF BEARING IS ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 24, T.1N., R.4W. BEING N89°39'26"W WITH A DISTANCE OF 2670.94 FEET.

BENCHMARK

BENCHMARK DATUM:
HORIZONTAL LOCATION= SE COR SEC 24, T.1N., R.4W. FOUND BRASS CAP IN HANDHOLE.
ELEVATION = 967.84' NORTH AMERICAN VERTICAL DATUM 1988

AREA CALCULATIONS

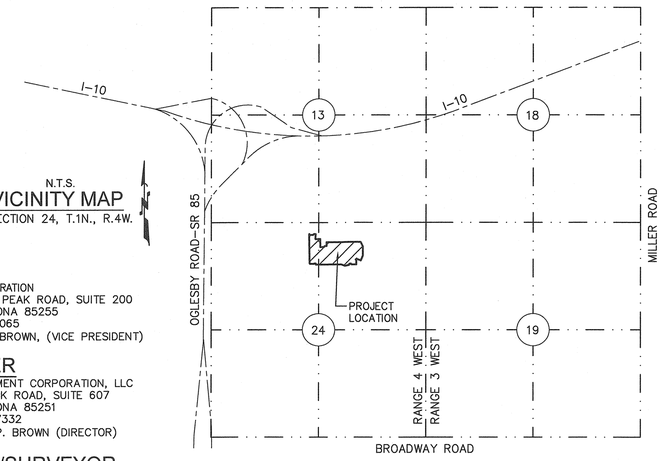
TRACTS	19,026 SQ.FT.	0.44 AC
LOTS = 70	582,827 SQ.FT.	13.38 AC
RIGHT OF WAY	145,441 SQ.FT.	3.34 AC
TOTAL	747,294 SQ.FT.	17.16 AC

RIGHT OF WAY TABLE

RIGHT OF WAY TABLE		
ROAD	AREA SQ FT	AREA ACRES
261ST LANE	16,187 SQ.FT.	0.37 AC
262ND AVENUE	10,079 SQ.FT.	0.23 AC
262ND DRIVE	10,850 SQ.FT.	0.25 AC
262ND LANE	1,625 SQ.FT.	0.04 AC
263RD AVENUE	23,099 SQ.FT.	0.53 AC
WILLIAMS STREET	38,507 SQ.FT.	0.88 AC
KINGMAN STREET	36,375 SQ.FT.	0.84 AC
CORDES ROAD	8,720 SQ.FT.	0.20 AC
TOTAL	145,441 SQ.FT.	3.34 AC

LEGEND

▲	SUBDIVISION CORNER TO BE SET
○	FOUND MONUMENT AS NOTED
◉	CENTERLINE MONUMENT (BRASS CAP)
PUE	PUBLIC UTILITY EASEMENT
MCR	MARICOPA COUNTY RECORDS
D	DELTA
R/W	RIGHT-OF-WAY
C1	CURVE TABLE NUMBER
L1	LINE TABLE NUMBER
①	33'x33' SIGHT VISIBILITY EASEMENT
VNAE	VEHICULAR NON-ACCESS EASEMENT
———	SUBDIVISION BOUNDARY
———	RIGHT OF WAY LINE
——— – ———	CENTERLINE
- - - - - - - - - - - -	EXISTING EASEMENT LINE
— — — — — —	NEW EASEMENT LINE
——— · ——— · ———	SECTION LINE
———---——---———	5' ROADWAY ACCESS EASEMENT ADJACENT RIGHT OF WAY (RWE)



N.T.S.
VICINITY MAP
SECTION 24, T.1N., R.4W.

OWNER

D.R. HORTON INC,
A DELAWARE CORPORATION
7689 E. PINNACLE PEAK ROAD, SUITE 200
SCOTTSDALE, ARIZONA 85255
PHONE: 480-368-1065
CONTACT: PATRICK BROWN, (VICE PRESIDENT)

DEVELOPER

GARRETT DEVELOPMENT CORPORATION, LLC
6900 E. CAMELBACK ROAD, SUITE 607
SCOTTSDALE, ARIZONA 85251
PHONE 480-907-7332
CONTACT: WYATT P. BROWN (DIRECTOR)

ENGINEER/SURVEYOR

ATWELL, LLC
4700 E. SOUTHERN AVENUE
MESA, ARIZONA 85206
PHONE 480-218-8831
CONTACT: MICHAEL J. PARK (PE)
CONTACT: JAMES G. SPRING (PLS)

SHEET INDEX

DESCRIPTION	SHEET NO
COVER SHEET	1
KEY MAP, TRACT TABLE, LOT DETAIL AND LEGAL DESCRIPTION	2
PLAT SHEETS	3-4

NOTES

1. THE LOTS DEPICTED ON THIS PLAT ARE LOCATED WITHIN THE VICINITY OF LUKE AIR FORCE BASE AND MAY BE SUBJECT TO OVERFLIGHTS BY JET AIRCRAFT. ALL STRUCTURES WITHIN THIS PLAT SHALL BE CONSTRUCTED IN COMPLIANCE WITH THE STATUTORILY REQUIRED SOUND ATTENUATION STANDARDS.
2. THE PROPERTY OWNERS, OR ANY SUBSEQUENT OWNERS SHALL NOT PROCEED WITH ANY ON SITE GRADING OR EXCAVATION WITHOUT FIRST OBTAINING A PERMIT FROM THE CITY OF BUCKEYE.
3. IN ACCORDANCE WITH ARS § 9-461.07, THE CITY OF BUCKEYE HAS DETERMINED THAT ALL DEDICATIONS OCCURRING WITH THIS PLAT ARE IN CONFORMANCE WITH THE GENERAL PLAN.
4. PURSUANT TO A.R.S. § 42-11102, THE CITY OF BUCKEYE, A POLITICAL SUBDIVISION OF THE STATE OF ARIZONA, IS EXEMPT FROM ALL TAXES AND ASSESSMENTS BASED ON ASSESSED VALUE EXCEPT FOR SPECIAL DISTRICTS #14751 AND 14710, WHEN APPLICABLE.
5. THIS SITE CONSISTS OF A TOTAL OF 70 LOTS, 12 TRACTS, AND 1 PARCEL IN THE "PC" PLANNED COMMUNITY ZONING DISTRICT.
6. THIS FINAL PLAT IS IN SUBSTANTIAL CONFORMANCE WITH THE PRELIMINARY PLAT APPROVED ON JULY 13TH, 2004 UNDER CASE #PP04-09.
7. THIS SUBDIVISION WAS ISSUED A CERTIFICATE OF ASSURED WATER SUPPLY BY ARIZONA DEPARTMENT OF WATER RESOURCES ON OCTOBER 19TH, 2007 WITH ADWR CERTIFICATE #31-402138.0001.
8. NO STRUCTURE OF ANY KIND SHALL BE CONSTRUCTED OR ANY VEGETATION TO BE PLANTED OR BE ALLOWED TO GROW WITHIN ANY DRAINAGE EASEMENT WHICH WOULD IMPEDE THE FLOW OF WATER OVER, UNDER, OR THROUGH EASEMENTS.
9. FINAL PLAT APPROVAL BY THE CITY IS CONDITIONAL AND SUBJECT TO FINANCIAL ASSURANCES BEING IN PLACE FOR ALL IMPROVEMENTS AS SHOWN ON THE APPROVED PLANS. THE CITY WILL NOT RECORD ANY PLATS UNTIL SUCH TIME FINANCIAL ASSURANCES ARE IN PLACE. IF AFTER ONE YEAR FROM CITY COUNCIL APPROVAL THE FINAL PLAT HAS NOT BEEN RECORDED, THEN IT SHALL BE NULL AND VOID. A VALID PRELIMINARY PLAT NEEDS TO BE IN PLACE PRIOR TO APPROVAL OF ANY FINAL PLAT ASSOCIATED WITHIN THE PROJECT IN ACCORDANCE WITH THE DEVELOPMENT CODE. THE SIGNED PLAT WILL NOT BE SUBMITTED TO THE CITY FOR SIGNATURE AND RECORDING UNTIL THE FINANCIAL ASSURANCES ARE IN PLACE.
10. ALL NEW OR RELOCATED UTILITIES WILL BE PLACED UNDERGROUND EXCEPT POWER LINES 69KV AND LARGER.
11. IT IS ACKNOWLEDGED THAT THIS PROPERTY WILL BE PART OF A PARKWAY MAINTENANCE IMPROVEMENT DISTRICT (MID) AND STREET LIGHTING IMPROVEMENT DISTRICT (SLID) AT THE TIME THAT IT IS DEVELOPED, IN ACCORDANCE WITH BUCKEYE ORDINANCES 43-05 AND 42-06.

FLOODZONE DESIGNATION

THE PROPERTY IS LOCATED WITHIN AN AREA DESIGNATED AS HAVING FLOOD ZONE X BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, ON FLOOD INSURANCE RATE MAP NO 04013C2115L, WITH A REVISION DATE OF OCTOBER 16TH, 2013 FOR COMMUNITY NO. 2115, IN THE CITY OF BUCKEYE, COUNTY OF MARICOPA, STATE OF ARIZONA, WHICH IS THE CURRENT FLOOD INSURANCE RATE MAP FOR THE COMMUNITY IN WHICH SAID PROPERTY IS SITUATED.

100 YEAR ASSURED WATER SUPPLY

THIS SUBDIVISION IS WITHIN THE CITY OF BUCKEYE WATER SERVICE AREA AND HAS OBTAINED A CERTIFICATE OF 100 YEAR ASSURED WATER SUPPLY FROM THE ARIZONA DEPARTMENT OF WATER RESOURCES, CERTIFICATE #31-402138.0001.

ZONING DESIGNATION

"PC" PLANNED COMMUNITY

SURVEYOR'S CERTIFICATION:

I, JAMES G. SPRING, HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR IN THE STATE OF ARIZONA, THAT THIS PLAT CONSISTING OF FOUR SHEETS CORRECTLY REPRESENTS A BOUNDARY SURVEY MADE BY ME DURING THE MONTH OF JULY, 2024. THAT THE SURVEY IS TRUE AND CORRECT AS SHOWN, THAT ALL MONUMENTS EXIST OR WILL BE SET AND, THAT THEIR POSITIONS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

JAMES G. SPRING, PLS 22282
ATWELL, LLC
4700 E. SOUTHERN AVENUE
MESA, ARIZONA 85206



NOTE:

A.R.S. § 32-151 STATES THAT THE USE OF THE WORD "CERTIFY" OR "CERTIFICATION" BY A PERSON OR FIRM THAT IS REGISTERED OR CERTIFIED BY THE BOARD IS AN EXPRESSION OF PROFESSIONAL OPINION REGARDING FACTS OR FINDINGS THAT ARE SUBJECT OF THE CERTIFICATION AND DOES NOT CONSTITUTE AN EXPRESS OR IMPLIED WARRANTY OR GUARANTEE.

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 13 & 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT
WESTPARK PHASE 2.2 "PARCEL 20N"
CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

ATWELL

PM.	J. SPRING
DR.	R. GILES
JOB NO.	21001100
	N.T.S.
	21001100 WESTPARK 20N FP.DWG
SHEET NO.	1 OF 4

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 20N\21001100 WESTPARK 20N FP.DWG SAVEDATE:8/5/2024 7:44 AM PLOTDATE:8/5/2024 11:05 AM

COPYRIGHT © 2023 ATWELL, LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL, LLC

LEGAL DESCRIPTION

LOCATED IN A PORTION OF THE NORTH HALF OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 4 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND BRASS CAP IN HANDHOLE, ACCEPTED AS THE SOUTHEAST CORNER OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 4 WEST FROM WHICH A FOUND STONE IN HANDHOLE, ACCEPTED AS THE SOUTH QUARTER CORNER OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 4 WEST, THEREOF BEARS N89°39'26"W A DISTANCE OF 2670.94 FEET;

THENCE, ALONG THE SOUTH LINE OF SAID SECTION 24, N89°39'26"W A DISTANCE OF 1739.09 FEET;

THENCE, LEAVING THE SOUTH LINE OF SAID SECTION 24, N00°00'00"E A DISTANCE OF 4245.72 FEET TO THE POINT OF BEGINNING;

THENCE, N89°19'59"W A DISTANCE OF 122.24 FEET;

THENCE, N32°08'03"W A DISTANCE OF 23.55 FEET;

THENCE, S89°12'26"W A DISTANCE OF 40.06 FEET;

THENCE, S10°42'33"W A DISTANCE OF 32.04 FEET;

THENCE, S79°59'17"W A DISTANCE OF 105.00 FEET;

THENCE, N69°59'58"W A DISTANCE OF 97.36 FEET;

THENCE, N89°19'59"W A DISTANCE OF 640.14 FEET;

THENCE, NORTH A DISTANCE OF 26.82 FEET;

THENCE, WEST A DISTANCE OF 40.00 FEET;

THENCE, S45°00'00"W A DISTANCE OF 9.90 FEET;

THENCE, WEST A DISTANCE OF 96.00 FEET;

THENCE, N45°00'00"W A DISTANCE OF 16.97 FEET;

THENCE, NORTH A DISTANCE OF 672.85 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE RIGHT;

THENCE, NORTHERLY ALONG SAID CURVE AN ARC LENGTH OF 72.46 FEET, WITH A RADIUS OF 660.00 FEET AND A CENTRAL ANGLE OF 06°17'26";

THENCE ALONG A LINE NON-TANGENT TO SAID CURVE, S41°57'56"E, A DISTANCE OF 40.96 FEET;

THENCE, S88°55'10"E A DISTANCE OF 63.22 FEET;

THENCE, N48°08'13"E A DISTANCE OF 36.60 FEET;

THENCE, S82°09'16"E A DISTANCE OF 40.01 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE LEFT;

THENCE, SOUTHERLY ALONG SAID CURVE AN ARC LENGTH OF 50.15 FEET, WITH A RADIUS OF 500.00 FEET AND THE RADIAL BEARING OF S83°35'13"E AND A CENTRAL ANGLE OF 05°44'46";

THENCE, S00°40'01"W A DISTANCE OF 74.27 FEET;

THENCE, S89°19'59"E A DISTANCE OF 120.00 FEET;

THENCE, S00°40'01"W A DISTANCE OF 200.00 FEET;

THENCE, S89°19'59"E A DISTANCE OF 90.00 FEET;

THENCE, N45°40'01"E A DISTANCE OF 35.36 FEET;

THENCE, S89°19'59"E A DISTANCE OF 40.00 FEET;

THENCE, N00°40'01"E A DISTANCE OF 95.00 FEET;

THENCE, S89°19'59"E A DISTANCE OF 850.00 FEET;

THENCE, S48°06'41"E A DISTANCE OF 18.55 FEET;

THENCE, S23°20'31"E A DISTANCE OF 114.32 FEET;

THENCE, S00°40'01"W A DISTANCE OF 219.70 FEET;

THENCE, S22°39'34"W A DISTANCE OF 136.52 FEET;

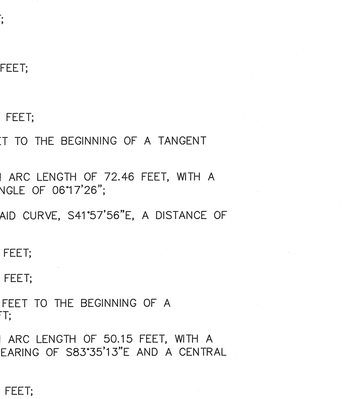
THENCE, N67°20'26"W A DISTANCE OF 106.73 FEET;

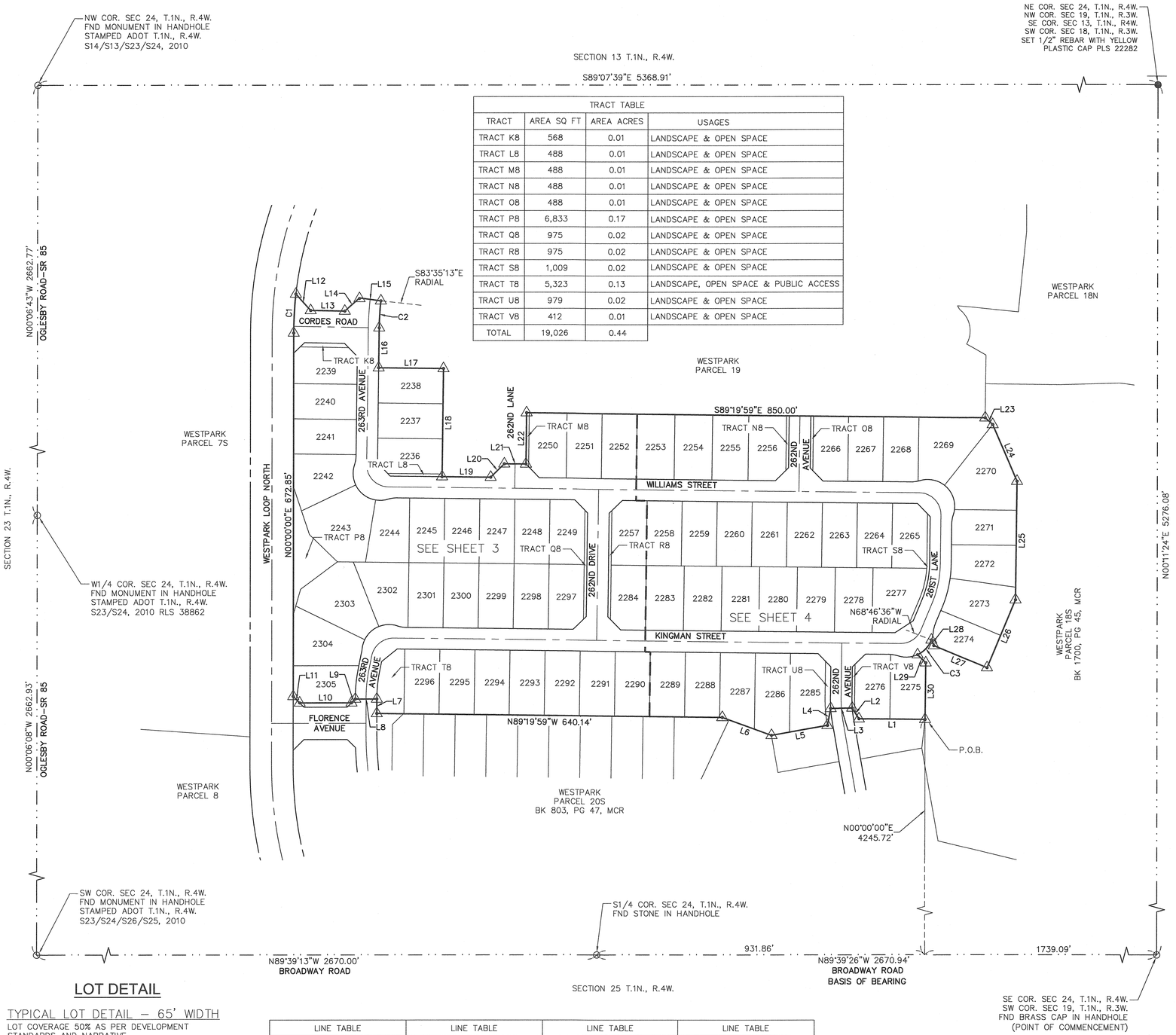
THENCE, N23°46'36"W A DISTANCE OF 11.44 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE RIGHT;

THENCE, SOUTHWESTERLY ALONG SAID CURVE AN ARC LENGTH OF 38.34 FEET, WITH A RADIUS OF 50.00 FEET AND THE RADIAL BEARING OF N68°46'36"W AND A CENTRAL ANGLE OF 43°55'45";

THENCE ALONG A LINE NON-TANGENT TO SAID CURVE, S45°20'11"E, A DISTANCE OF 21.42 FEET;

THENCE, S00°40'01"W A DISTANCE OF 105.00 FEET TO THE POINT OF BEGINNING.





TRACT TABLE			
TRACT	AREA SQ FT	AREA ACRES	USAGES
TRACT K8	568	0.01	LANDSCAPE & OPEN SPACE
TRACT L8	488	0.01	LANDSCAPE & OPEN SPACE
TRACT M8	488	0.01	LANDSCAPE & OPEN SPACE
TRACT N8	488	0.01	LANDSCAPE & OPEN SPACE
TRACT O8	488	0.01	LANDSCAPE & OPEN SPACE
TRACT P8	6,833	0.17	LANDSCAPE & OPEN SPACE
TRACT Q8	975	0.02	LANDSCAPE & OPEN SPACE
TRACT R8	975	0.02	LANDSCAPE & OPEN SPACE
TRACT S8	1,009	0.02	LANDSCAPE & OPEN SPACE
TRACT T8	5,323	0.13	LANDSCAPE, OPEN SPACE & PUBLIC ACCESS
TRACT U8	979	0.02	LANDSCAPE & OPEN SPACE
TRACT V8	412	0.01	LANDSCAPE & OPEN SPACE
TOTAL	19,026	0.44	

LOT DETAIL

TYPICAL LOT DETAIL – 65' WIDTH

LOT COVERAGE 50% AS PER DEVELOPMENT STANDARDS AND NARRATIVE

VARIED CONDITIONS:
* = 5' MIN. – 10' MAX.
(DEPENDENT ON 10' PUE ON OPPOSITE SIDE OF STREET)

** = 10' TO SIDE ENTRY GARAGE
= 15' TO LIVABLE AREA
= 18' TO GARAGE

SPECIAL NOTES:
1) SETBACKS MEASURED FROM PROPERTY LINE.
2) FRONT YARD SETBACKS TO BE STAGGERED 3' SO NO TWO CONSECUTIVE FRONTAGES MATCH.
3) DRIVEWAY SHALL NOT BE LESS THAN 20 FEET IN LENGTH FROM FACE OF GARAGE TO BACK OF THE SIDEWALK OR TO CURRENT DEVELOPMENT CODE STANDARDS
4) RWE = ROADWAY ACCESS EASEMENT

LINE TABLE			LINE TABLE			LINE TABLE			LINE TABLE		
LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH
L1	N89°19'59"W	122.24'	L9	S45°00'00"W	9.90'	L17	S89°19'59"E	120.00'	L25	S00°40'01"W	219.70'
L2	N32°08'03"W	23.55'	L10	N90°00'00"W	96.00'	L18	S00°40'01"W	200.00'	L26	S22°39'34"W	136.52'
L3	S89°12'26"W	40.06'	L11	N45°00'00"W	16.97'	L19	S89°19'59"E	90.00'	L27	N67°20'26"W	106.73'
L4	S10°42'33"W	32.04'	L12	S41°57'56"E	40.96'	L20	N45°40'01"E	35.36'	L28	N23°46'36"W	11.44'
L5	S79°59'17"W	105.00'	L13	S88°55'10"E	63.22'	L21	S89°19'59"E	40.00'	L29	S45°20'11"E	21.42'
L6	N69°59'58"W	97.36'	L14	N48°08'13"E	36.60'	L22	N00°40'01"E	95.00'	L30	S00°40'01"W	105.00'
L7	N00°00'00"E	26.82'	L15	S82°09'16"E	40.01'	L23	S48°06'41"E	18.55'			
L8	N90°00'00"W	40.00'	L16	S00°40'01"W	74.27'	L24	S23°20'31"E	114.32'			

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C1	72.46'	660.00'	006°17'26"
C2	50.15'	500.00'	005°44'46"
C3	38.34'	50.00'	043°55'45"



CITY OF BUCKEYE PLANNING NO. PLZS 23-00020

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 13 & 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT
WESTPARK PHASE 2.2
"PARCEL 20N"
CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

ATWELL

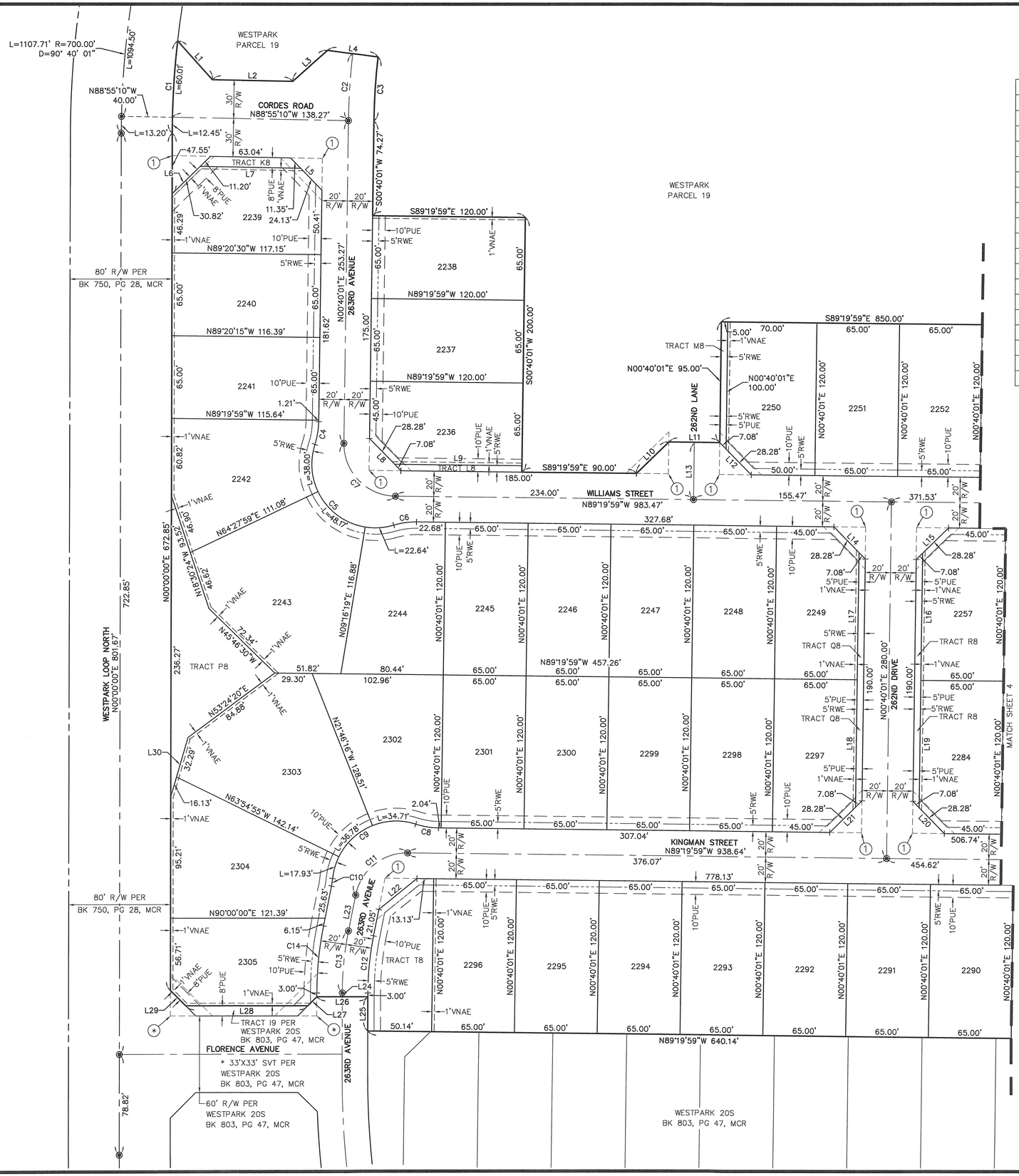
PM.	J. SPRING
DR.	R. GILES
JOB NO.	21001100
SCALE	0 50 100
	1" = 100 FEET

21001100 WESTPARK 20N FP.DWG

SHEET NO.
2 OF 4

K:\21001100 – WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 20N\21001100 WESTPARK 20N FP.DWG SAVEDATE:7/31/2024 11:16 AM PLOTDATE:7/31/2024 11:21 AM

COPYRIGHT © 2023 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC



LOT TABLE			LOT TABLE		
LOT	AREA SQ FT	AREA ACRES	LOT	AREA SQ FT	AREA ACRES
2236	7600	0.17	2284	7600	0.17
2237	7800	0.18	2290	7800	0.18
2238	7800	0.18	2291	7800	0.18
2239	7589	0.17	2292	7800	0.18
2240	7590	0.17	2293	7800	0.18
2241	7541	0.17	2294	7800	0.18
2242	9171	0.21	2295	7800	0.18
2243	13037	0.30	2296	7800	0.18
2244	8449	0.19	2297	7600	0.17
2245	7800	0.18	2298	7800	0.18
2246	7800	0.18	2299	7800	0.18
2247	7800	0.18	2300	7800	0.18
2248	7800	0.18	2301	7800	0.18
2249	7600	0.17	2302	9232	0.21
2250	8200	0.19	2303	12629	0.29
2251	7800	0.18	2304	10314	0.24
2252	7800	0.18	2305	7931	0.18
2257	7600	0.17			

LINE TABLE			LINE TABLE		
LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH
L1	S41°57'56"E	40.96'	L16	N00°40'01"E	100.00'
L2	S88°55'10"E	63.22'	L17	N00°40'01"E	100.00'
L3	N48°08'13"E	36.60'	L18	N00°40'01"E	100.00'
L4	S82°09'16"E	40.01'	L19	N00°40'01"E	100.00'
L5	N44°07'34"W	35.48'	L20	N44°19'59"W	35.36'
L6	N45°32'25"E	42.02'	L21	N45°40'01"E	35.36'
L7	N88°55'10"W	78.95'	L22	N50°57'31"E	38.47'
L8	N44°19'59"W	35.36'	L23	N11°15'00"E	28.61'
L9	N89°19'59"W	100.00'	L24	N00°00'00"E	3.00'
L10	N45°40'01"E	35.36'	L25	N00°00'00"E	26.82'
L11	S89°19'59"E	40.00'	L26	N90°00'00"W	40.00'
L12	N44°19'59"W	35.36'	L27	S45°00'00"W	9.90'
L13	S00°40'01"W	44.00'	L28	N90°00'00"W	96.00'
L14	N44°19'59"W	35.36'	L29	N45°00'00"W	16.97'
L15	N45°40'01"E	35.36'	L30	N16°01'59"E	48.42'

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C1	72.46'	660.00'	006°17'26"
C2	52.65'	520.00'	005°48'05"
C3	50.15'	500.00'	005°44'46"
C4	18.16'	60.00'	017°20'29"
C5	108.81'	50.00'	124°40'58"
C6	18.16'	60.00'	017°20'29"
C7	64.40'	41.00'	090°00'00"
C8	18.16'	60.00'	017°20'29"
C9	89.42'	50.00'	102°28'10"
C10	5.98'	60.00'	005°42'40"
C11	56.83'	41.00'	079°25'01"
C12	45.16'	230.00'	011°15'00"
C13	49.09'	250.00'	011°15'00"
C14	53.01'	270.00'	011°15'00"

(1)=SVT 33'X33' TYPICAL



ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION:13 & 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT
WESTPARK PHASE 2.2
"PARCEL 20N"
CITY OF BUCKEYE, ARIZONA

AUGUST 2024

REVISIONS:

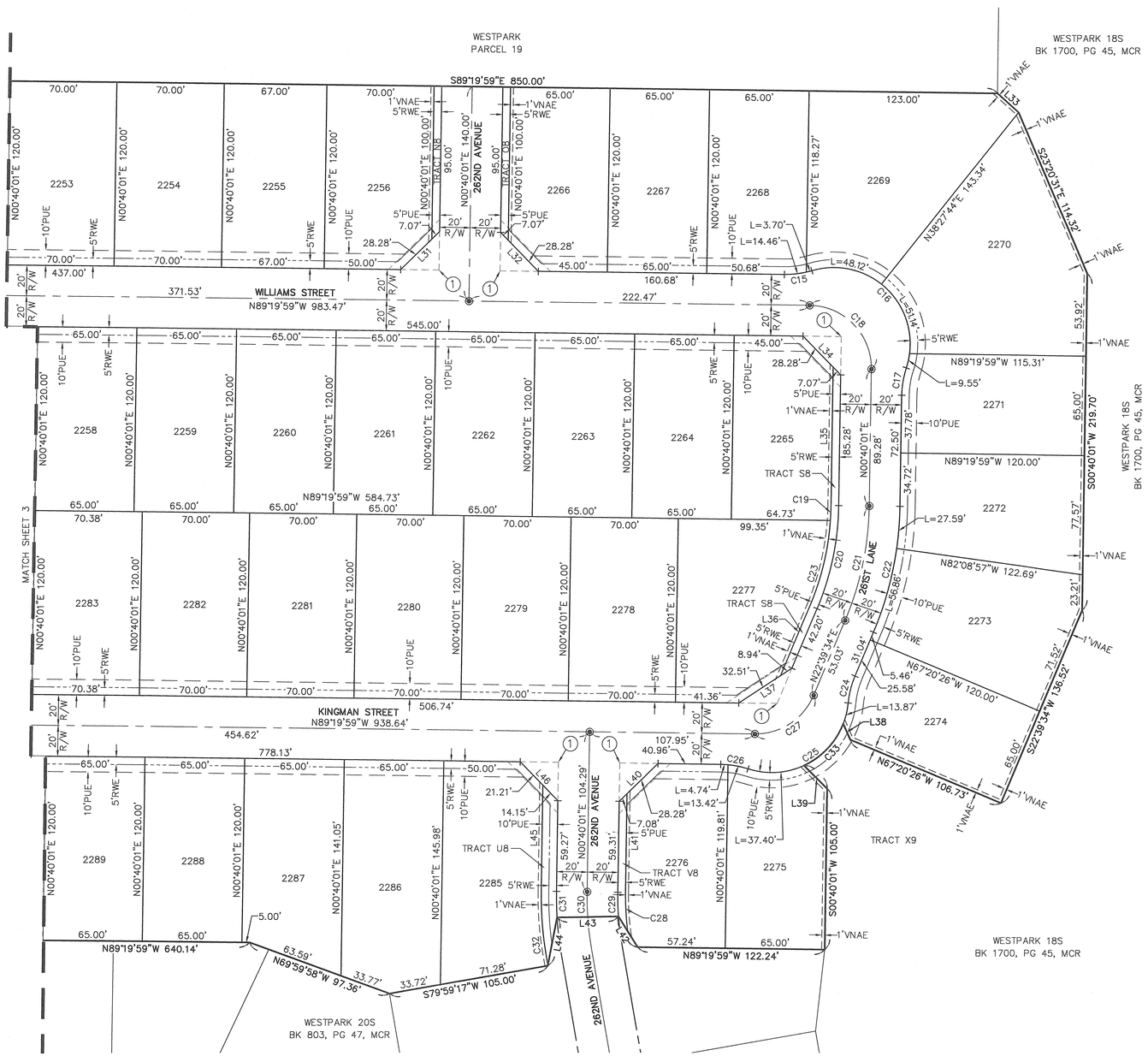
ATWELL

PM. J. SPRING
DR. R. GILES
JOB NO. 21001100
SCALE 0 20 40
1" = 40 FEET
21001100 WESTPARK 20N FP.DWG
SHEET NO. 3 OF 4

CITY OF BUCKEYE PLANNING NO. PLZS 23-00020

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 20N\21001100 WESTPARK 20N FP.DWG SAVEDATE:8/3/2024 8:43 AM PLOTDATE:8/5/2024 6:50 AM

COPYRIGHT © 2023 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC



LOT TABLE			LOT TABLE		
LOT	AREA SQ FT	AREA ACRES	LOT	AREA SQ FT	AREA ACRES
2253	8400	0.19	2272	8417	0.19
2254	8400	0.19	2273	9577	0.22
2255	8040	0.18	2274	7655	0.18
2256	8200	0.19	2275	7531	0.17
2258	7800	0.18	2276	7614	0.17
2259	7800	0.18	2277	9854	0.23
2260	7800	0.18	2278	8400	0.19
2261	7800	0.18	2279	8400	0.19
2262	7800	0.18	2280	8400	0.19
2263	7800	0.18	2281	8400	0.19
2264	7800	0.18	2282	8400	0.19
2265	7599	0.17	2283	8446	0.19
2266	7600	0.17	2285	9065	0.21
2267	7800	0.18	2286	9613	0.22
2268	7792	0.18	2287	8432	0.19
2269	11734	0.27	2288	7800	0.18
2270	13230	0.30	2289	7800	0.18
2271	7748	0.18			

LINE TABLE			LINE TABLE		
LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH
L31	N45°40'01"E	35.36'	L39	S45°20'11"E	21.42'
L32	N44°19'59"W	35.36'	L40	N45°40'01"E	35.36'
L33	S48°06'41"E	18.55'	L41	N00°40'01"E	64.51'
L34	N44°19'59"W	35.36'	L42	N32°08'03"W	23.55'
L35	N00°40'01"E	90.28'	L43	S89°12'26"W	40.06'
L36	S22°39'34"W	49.61'	L44	S10°42'33"W	32.04'
L37	N56°39'48"E	41.45'	L45	N00°40'01"E	69.04'
L38	N23°46'36"W	11.44'	L46	N44°19'59"W	35.36'

CURVE TABLE				CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA	CURVE #	LENGTH	RADIUS	DELTA
C15	18.16'	60.00'	017°20'29"	C25	89.61'	50.00'	102°41'25"
C16	108.81'	50.00'	124°40'58"	C26	18.16'	60.00'	017°20'29"
C17	18.16'	60.00'	017°20'29"	C27	48.67'	41.00'	068°00'27"
C18	64.40'	41.00'	090°00'00"	C28	25.32'	175.00'	008°17'18"
C19	9.72'	175.00'	003°10'57"	C29	15.91'	180.00'	005°03'50"
C20	69.09'	180.00'	021°59'33"	C30	16.44'	200.00'	004°42'32"
C21	76.77'	200.00'	021°59'33"	C31	16.97'	220.00'	004°25'08"
C22	84.45'	220.00'	021°59'33"	C32	48.66'	230.00'	012°07'14"
C23	57.45'	175.00'	018°48'36"	C33	38.34'	50.00'	043°55'45"
C24	18.16'	60.00'	017°20'29"				

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 13 & 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT
WESTPARK PHASE 2.2
"PARCEL 20N"
CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

ATWELL

PM. J. SPRING
DR. R. GILES
JOB NO. 21001100
SCALE 0 20 40
1" = 40 FEET
21001100 WESTPARK 20N FP.DWG
SHEET NO. 4 OF 4

PROFESSIONAL LAND SURVEYOR CERTIFICATE NO. 22282 JAMES G. SPRING Date Signed 7/31/24 ARIZONA U.S.A. Expires 6-30-25

CITY OF BUCKEYE PLANNING NO. PLZS 23-00020

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 20N\21001100 WESTPARK 20N FP.DWG SAVEDATE:7/31/2024 11:16 AM PLOTDATE:7/31/2024 11:21 AM

4R PLZS-23-00020 RECEIVED AUG 01 2024 AL

STATE OF ARIZONA
DEPARTMENT OF WATER RESOURCES
CERTIFICATE OF ASSURED WATER SUPPLY

This is to certify that

KEMF WP 2.2, LLC, an Arizona limited liability company, Owner, D.R.Horton, Inc., a Delaware corporation, Buyer, Century Communities of Arizona , an Arizona limited liability company, Buyer and GDC WP 2.2, LLC, an Arizona limited liability company, Buyer,

have met the requirements of A.R.S. §§ 45-576 and A.A.C.R12-15-701 et. seq., and

By powers vested in the Director of the Arizona Department of Water Resources by the State of Arizona, and subject to the conditions contained in A.A.C. R12-15-701 et seq.,

Are issued this Certificate of Assured Water Supply for

Westpark Phase 2.2 Parcels 7N, 7S, 8, 19 and 20N
Township 1 North, Range 4 West, Sections 13 and 24
GSRB&M Maricopa County, PHOENIX AMA

The referenced subdivision consists of **446 lots** as described in the preliminary plat on file with the Department, and has an estimated water demand of **199.52 acre-feet per year.** The subdivision will be served **groundwater** by **the City of Buckeye.**

This Certificate is invalid as to any entity not named above.
This Certificate may be assigned pursuant to A.A.C. R12-15-705.

Certificate Number: 31-402138.0001
Original Issue Date: October 19, 2007

ARIZONA DEPARTMENT OF WATER RESOURCES

Carol M. Ward

Assistant Director

July 29, 2024
Date

TYPE A CERTIFICATE

CITY OF BUCKEYE
Regular Council Meeting
COUNCIL ACTION REPORT

MEETING DATE: 09/03/24	**AGENDA ITEM:** 4.J. DS - Westpark Phase 2.2 "Parcel 7N" - Final Plat - PLZS-23-00015
DATE PREPARED: 08/29/24	**DISTRICT NO.:** Council District 3
STAFF LIAISON: Patricia Cooley, Planner 1, pcooley@buckeyeaz.gov, (623) 349-6233	
DEPARTMENT: Development Services	**AGENDA ITEM TYPE:** Consent Agenda Items / New Business

ACTION/MOTION: (This language identifies the formal motion to be made by the Council)
Council to take action on a Final Plat of Westpark Phase 2.2 "Parcel 7N," located north of the northwest corner of West Westpark Loop North and West Warner Street.

SUMMARY

PROJECT DESCRIPTION:
Barry Lindner from Atwell, Inc, on behalf of GDC WP 2.2, LLC, is requesting approval of a Final Plat of Westpark Phase 2.2 "Phase 7N" located north of the northwest corner of W. Westpark Loop North and W. Warner Street. The project encompasses approximately 21.81 acres and includes 77 single-family lots,10 tracts and 6.0 acres of open space with an overall density of approximately 3.53 dwelling units per acre. Approximately 3.56 acres of Right-of-way (ROW) is being dedicated to the City of Buckeye through this Final Plat. The proposal is in substantial conformance with the Preliminary Plat. The Final Plat is accompanied by a Certificate of Assured Water Supply from the Department of Water Resources, per A.R.S. 9-463.01(I).

BENEFITS:
The subject Final Plat will allow continued development of traditional single-family residences within the City of Buckeye.

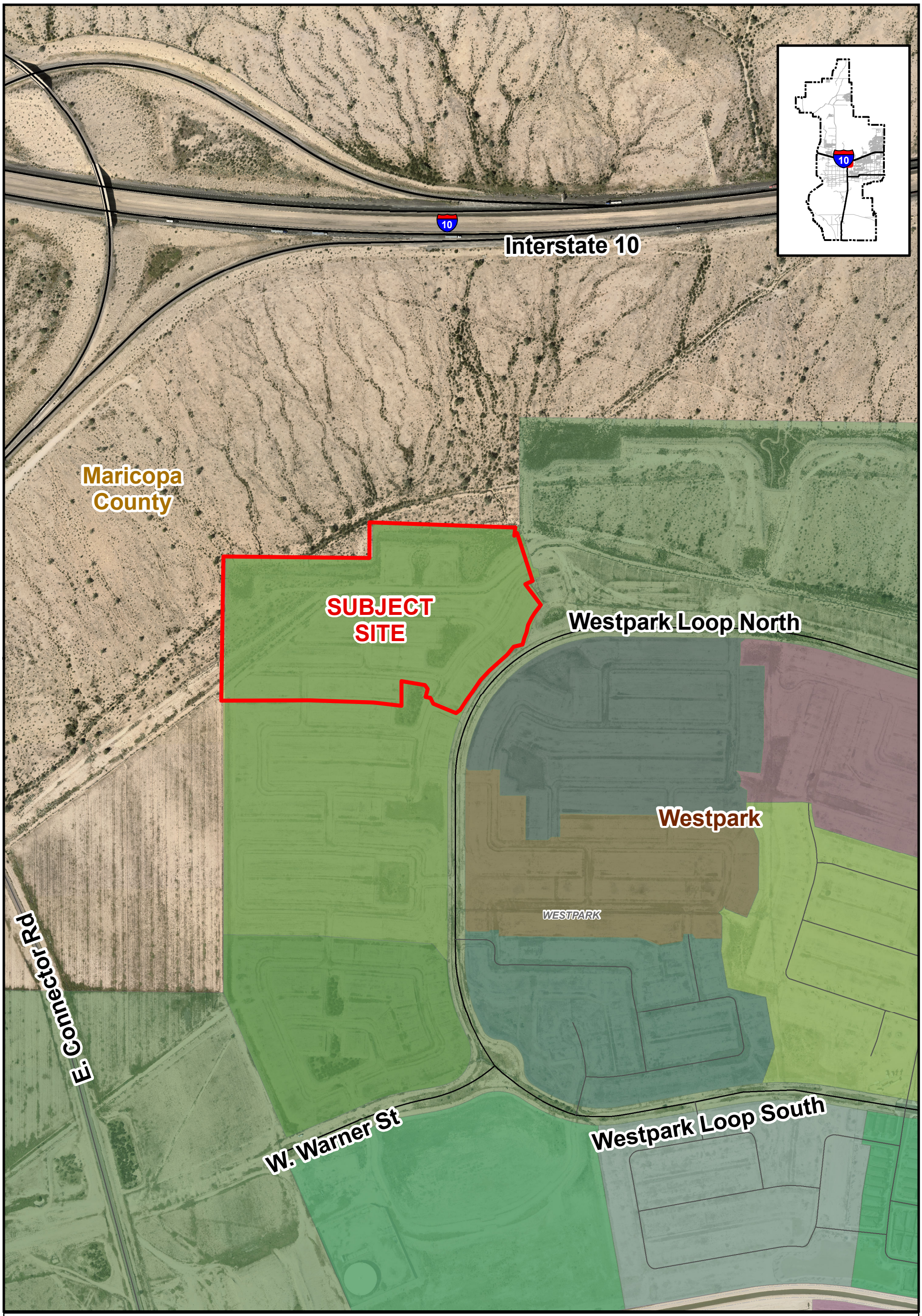
FINANCIAL IMPACT STATEMENT:
Although a fiscal impact analysis has not been conducted on this specific project, all new development will have an ongoing fiscal impact on the city. The development is responsible for construction of all infrastructure necessary to serve the site and will generate one-time revenue for the city such as permit fees, construction sales tax and development impact fees. Longer term fiscal impacts include increased demands for municipal services, the costs of which may or may not be offset by increased property values/tax levies, city sales tax, state shared revenues and the increased demand for commercial and retail development. Any areas that will be maintained by the city are constructed by the developer and then conveyed to the city two (2) years after construction.

FINANCIAL IMPACT STATEMENT:
Although a fiscal impact analysis has not been conducted on this specific project, all new development will have an ongoing fiscal impact on the city. The development is responsible for construction of all infrastructure necessary to serve the site and will generate one-time revenue for the city such as permit fees, construction sales tax and development impact fees. Longer term fiscal impacts include increased demands for municipal services, the costs of which may or may not be offset by increased property values/tax levies, city sales tax, state shared revenues and the increased demand for commercial and retail development. Any areas that will be maintained by the city are constructed by the developer and then conveyed to the city two years after construction.

Items related to a project or facility location must include an attached vicinity map for Council Review.

ATTACHMENTS:

Exhibit A - PLZS-23-00015 - Westpark 7N - Final Plat - Vicinity Map.pdf
Exhibit B - PLZS-23-00015 - Westpark Parcel 7N - Final Plat - Narrative.pdf
Exhibit C - PLZS-23-00015 - Westpark Parcel 7N - Final Plat - Final Plat.pdf
Exhibit D - PLZS-23-00015 - Westpark Parcel 7N - Final Plat - CAWS.pdf



VICINITY MAP

BUCKEYE, AZ

PLZS-23-00015
Westpark Phase 2.2 Parcel 7N Final Plat
City Council District 3

N
W E
S

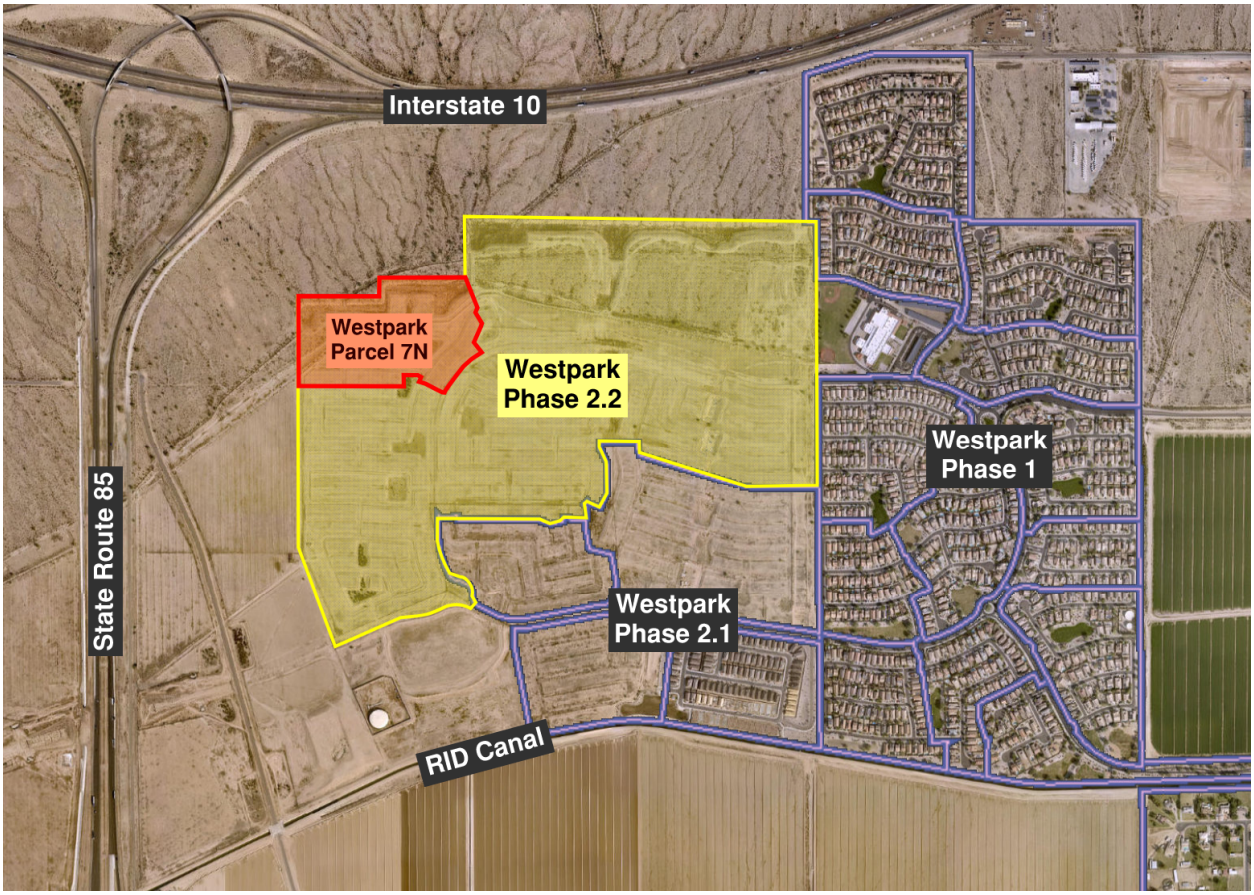
Final Plat Narrative Report

For

Westpark – Phase 2.2
Parcel 7N

PLZS-23-00015

SEC of I-10 & SR-85
Buckeye, AZ



4700 E. Southern Avenue, Mesa, AZ 85206 Tel: 480.218.8831 Fax: 480.830.4888
www.atwell-group.com

Purpose of Request

The primary purpose of the subject Final Plat submittals is to fulfill prior project entitlements and to complete site development of Phase 2.2 for the existing Westpark residential subdivision. This current phase of the project will focus on completing the remaining portions of the Westpark Loop Road and Warner Street infrastructure, as well as continue with final development approvals to permit full construction of Parcels 5, 6, 7N, 7S, 8, 18N, 19 and 20N. The improvements for the remaining portions of the West Park Loop Road and Warner Street will be completed under a separate cover specific to only off-site improvements while each of the different parcels will be constructed under individual on-site covers. Refer to the Development Standards section of this narrative for a table of the approved and proposed development zoning conditions. Developer is expecting to commence construction of Westpark Loop North before the end of the year. Agreements with builders and other developers affect the schedule with the intent to construct Westpark Loop North first, then Parcels 8, 7S & 19. The development schedule of the remaining parcels is not certain at this time.

Project Background & Current Conditions

The overall Westpark subdivision is located at the southeast corner of the intersection of Interstate 10 (I-10) and State Route 85 (SR-85) in Buckeye, Arizona. As it sits today, the overall subdivision is mostly surrounded by undeveloped desert and agricultural farmlands with an existing development directly southeast. It is bordered to the south by the RID Canal but is not necessarily served by those irrigation facilities. Public vehicular access is currently only provided from Miller Road to the East. There are two access points to Miller Road, and they are the North and South Westpark Loop Road connections. A tertiary access road identified as E. Connector Road was constructed in 2010. This road connects to W. Broadway Road to the south, bridges the RID Canal, then stops at a point along the old SR-85 frontage road just south of the intersection with I-10. There are future plans by the Developers to connect this over to the existing end of W. Durango Street, just north of Phase 1. Eventually, additional interior street connections with Westpark will be made to aide in overall vehicular circulation and connectivity with local roadways.

The subdivision was originally planned as “Roston/Buckeye” and received approval of its Community Master Plan (CMP) in October of 2000 since it was consistent with the City’s General Plan Land Use Designation of “Master Planned Community” (MPC). Several amendments have occurred over the years since it’s initial approval to enact minor updates to better suit the changing needs of the City and surrounding area. A Preliminary Plat of Westpark Phase 2, Project No. PP04-09, was approved in mid-2004 and is the basis for the scope of work proposed with the subject project submittals. Parcel 7N is proposing 77 lots over a total of 21.81 acres, which equates to a density of 3.53 dwelling units per acre. The minimum lot size proposed is 58’x115’. While the parcel has an overlying zoning of Planned Community (PC), the development standards remain consistent with the City’s underlying applicable residential zoning standards and maintain the initial intent and approvals of the CMP.

Construction of Phase 1 began around 2004 and met full build-out in 2007. With Phase 1 nearing completion and the need for further expansion, Phase 2 began construction in 2006 but stalled out after mass grading and some portions of infrastructure work. The mass grading covered a predominance of the Phase 2 area, but a small portion of the northerly parcels was left in a natural state due to an irrigation supply ditch that was necessary to remain in service at the time. Since then, the subject ditch has been decommissioned and is no longer needed. The site has remained in a partially completed state until the southeasterly portion of it (identified as Phase 2.1 and consisting of platted Parcels 13, 14, 18S and 20S) was resurrected recently in 2019 by a separate ownership entity. These four parcels are continuing development pursuit by said owner on a parallel track to the subject Phase 2.2 work. Currently, Parcel 14 is complete, Parcel 18S has approved plans, and improvement plans for Parcels 13 and 20S are in progress.

The mass grading work established large offsite drainage attenuating basins along the entire northerly portion of the property. These basins intercept offsite runoff then route them accordingly and discharge in the historic courses. Individual parcels will maintain the necessary offsite routing as well as provide for the required onsite stormwater management addressing the 100-year design conditions as typical. Existing ground conditions have been maintained over the years to keep unwanted vegetation growth at bay and to ensure the in-place network of surface basins and drainageways function as needed. Natural terrain falling from northeast to southwest remains as the overall condition.

Utilities and Services

Water and sewer are both provided to and serving the Westpark subdivision by the City of Buckeye. Westpark falls within the limits of the City's water pressure Zone 2. This zone is primarily supplied by a facility identified as the North Airport Road Water Campus (NARWC), which is located approximately 8-miles northeast of Westpark. The primary supply of water is brought to the subdivision by offsite 16" transmission mains located within W. Durango Street and Miller Road. Phase 1 contains distribution mains throughout which vary in size from 6" through 16" which stop at Phase 2 for continuation. Phase 2 will install the same type and sizes of potable distribution throughout and a new 16" connection to the offsite main in W. Durango Street to help bolster the overall system's capabilities. A 16" main line stub will be placed at the west end of Warner Street for future connection and further continuation of the water system. Parcel 7N's potable water distribution is mostly comprised of 8" mains and connects to the 16" main within Weskpark Loop North Road at one location, an 8" stub in W. Payson Drive in Parcel 7S. A second connection will be made to Parcel 6 within S. 263rd Drive.

Similar to the water distribution, sewage collection is provided throughout the existing subdivision utilizing a network of 8" through 10" public collection gravity main lines. Due to the gravity design of the sewer following the natural terrain, the individual parcels within Phase 2 cascade through one another as the site sewerage flows from north to south. Infrastructure for the Phase 2.2 parcels will be constructed in a manner that starts with the lower end of the system so that dependent parcels are able to discharge once flow demands come online. Parcel 7N's system consists of 8" sewer lines that ultimately drain to S 263rd Drive, into Parcel 7S. Parcel 7N system also provides for a future connection to the property to the north in S. 263rd Lane. Existing Westpark Phase 1 discharges at its southwest corner and Phase 2 discharges at its southeast corner, meeting at an existing 18" main on the north side of the RID Canal at the intersection with the Rooks Road alignment. From there, the existing 18" main heads south, crosses the canal, then continues roughly 5 miles southeast where it ends up at the Beloat Wastewater Treatment Plant facility (which is located just south of downtown Buckeye, southeast of the intersection of S. Miller Road and E. Irwin Avenue). The plant currently has capacity to serve the Westpark Phase 2.2 build-out.

Other public utilities and service providers include Arizona Public Service (APS) for electrical with cable and telephone provided by both CenturyLink and Cox. Additionally, refuse/recycle service is handled by the City of Buckeye for typical residential collection services.

Emergency services are handled within the City's jurisdictional limits and are provided by Buckeye Fire Department and Buckeye Police Department. The nearest Fire Station to serve Phase 2.2 already exists within the Phase 1 limits. Buckeye Fire Station #706 is located just east of Parcel 5, on the north side of the adjacent Westpark Elementary School. An additional future Fire Station site has been slated for a vacant parcel within the Phase 2.2 limits but is not yet defined for construction. The primary Buckeye Police Station dispatches from their home base located at 100 N. Apache Road, which is south of Downtown Buckeye on the east side of the MC85/Monroe Avenue curve.

Education services are provided through the local school districts. Students start off in the Buckeye Elementary School District which handles grades K-8. The nearest elementary school is Westpark Elementary, which happens to be adjacent east to Parcel 5. The school was completed and has been serving the neighborhood since 2007. Once students are ready to move on, they migrate to the Buckeye

Union High School District. The nearest public school is Youngker High School, which is approximately 1-mile due east of Westpark, at the northwest corner of S. Apache Road and W. Lower Buckeye Road.

Landscaping, Parks & Open Space

Overall, the new Phase 2.2 landscape design will match and mesh with the existing Westpark Phase 1 theme, continuing to provide appropriate green spaces that soften the development appearance while maintaining strict standards for a low water-use plant palette and maintenance. With 20.6% of open space allocated in Phase 2.2, there is a meaningful natural appearance offering an array of outdoor uses that tie the subdivision together. Overall, this equates to roughly 41 +/- acres of common area open space and amenities for the residents. Each parcel is proposed to include a “pocket park” for safe family activities as well as harnessing the various remaining open spaces for activity opportunities. Parcel 7N specifically has multiple dual-use basins located throughout the site. These areas help make up the 6.0 acres of parks and open space, which is about 27.5% of the Parcel. An 8’ wide multiuse path is also provided along the exterior of the site and connects to the subdivision’s larger trail network. This trail network will ensure all the open/green spaces are connected to one another as well as providing a safe and continuous accessway throughout the entire subdivision. This network and other access means will be extended to each of the future phases as well, completing the harmonious nature of the development and general community feel. Although not part of this current plan of development, a large format regional park and recreation facility is designed and slated for one of the remaining undeveloped parcels of Phase 2.2. It is adjacent south of Warner Street and will be a substantial amenity benefit to the area. When developed, it will add an additional 25 +/- acres of high-quality recreational facilities of varied substance.

Development Schedule

Currently, the anticipated development schedule is somewhat dependent on the timing of all jurisdictional reviews and approvals. As mentioned prior, the entirety of Phase 2 (with the exception of portions of the northerly parcels) was mass-graded in 2006, with some primary utility infrastructure placed as well. The utility work was focused on the southern leg of the Loop Road, and the adjacent four Parcels 13, 14, 18S and 20S. This prior work reduces some of the longer field processes associated with site development, but there is still plenty to do once field work commences.

In general, it is expected that the first portion of new development will be to construct the remaining segments of Westpark Loop Road, Warner Street and the offsite water main connection north to Durango Street. Once work begins, it is projected to be completed in approximately 5-8 months. Individual parcel construction will commence once approvals are obtained and home builders have committed to parcels accordingly. Since this is not yet clearly defined, some speculation is necessary to forecast the development progress. It is anticipated that individual parcel development would take an initial 3-6 months to complete site improvements and begin constructing homes. With construction varying both regionally and throughout the industry, we would anticipate first homes coming online for sale within the following 4-6 months. Currently home builders are averaging anywhere from 5 to 8 home closings per month once they are in full swing (after site work). As identified prior, since there are some infrastructure limitations for several parcels, the progression of development is expected to proceed in the following order: Loop Road/Offsite Infrastructure, then Parcels 8, 7S, 7N, 20N & 19 then Parcels 6, 5, & 18N.This order will ensure that suitable utilities and drainage facilities are maintained to support the construction and new residents of Buckeye accordingly.

Tract Table

TRACT	AREA SQ FT	AREA ACRES	USAGES
TRACT A5	217,676	5.00	LANDSCAPE, OPEN SPACE & PUE
TRACT B5	419	0.01	LANDSCAPE & OPEN SPACE
TRACT C5	850	0.02	LANDSCAPE & OPEN SPACE
TRACT D5	560	0.01	LANDSCAPE & OPEN SPACE
TRACT E5	925	0.02	LANDSCAPE & OPEN SPACE
TRACT F5	925	0.02	LANDSCAPE & OPEN SPACE
TRACT G5	934	0.02	LANDSCAPE & OPEN SPACE
TRACT H5	38,264	0.88	LANDSCAPE & OPEN SPACE
TRACT I5	463	0.01	LANDSCAPE & OPEN SPACE
TRACT S6	463	0.01	LANDSCAPE & OPEN SPACE
TOTAL	261,479	6.00	

Development Standards

Parcel No.	Gross Parcel Area (Acres)	Lot Count	Lot Size (Min.)	Gross Density (DU/Acre)	Open Space (Acre)
5	42.85	153	53' x 120'	3.57	12.83
6	22.06	84	58' x 115'	3.81	5.01
7N	21.81	77	58' x 115'	3.53	6.00
7S	26.02	109	53' x 115'	4.19	4.68
8	17.30	85	45' x 110'	4.91	3.21
18N	30.84	164	45' x 110'	5.32	6.34
19	21.80	106	53' x 115'	4.86	2.73
20N	17.16	70	65' x 120'	4.08	0.44
Totals:	**199.84**	**847**	--	**4.28**	**41.24**

Parcel No.	Lot Count	Lot Size (Min.)	Lot Coverage (Max.)	Front Setback	Rear Setback	Side Setbacks
5	153	53' x 120'	65%	*	20'	5' / 8'
6	84	58' x 115'	50%	*	20'	5' / 8'
7N	77	58' x 115'	50%	*	20'	5' / 8'
7S	109	53' x 115'	65%	*	20'	5' / 8'
8	85	45' x 110'	65%	*	15'	5' / 5'
18N	164	45' x 110'	65%	*	15'	5' / 5'
19	105	53' x 115'	65%	*	20'	5' / 8'
20N	70	65' x 120'	50%	*	20'	5' / 10'

* = 10' to side entry garage
12' to living area
18' to garage

RESIDENTIAL PARCEL TABLE		
PARCEL	LOT SIZE	UNIT COUNT
5	53' X 120'	153
6	58' X 115'	84
7N	58' X 115'	77
7S	53' X 115'	109
8	45' X 110'	85
18N	45' X 110'	164
19	53' X 115'	105
20N	65' X 120'	70
	TOTAL LOTS:	847

(NOT A PART)

NARRATIVE REPORT PERTAINS TO PARCEL 7N ONLY

FUTURE PHASE 3 (NOT A PART)

FUTURE PHASE 3 (NOT A PART)

FUTURE PHASE 3 (NOT A PART)

EAST CONNECTOR ROAD

(NOT A PART)

(NOT A PART)

PARCEL 6
58' x 115'
84 LOTS

PARCEL 5
53' x 120'
153 LOTS

EXISTING PHASE 1
(NOT A PART)

PARCEL 7N
58' x 115'
77 LOTS

WESTPARK LOOP NORTH

PARCEL 19
53' x 115'
105 LOTS

PARCEL 18N
45' x 110'
164 LOTS

PARCEL 7S
53' x 115'
109 LOTS

PARCEL 20N
65' x 120'
70 LOTS

PARCEL 8
45' x 110'
85 LOTS

PARCEL 18S
PHASE 2.1

PARCEL 20S
PHASE 2.1

WARNER STREET

WESTPARK LOOP SOUTH

EXISTING PHASE 1
(NOT A PART)

PARK
NOT A PART

PARCEL 13
PHASE 2.1

PARCEL 14
PHASE 2.1

R.I.D. CANAL

WESTPARK - PHASE 2.2

EXHIBIT 4

200 0 200 400

SEPTEMBER 17, 2021

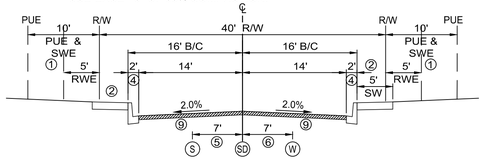
ATWELL
866.850.4200 www.atwell-group.com

k:\21001100 – westpark phases 2.2\dwg\presentation\21001100_marketing map.dwg

COPYRIGHT © 2021 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC

GENERAL NOTES

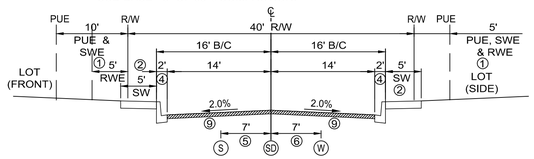
① PUE / LPPUE / LANDSCAPE - 8:1 MAX SLOPE.
② 5' S / W PER MAG STD DTL 230.
③ ROW / LANDSCAPE AREA, 1.5% SLOPE. FIRE HYDRANTS, TREES & STREET LIGHTS LOCATED 2' BACK OF SIDEWALK.
④ CURB & GUTTER PER MAG STD DTL 220-1, TYPE 'A' OR C'.
⑤ SANITARY SEWER MAINS SHALL BE PLACED 7' SOUTH OR WEST OF CL.
⑥ WATER MAINS SHALL BE PLACED 7' NORTH OR EAST OF CL.
⑦ NOT USED
⑧ STORM DRAIN SHALL BE PLACED ON THE CL OF STREET.
⑨ PAVEMENT REQUIREMENTS:
AC - 2.5" OF R12.5MM MARSHALL.
BASE - 8" OF ABC. PER MAG STD SPEC 702.2.
SUB-BASE - 8" OF 95% COMPACTION.



LOCAL STREET - MODIFIED COB DTL 63170
(FRONT LOADED LOTS)
SCALE: 1"=10'

GENERAL NOTES

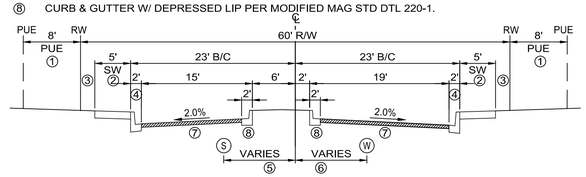
① PUE / LPPUE / LANDSCAPE - 8:1 MAX SLOPE.
② 5' S / W PER MAG STD DTL 230.
③ ROW / LANDSCAPE AREA, 1.5% SLOPE. FIRE HYDRANTS, TREES & STREET LIGHTS LOCATED 2' BACK OF SIDEWALK.
④ CURB & GUTTER PER MAG STD DTL 220-1, TYPE 'A' OR C'.
⑤ SANITARY SEWER MAINS SHALL BE PLACED 7' SOUTH OR WEST OF CL.
⑥ WATER MAINS SHALL BE PLACED 7' NORTH OR EAST OF CL.
⑦ NOT USED
⑧ STORM DRAIN SHALL BE PLACED ON THE CL OF STREET.
⑨ PAVEMENT REQUIREMENTS:
AC - 2.5" OF R12.5MM MARSHALL.
BASE - 8" OF ABC. PER MAG STD SPEC 702.2.
SUB-BASE - 8" OF 95% COMPACTION.



LOCAL STREET - MODIFIED COB DTL 63170
(FRONT & SIDE LOADED LOTS)
SCALE: 1"=10'

GENERAL NOTES

① PUE / LPPUE / LANDSCAPE - 8:1 MAX SLOPE.
② 5' ATTACHED S / W PER MAG STD DTL 230.
③ LANDSCAPE AREA, SREET LIGHTS CENTERED IN MEDIAN
④ CURB & GUTTER PER MAG STD DTL 220-1, TYPE 'A' OR C'.
⑤ WATER MAINS SHALL BE PLACED 7' NORTH OR EAST OF CL, CENTERED IN DRIVING LANE
⑥ SANITARY SEWER MAINS SHALL BE PLACED 7' SOUTH OR WEST OF CL, CENTERED IN DRIVING LANE
⑦ PAVEMENT REQUIREMENTS:
AC - 3" OF R12.5MM MARSHALL.
BASE - 8" OF ABC. PER MAG STD SPEC 702.2.
SUB-BASE - 8" OF 95% COMPACTION.
⑧ CURB & GUTTER W/ DEPRESSED LIP PER MODIFIED MAG STD DTL 220-1.



RESIDENTIAL ENTRANCE - COB DTL 63190
SCALE: 1"=10'

DATE: 09/10/2021

THE LOCATIONS OF EXISTING UNDERGROUND UTILITIES ARE SHOWN IN AN APPROXIMATE WAY ONLY AND HAVE NOT BEEN INDEPENDENTLY VERIFIED BY THE OWNER OR ITS REPRESENTATIVE. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING WORK, AND AGREES TO BE FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MIGHT BE OCCASIONED BY THE CONTRACTOR'S FAILURE TO EXACTLY LOCATE AND PRESERVE ANY AND ALL UNDERGROUND UTILITIES.

NOTICE:
CONSTRUCTION SITE SAFETY IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR; NEITHER THE OWNER NOR THE ENGINEER SHALL BE EXPECTED TO ASSUME ANY RESPONSIBILITY FOR SAFETY OF THE WORK, OF PERSONS ENGAGED IN THE WORK, OF ANY NEARBY STRUCTURES, OR OF ANY OTHER PERSONS.

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8531

SITE PLAN

PROJECT: WESTPARK PHASE 2.2
BUCKEYE, AZ

Know what's below. Call before you dig.

REVISIONS:

PRELIMINARY
NOT FOR
CONSTRUCTION
OR
RECORDING

PM.	CAP
DR.	C. PARENT
JOB NO.	21001100
FILE NO.	SITE LAYOUT

SHEET NO.
2 OF 5

k:\21001100 - westpark phases 2.2\dwg\lot fifsale layout exhibit.dwg Savedate:9/14/2021 11:00 AM Plotdate:8/10/2022 5:34 PM

4R PLZZ-24-0007 RECEIVED AUG 07 2024 AL

COPYRIGHT © 2024 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC

FINAL PLAT
OF
WESTPARK PHASE 2.2
"PARCEL 7N"

LOCATED IN A PORTION OF THE NORTHWEST QUARTER OF SECTION 24 AND THE SOUTH HALF OF SECTION 13, TOWNSHIP 1 NORTH, RANGE 4 WEST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN MARICOPA COUNTY, ARIZONA

DEDICATION

STATE OF ARIZONA }
}SS
COUNTY OF MARICOPA }

KNOW ALL PERSONS BY THESE PRESENTS: GDC WP 2.2, LLC, AN ARIZONA LIMITED LIABILITY COMPANY ("OWNER"), HAS SUBDIVIDED UNDER THE NAME WESTPARK PHASE 2.2 "PARCEL 7N", A SUBDIVISION LOCATED IN A PORTION OF THE NORTHWEST QUARTER OF SECTION 24 AND THE SOUTH HALF OF SECTION 13, TOWNSHIP 1 NORTH, RANGE 4 WEST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN MARICOPA COUNTY, ARIZONA AS SHOWN AND PLATTED HEREON AND DOES HEREBY PUBLISH THIS PLAT AS AND FOR THE PLAT OF WESTPARK PHASE 2.2 "PARCEL 7N" AND DECLARES THAT THIS PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF EACH LOT, TRACT, STREET, AND EASEMENTS CONSTITUTING SAME, AND THAT EACH LOT, TRACT, STREET, AND EASEMENT SHALL BE KNOWN BY THE NUMBER, LETTER, AND/OR NAME GIVEN TO EACH RESPECTIVELY AS SHOWN ON THIS PLAT.

OWNER HEREBY DEDICATES TO THE CITY OF BUCKEYE FEE TITLE TO ALL PUBLIC RIGHTS-OF-WAY AS SHOWN ON THIS PLAT.

OWNER HEREBY GRANTS TO THE CITY OF BUCKEYE A NON-EXCLUSIVE EASEMENT OVER, UPON AND ACROSS THE AREAS DESIGNATED AS PUBLIC UTILITY EASEMENTS AS SHOWN ON THE PLAT FOR THE PURPOSE OF INSTALLING, CONSTRUCTING, MAINTAINING, REPAIRING, REPLACING AND UTILIZING PUBLIC UTILITIES.

OWNER HEREBY GRANTS TO THE CITY OF BUCKEYE AN EXCLUSIVE EASEMENT FOR THE PURPOSE OF WATER WITHIN THE AREAS SHOWN ON THIS PLAT AS WATER EASEMENTS. THE CITY SHALL HAVE THE RIGHT TO ACCESS, CONSTRUCT, MAINTAIN, OPERATE AND REPLACE PUBLIC WATER LINES OVER, UNDER AND ACROSS THE EASEMENT AREAS SHOWN HEREON.

OWNER HEREBY GRANTS TO THE CITY OF BUCKEYE AN EXCLUSIVE EASEMENT FOR THE PURPOSE OF SEWER WITHIN THE AREAS SHOWN ON THIS PLAT AS SEWER EASEMENTS. THE CITY HALL HAVE THE RIGHT TO ACCESS, CONSTRUCT, MAINTAIN, OPERATE AND REPLACE PUBLIC SEWER LINES OVER, UNDER AND ACROSS THE EASEMENT AREAS SHOWN HEREON.

OWNER HEREBY GRANTS TO THE CITY OF BUCKEYE, A NON-EXCLUSIVE EASEMENT OVER, UPON AND ACROSS THE AREAS DESIGNATED AS SITE VISIBILITY TRIANGLES FOR THE PURPOSE OF ENSURING THAT THESE AREAS REMAIN FREE OF SITE VISIBILITY OBSTRUCTIONS AS PER THE ENGINEERING DESIGN STANDARDS.

OWNER HEREBY GRANTS TO THE UNITED STATES OF AMERICA DEPARTMENT OF THE AIR FORCE ("USAF") AN AVIGATION EASEMENT OVER AND ACROSS THIS PLAT AND EVERY LOT AND PARCEL THEREOF, WHICH EASEMENT SHALL INCLUDE, BUT NOT BE LIMITED TO; THE RIGHT OF FLIGHT OF AIRCRAFT OVER THIS PLAT, TOGETHER WITH ITS ATTENDANT NOISE, VIBRATIONS, FUMES, DUST, FUEL AND LUBRICANT PARTICLES, AND ALL OTHER EFFECTS THAT MAY BE CAUSED BY THE OPERATION OF AIRCRAFT LANDING AT, OR TAKING OFF FROM, OR OPERATING AT OR ON LUKE AIR FORCE BASE AND AUXILIARY FIELD.

GDC WP 2.2, LLC, AN ARIZONA LIMITED LIABILITY COMPANY ("OWNER"), AS OWNER DOES HEREBY (1) RELEASE AND DISCHARGE THE USAF AND THE CITY OF BUCKEYE, AND (2) INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF BUCKEYE, OF AND FROM ANY LIABILITY FOR ANY AND ALL CLAIMS FOR DAMAGES OF ANY KIND TO PERSONS OR PROPERTY THAT MAY ARISE AT ANY TIME IN THE FUTURE OVER, OR IN CONNECTION WITH AIRCRAFT OVERFLIGHTS FROM AIRCRAFT UTILIZING LUKE AIR FORCE BASE, WHETHER SUCH DAMAGE SHALL ORIGINATE FROM NOISE, VIBRATION, FUMES, DUST, FUEL AND LUBRICANT PARTICLES, AND ALL OTHER EFFECTS THAT MAY BE CAUSED BY THE OPERATION OF AIRCRAFT LANDING AT, OR TAKING OFF FROM, OR OPERATING AT OR ON LUKE AIR FORCE BASE. THIS INSTRUMENT SHALL RUN WITH THE LAND AND BE BINDING UPON OWNER AND ITS HEIRS, ASSIGNS, AND SUCCESSORS IN INTEREST TO THIS PLAT OR ANY PARCEL OR LOT THEREOF. THIS INSTRUMENT DOES NOT RELEASE THE USAF FROM LIABILITY FOR DAMAGE OR INJURY TO PERSON OR PROPERTY CAUSED BY FALLING AIRCRAFT OR FALLING PHYSICAL OBJECTS FROM AIRCRAFT, EXCEPT AS STATED HEREIN WITH RESPECT TO NOISE, FUMES, DUST, FUEL, AND LUBRICANT PARTICLES.

GDC WP 2.2, LLC, AN ARIZONA LIMITED LIABILITY COMPANY ("OWNER"), AS OWNER DOES HEREBY; (1) RELEASE AND DISCHARGE THE CITY OF BUCKEYE, AND (2) INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF BUCKEYE, OF AND FROM ANY LIABILITY FOR ANY AND ALL CLAIMS FOR DAMAGES OF ANY KIND TO PERSONS OR PROPERTY THAT MAY ARISE AT ANY TIME IN THE FUTURE OVER, OR IN CONNECTION WITH THE AREAS LOCATED WITHIN THE NEWLY DEDICATED RIGHT-OF-WAY AS DEPICTED ON THIS PLAT UNTIL SUCH TIME THE RIGHT-OF-WAY IS IMPROVED TO CITY STANDARDS AND THOSE IMPROVEMENTS ARE APPROVED AND ACCEPTED BY THE CITY. THE MAINTENANCE OF THE AREA WITHIN ANY NEWLY DEDICATED RIGHT-OF-WAY AS SHOWN ON THIS PLAT SHALL BE THE RESPONSIBILITY OF THE ADJACENT OWNER/OR SUBSEQUENT ADJACENT OWNERS WITHIN THE BOUNDARY OF SAID PLAT UNTIL SUCH TIME THAT THE AREA WITHIN THE RIGHT-OF-WAY IS IMPROVED TO CITY STANDARD AND ACCEPTED BY THE CITY OF BUCKEYE.

ALL IMPROVEMENTS, FOR STREETS AND PUBLIC UTILITIES OWNED AND OPERATED BY THE CITY, INSTALLED OR CONSTRUCTED BY OWNER WITHIN THE PUBLIC RIGHT-OF-WAYS, THE EASEMENTS, OR ANY TRACTS OR PARCELS HEREBY DEDICATED TO THE CITY OF BUCKEYE SHALL BE DEEMED TO HAVE BEEN DEDICATED BY OWNER TO THE CITY UPON THEIR COMPLETION; HOWEVER, SUCH TRANSFER SHALL NOT OCCUR UNTIL CITY OF BUCKEYE MANIFESTS ITS ACCEPTANCE BY SEPARATE FORMAL ACTION.

THE EASEMENTS GRANTED WITHIN THIS DEDICATION ARE PERMANENT AND PERPETUAL AND SHALL RUN WITH THE LAND AND BE BINDING UPON OWNER AND ITS HEIRS, ASSIGNS, AND SUCCESSORS AND INTEREST TO THIS PLAT OR ANY PARCEL OR LOT THEREOF.

TRACTS A5, B5, C5, D5, E5, F5, G5, H5, I5, AND S6 ARE DECLARED TO BE FOR LANDSCAPE AND OPEN SPACE AS SHOWN IN THE TRACT TABLE INCLUDED HEREON.

ALL TRACTS ARE TO BE OWNED AND MAINTAINED BY GDC WP 2.2, LLC, AN ARIZONA LIMITED LIABILITY COMPANY.

OWNER HEREBY GRANTS TO THE PUBLIC A NON-EXCLUSIVE EASEMENT FOR RECREATION OVER UPON AND ACROSS THOSE AREAS DESIGNATED AS RECREATION TRAILS OR AREAS FOR THE PURPOSE OF ALLOWING PUBLIC ACCESS TO THE TRAIL SYSTEM.

NOTHING CONTAINED HEREIN SHALL BE DEEMED TO DEDICATE ANY PORTION OF THE TRACTS FOR PUBLIC USE OTHER THAN FOR EASEMENTS SPECIFICALLY GRANTED TO THE PUBLIC HEREIN.

OWNER HEREBY GRANTS TO THE CITY OF BUCKEYE A NON-EXCLUSIVE EASEMENT OVER, UPON, AND ACROSS THE AREAS DESIGNATED AS "ROADWAY EASEMENTS" AS SHOWN ON THE PLAT FOR THE PURPOSE OF INSTALLING, CONSTRUCTION, MAINTAINING, REPAIRING AND UTILIZING STREET AS PER THE CITY OF BUCKEYE ENGINEERING DESIGN STANDARDS.

OWNER WARRANTS AND REPRESENTS TO THE CITY OF BUCKEYE TO BE THE SOLE OWNER OF THE PROPERTY COVERED HEREBY AND THAT EVERY LENDER, EASEMENT HOLDER, OR OTHER PERSON, OR ENTITY, HAVING ANY INTEREST IN THE LAND ADVERSE TO OR INCONSISTENT WITH THE DEDICATION, CONVEYANCES OR OTHER REAL PROPERTY INTEREST CREATED OR TRANSFERRED BY THIS PLAT HAS CONSENTED TO, OR JOINED IN THE PLAT, AS EVIDENCED BY INSTRUMENTS WHICH ARE RECORDED WITH THE MARICOPA COUNTY RECORDERS OFFICE, OR WHICH OWNER WILL RECORD NOT LATER THAN THE DATE ON WHICH THIS PLAT IS RECORDED.

THE MAINTENANCE OF LANDSCAPING WITHIN THE OPEN SPACES, LANDSCAPED TRACTS, RETENTION BASINS AND PARKS SHALL BE THE RESPONSIBILITY OF THE OWNER OR THE ASSOCIATION FORMED BY THE OWNER.

THE MAINTENANCE OF LANDSCAPING WITHIN THE ADJACENT PUBLIC RIGHT-OF-WAYS, INCLUDING; LANDSCAPED MEDIANS WITHIN COLLECTORS AND LOCAL STREETS AND LANDSCAPED AREAS BETWEEN THE CURB AND THE DETACHED SIDEWALK, SHALL BE THE RESPONSIBILITY OF THE ADJACENT PROPERTY OWNER OR THE PROPERTY ASSOCIATION FORMED BY THE ADJACENT PROPERTY.

IN WITNESS WHEREOF, OWNER HAS HEREUNTO CAUSED ITS CORPORATE NAME TO BE SIGNED AND ITS CORPORATE SEAL TO BE AFFIXED BY THE UNDERSIGNED, DULY AUTHORIZED OFFICER THIS _____ DAY OF _____, 2024.

GDC WP 2.2, LLC, AN ARIZONA LIMITED LIABILITY COMPANY

BY: GARRETT REAL ESTATE HOLDINGS, LLC, AN ARIZONA LIABILITY COMPANY, MEMBER
BY: GARRETT DEVELOPMENT CORPORATION, AN ARIZONA CORPORATION, MEMBER

BY: _____
JEFF GARRETT, PRESIDENT

ACKNOWLEDGMENT

STATE OF ARIZONA }
}SS
COUNTY OF MARICOPA }

ON THIS, THE ____ DAY OF _____, 2024, BEFORE ME THE UNDERSIGNED NOTARY, JEFF GARRETT PERSONALLY APPEARED WHO ACKNOWLEDGED HIMSELF TO BE THE PRESIDENT AND ACKNOWLEDGED THAT HE, BEING DULY AUTHORIZED SO TO DO, EXECUTED THIS INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF:

I HEREUNTO SET MY HAND AND OFFICIAL SEAL:

_____ _____
NOTARY PUBLIC MY COMMISSION EXPIRES

APPROVALS

APPROVED BY THE CITY COUNCIL OF THE CITY OF BUCKEYE ON THIS _____ DAY OF _____, 2024.

BY: _____
MAYOR

ATTEST: _____
CITY CLERK

I CERTIFY THAT ALL ENGINEERING CONDITIONS AND REQUIREMENTS HAVE BEEN COMPLIED WITH.

BY: _____
BUCKEYE CITY ENGINEER DATE

BY: _____
DEVELOPMENT SERVICES DIRECTOR DATE

AREA CALCULATIONS

TRACTS	261,479 SQ.FT.	6.00 AC
LOTS = 77	533,821 SQ.FT.	12.25 AC
RIGHT OF WAY	154,960 SQ.FT.	3.56 AC
TOTAL	950,260 SQ.FT.	21.81 AC

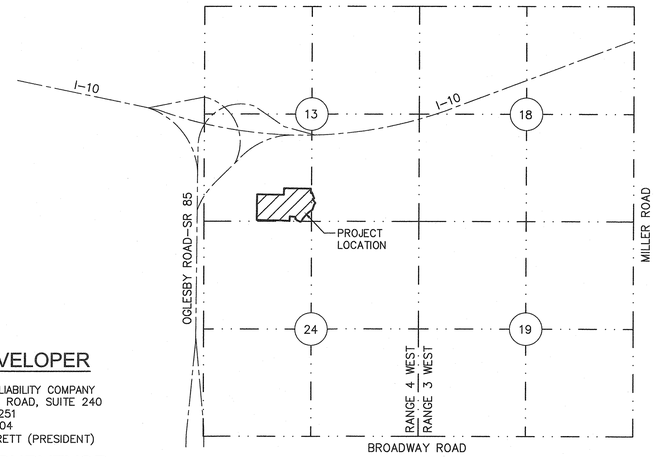
RIGHT OF WAY TABLE

RIGHT OF WAY TABLE		
STREET	AREA SQ FT	AREA ACRES
263RD DRIVE	44,361	1.02
264TH AVE	15,700	0.36
264TH DRIVE	11,207	0.26
PRESTON LANE	35,205	0.81
TORONTO WAY	48,487	1.11
TOTAL	154,960	3.56

LEGEND

▲	SUBDIVISION CORNER TO BE SET
○	FOUND MONUMENT AS NOTED
◉	CENTERLINE MONUMENT (BRASS CAP)
PUE	PUBLIC UTILITY EASEMENT
MCR	MARICOPA COUNTY RECORDS
D	DELTA
R/W	RIGHT-OF-WAY
C1	CURVE TABLE NUMBER
L1	LINE TABLE NUMBER
①	33'x33' SIGHT VISIBILITY EASEMENT
VNAE	VEHICULAR NON-ACCESS EASEMENT
———	SUBDIVISION BOUNDARY
———	RIGHT OF WAY LINE
——— – ———	CENTERLINE
- - - - - - - - - -	EXISTING EASEMENT LINE
— — — — —	NEW EASEMENT LINE
——— · · ——— · · ———	SECTION LINE
———— ————	5' ROADWAY ACCESS EASEMENT ADJACENT RIGHT OF WAY (RWE)

N.T.S.
VICINITY MAP
SECTION 13, T.1N., R.4W.
SECTION 24, T.1N., R.4W.



OWNER/DEVELOPER

GDC WP 2.2, LLC,
AN ARIZONA LIMITED LIABILITY COMPANY
6900 E. CAMELBACK ROAD, SUITE 240
SCOTTSDALE, AZ 85251
PHONE: 480-970-4004
CONTACT: JEFF GARRETT (PRESIDENT)

ENGINEER/SURVEYOR

ATWELL, LLC
4700 E. SOUTHERN AVENUE
MESA, ARIZONA 85206
PHONE 480-218-8831
CONTACT: MICHAEL J. PARK (PE)
CONTACT: JAMES G. SPRING (PLS)

SHEET INDEX

DESCRIPTION	SHEET NO
COVER SHEET	1
KEY MAP, TRACT TABLE, LOT DETAIL AND LEGAL DESCRIPTION	2
PLAT SHEETS	3-5

NOTES

1. THE LOTS DEPICTED ON THIS PLAT ARE LOCATED WITHIN THE VICINITY OF LUKE AIR FORCE BASE AND MAY BE SUBJECT TO OVERFLIGHTS BY JET AIRCRAFT. ALL STRUCTURES WITHIN THIS PLAT SHALL BE CONSTRUCTED IN COMPLIANCE WITH THE STATUTORILY REQUIRED SOUND ATTENUATION STANDARDS.
2. THE PROPERTY OWNERS, OR ANY SUBSEQUENT OWNERS SHALL NOT PROCEED WITH ANY ON SITE GRADING OR EXCAVATION WITHOUT FIRST OBTAINING A PERMIT FROM THE CITY OF BUCKEYE.
3. IN ACCORDANCE WITH ARS §9-461.07, THE CITY OF BUCKEYE HAS DETERMINED THAT ALL DEDICATIONS OCCURRING WITH THIS PLAT ARE IN CONFORMANCE WITH THE GENERAL PLAN.
4. PURSUANT TO A.R.S. §42-11102, THE CITY OF BUCKEYE, A POLITICAL SUBDIVISION OF THE STATE OF ARIZONA, IS EXEMPT FROM ALL TAXES AND ASSESSMENTS BASED ON ASSESSED VALUE EXCEPT FOR SPECIAL DISTRICTS #14751 AND 14710, WHEN APPLICABLE.
5. THIS SITE CONSISTS OF A TOTAL OF 77 LOTS, 10 TRACTS, IN THE "PC" PLANNED COMMUNITY ZONING DISTRICT.
6. THIS FINAL PLAT IS IN SUBSTANTIAL CONFORMANCE WITH THE PRELIMINARY PLAT APPROVED ON JULY 13TH, 2004 UNDER CASE #PP04-09.
7. THIS SUBDIVISION WAS ISSUED A CERTIFICATE OF ASSURED WATER SUPPLY BY ARIZONA DEPARTMENT OF WATER RESOURCES ON OCTOBER 19TH, 2007 WITH ADWR CERTIFICATE #31-402138.0001.
8. NO STRUCTURE OF ANY KIND SHALL BE CONSTRUCTED OR ANY VEGETATION TO BE PLANTED OR BE ALLOWED TO GROW WITHIN ANY DRAINAGE EASEMENT WHICH WOULD IMPEDE THE FLOW OF WATER OVER, UNDER, OR THROUGH EASEMENTS.
9. FINAL PLAT APPROVAL BY THE CITY IS CONDITIONAL AND SUBJECT TO FINANCIAL ASSURANCES BEING IN PLACE FOR ALL IMPROVEMENTS AS SHOWN ON THE APPROVED PLANS. THE CITY WILL NOT RECORD ANY PLATS UNTIL SUCH TIME FINANCIAL ASSURANCES ARE IN PLACE. IF AFTER ONE YEAR FROM CITY COUNCIL APPROVAL THE FINAL PLAT HAS NOT BEEN RECORDED, THEN IT SHALL BE NULL AND VOID. A VALID PRELIMINARY PLAT NEEDS TO BE IN PLACE PRIOR TO APPROVAL OF ANY FINAL PLAT ASSOCIATED WITHIN THE PROJECT IN ACCORDANCE WITH THE DEVELOPMENT CODE. THE SIGNED PLAT WILL NOT BE SUBMITTED TO THE CITY FOR SIGNATURE AND RECORDING UNTIL THE FINANCIAL ASSURANCES ARE IN PLACE.
10. ALL NEW OR RELOCATED UTILITIES WILL BE PLACED UNDERGROUND EXCEPT POWER LINES 69KV AND LARGER.
11. IT IS ACKNOWLEDGED THAT THIS PROPERTY WILL BE PART OF A PARKWAY MAINTENANCE IMPROVEMENT DISTRICT (MID) AND STREET LIGHTING IMPROVEMENT DISTRICT (SLID) AT THE TIME THAT IT IS DEVELOPED, IN ACCORDANCE WITH BUCKEYE ORDINANCES 43-05 AND 42-06.

BENCHMARK

BENCHMARK DATUM:
HORIZONTAL LOCATION= SE COR SEC 24, T.1N., R.4W. FOUND BRASS CAP IN HANDHOLE.
ELEVATION = 967.84' NORTH AMERICAN VERTICAL DATUM 1988

BASIS OF BEARING

BASIS OF BEARING IS ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 24, T.1N., R.4W. BEING N89°39'26"W WITH A DISTANCE OF 2670.94 FEET.

FLOODZONE DESIGNATION

THE PROPERTY IS LOCATED WITHIN AN AREA DESIGNATED AS HAVING FLOOD ZONE X BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, ON FLOOD INSURANCE RATE MAP NO 04013C2115L, WITH A REVISION DATE OF OCTOBER 16TH, 2013 FOR COMMUNITY NO. 2115, IN THE CITY OF BUCKEYE, COUNTY OF MARICOPA, STATE OF ARIZONA, WHICH IS THE CURRENT FLOOD INSURANCE RATE MAP FOR THE COMMUNITY IN WHICH SAID PROPERTY IS SITUATED.

100 YEAR ASSURED WATER SUPPLY

THIS SUBDIVISION IS WITHIN THE CITY OF BUCKEYE WATER SERVICE AREA AND HAS OBTAINED A CERTIFICATE OF 100 YEAR ASSURED WATER SUPPLY FROM THE ARIZONA DEPARTMENT OF WATER RESOURCES, CERTIFICATE #31-402138.0001.

ZONING DESIGNATION

"PC" PLANNED COMMUNITY

SURVEYOR'S CERTIFICATION:

I, JAMES G. SPRING, HEREBY CERTIFY THAT I AM A PROFESSIONAL LAND SURVEYOR IN THE STATE OF ARIZONA, THAT THIS PLAT CONSISTING OF 5 SHEETS CORRECTLY REPRESENTS A BOUNDARY SURVEY MADE BY ME DURING THE MONTH OF JULY, 2024. THAT THE SURVEY IS TRUE AND CORRECT AS SHOWN, THAT ALL MONUMENTS EXIST OR WILL BE SET AND, THAT THEIR POSITIONS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

JAMES G. SPRING, PLS 22282
ATWELL, LLC
4700 E. SOUTHERN AVENUE
MESA, ARIZONA 85206

PROFESSIONAL LAND SURVEYOR CERTIFICATE NO. 22282 JAMES G. SPRING Date Signed 7/31/24 ARIZONA U.S.A. Expires 6-30-2025

NOTE:

A.R.S. § 32-151 STATES THAT THE USE OF THE WORD "CERTIFY" OR "CERTIFICATION" BY A PERSON OR FIRM THAT IS REGISTERED OR CERTIFIED BY THE BOARD IS AN EXPRESSION OF PROFESSIONAL OPINION REGARDING FACTS OR FINDINGS THAT ARE SUBJECT OF THE CERTIFICATION AND DOES NOT CONSTITUTE AN EXPRESS OR IMPLIED WARRANTY OR GUARANTEE.

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 13 & 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT
WESTPARK PHASE 2.2
"PARCEL 7N"
CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

ATWELL

PM. J. SPRING
DR. R. GILES
JOB NO. 21001100

N.T.S.

21001100 WESTPARK 7N FP-8-2-24.DWG

SHEET NO. 1 OF 5

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 7N\21001100 WESTPARK 7N FP-8-2-24.DWG SAVEDATE:8/2/2024 11:42 AM PLOTDATE:8/2/2024 11:51 AM

COPYRIGHT © 2024 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC

LEGAL DESCRIPTION

LOCATED IN A PORTION OF THE NORTHWEST QUARTER OF SECTION 24 AND THE SOUTH HALF OF SECTION 13, TOWNSHIP 1 NORTH, RANGE 4 WEST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN MARICOPA COUNTY, ARIZONA

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND STONE IN HANDHOLE ACCEPTED AS THE SOUTH QUARTER CORNER OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 4 WEST, FROM WHICH A FOUND MONUMENT IN HANDHOLE, ACCEPTED AS THE SOUTHEAST CORNER OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 4 WEST,THEREOF BEARS S89°39'26"E A DISTANCE OF 2670.94 FEET;

THENCE, ALONG THE SOUTH LINE OF SAID SECTION 24, A DISTANCE OF 1337.59 FEET;

THENCE, LEAVING THE SOUTH LINE OF SAID SECTION 24, N00°00'00"E A DISTANCE OF 5326.26 FEET, TO THE POINT OF BEGINNING;

THENCE, N00°35'43"E A DISTANCE OF 640.00 FEET;

THENCE, S89°13'42"E A DISTANCE OF 669.06 FEET;

THENCE, N00°25'03"E A DISTANCE OF 163.50 FEET;

THENCE, S89°15'16"E A DISTANCE OF 667.84 FEET;

THENCE, S00°11'27"W A DISTANCE OF 105.08 FEET;

THENCE, N67°10'48"E A DISTANCE OF 28.42 FEET;

THENCE, S22°02'47"E A DISTANCE OF 155.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE LEFT;

THENCE, SOUTHWESTERLY ALONG SAID CURVE AN ARC LENGTH OF 32.99 FEET, WITH A RADIUS OF 180.00 FEET AND THE RADIAL BEARING OF S22°02'47"E AND A CENTRAL ANGLE OF 10°29'58";

THENCE, ALONG A LINE NON-TANGENT TO SAID CURVE, S32°24'56"W, A DISTANCE OF 12.26 FEET;

THENCE, S34°35'28"E A DISTANCE OF 116.03 FEET;

THENCE, S39°49'09"W A DISTANCE OF 45.62 FEET;

THENCE, S19°00'32"W A DISTANCE OF 139.06 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE LEFT;

THENCE, SOUTHWESTERLY ALONG SAID CURVE AN ARC LENGTH OF 408.29 FEET, WITH A RADIUS OF 740.00 FEET AND THE RADIAL BEARING OF S30°24'06"E AND A CENTRAL ANGLE OF 31°36'46";

THENCE, ALONG A LINE NON-TANGENT TO SAID CURVE, S70°04'54"W, A DISTANCE OF 32.02 FEET;

THENCE, N66°39'39"W A DISTANCE OF 80.96 FEET;

THENCE, N19°32'06"W A DISTANCE OF 23.10 FEET;

THENCE, N61°24'52"W A DISTANCE OF 40.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE RIGHT;

THENCE, NORTHEASTERLY ALONG SAID CURVE AN ARC LENGTH OF 22.25 FEET, WITH A RADIUS OF 760.00 FEET AND THE RADIAL BEARING OF S61°24'52"E AND A CENTRAL ANGLE OF 01°40'38";

THENCE ALONG A LINE NON-TANGENT TO SAID CURVE, N19°47'06"W, A DISTANCE OF 31.47 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE LEFT;

THENCE, WESTERLY ALONG SAID CURVE AN ARC LENGTH OF 35.45 FEET, WITH A RADIUS OF 180.00 FEET AND THE RADIAL BEARING OF S15°14'33"W AND A CENTRAL ANGLE OF 11°17'08";

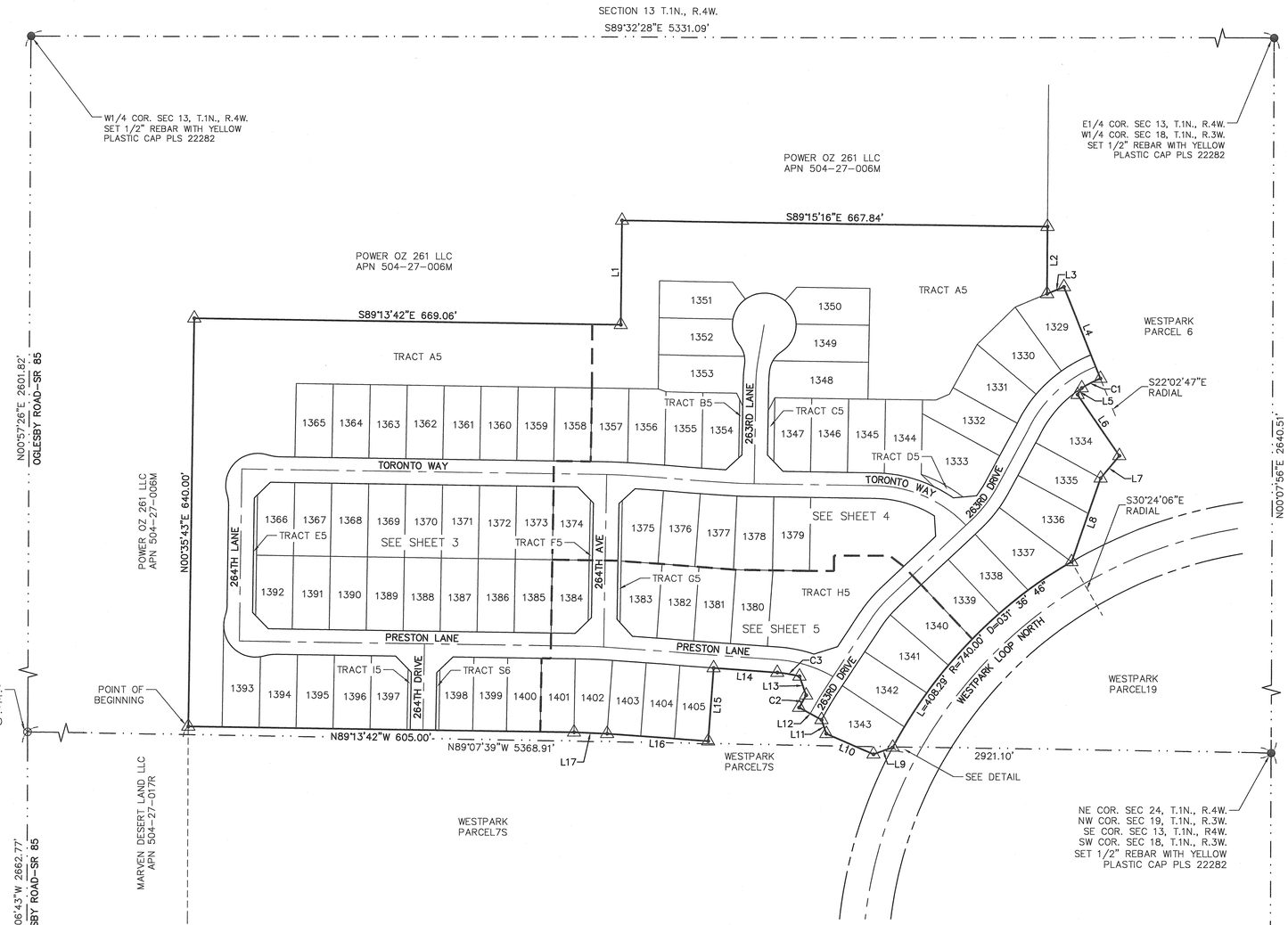
THENCE, N86°02'34"W A DISTANCE OF 100.16 FEET;

THENCE, S03°57'26"W A DISTANCE OF 115.00 FEET;

THENCE, N86°02'34"W A DISTANCE OF 159.00 FEET;

THENCE, N87°35'36"W A DISTANCE OF 51.89 FEET;

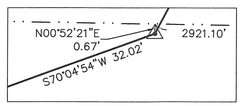
THENCE, N89°13'42"W A DISTANCE OF 605.00 FEET TO THE POINT OF BEGINNING.



LINE TABLE			LINE TABLE			LINE TABLE		
LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH
L1	N00°25'03"E	163.50'	L7	S39°49'09"W	45.62'	L13	N19°47'06"W	31.47'
L2	S00°11'27"W	105.08'	L8	S19°00'32"W	139.06'	L14	N86°02'34"W	100.16'
L3	N67°10'48"E	28.42'	L9	S70°04'54"W	32.02'	L15	S03°57'26"W	115.00'
L4	S22°02'47"E	155.00'	L10	N66°39'39"W	80.96'	L16	N86°02'34"W	159.00'
L5	S32°24'56"W	12.26'	L11	N19°32'06"W	23.10'	L17	N87°35'36"W	51.89'
L6	S34°35'28"E	116.03'	L12	N61°24'52"W	40.00'			

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C1	32.99'	180.00'	010°29'58"
C2	22.25'	760.00'	001°40'38"
C3	35.45'	180.00'	011°17'08"

C2 RADIAL BEARING = S61°24'52"E
C3 RADIAL BEARING = S15°14'33"W



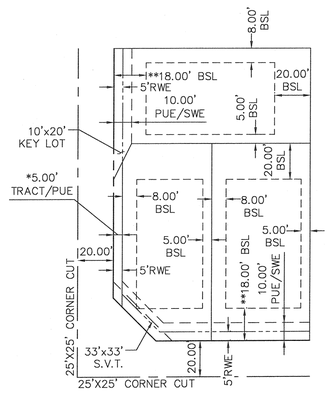
DETAIL
1" = 5'

TRACT TABLE							
TRACT	AREA SQ FT	AREA ACRES	USAGES	TRACT	AREA SQ FT	AREA ACRES	USAGES
TRACT A5	217,676	5.00	LANDSCAPE, OPEN SPACE & PUE	TRACT G5	934	0.02	LANDSCAPE & OPEN SPACE
TRACT B5	419	0.01	LANDSCAPE & OPEN SPACE	TRACT H5	38,264	0.88	LANDSCAPE & OPEN SPACE
TRACT C5	850	0.02	LANDSCAPE & OPEN SPACE	TRACT I5	463	0.01	LANDSCAPE & OPEN SPACE
TRACT D5	560	0.01	LANDSCAPE & OPEN SPACE	TRACT S6	463	0.01	LANDSCAPE & OPEN SPACE
TRACT E5	925	0.02	LANDSCAPE & OPEN SPACE	TOTAL	261,479	6.00	
TRACT F5	925	0.02	LANDSCAPE & OPEN SPACE				

LOT DETAIL

TYPICAL LOT DETAIL – 58' WIDTH

LOT COVERAGE 50% AS PER DEVELOPMENT STANDARDS



VARIED CONDITIONS:
* = 5' MIN. – 10' MAX.
(DEPENDENT ON 10' PUE ON OPPOSITE SIDE OF STREET)

** = 10' TO SIDE ENTRY GARAGE
= 12' TO LIVABLE AREA
= 18' TO GARAGE

SPECIAL NOTES:
1) SETBACKS MEASURED FROM PROPERTY LINE.
2) FRONT YARD SETBACKS TO BE STAGGERED 3' SO NO TWO CONSECUTIVE FRONTAGES MATCH.
3) DRIVEWAY SHALL NOT BE LESS THAN 20 FEET IN LENGTH FROM FACE OF GARAGE TO BACK OF THE SIDEWALK OR TO CURRENT DEVELOPMENT CODE STANDARDS.
4) RWE = ROADWAY ACCESS EASEMENT

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 13 & 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT
WESTPARK PHASE 2.2
"PARCEL 7N"
CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

ATWELL

PM. J. SPRING
DR. R. GILES
JOB NO.
21001100

SCALE 0 50' 100'
1" = 100 FEET

21001100 WESTPARK 7N FP.DWG

SHEET NO.
2 OF 5

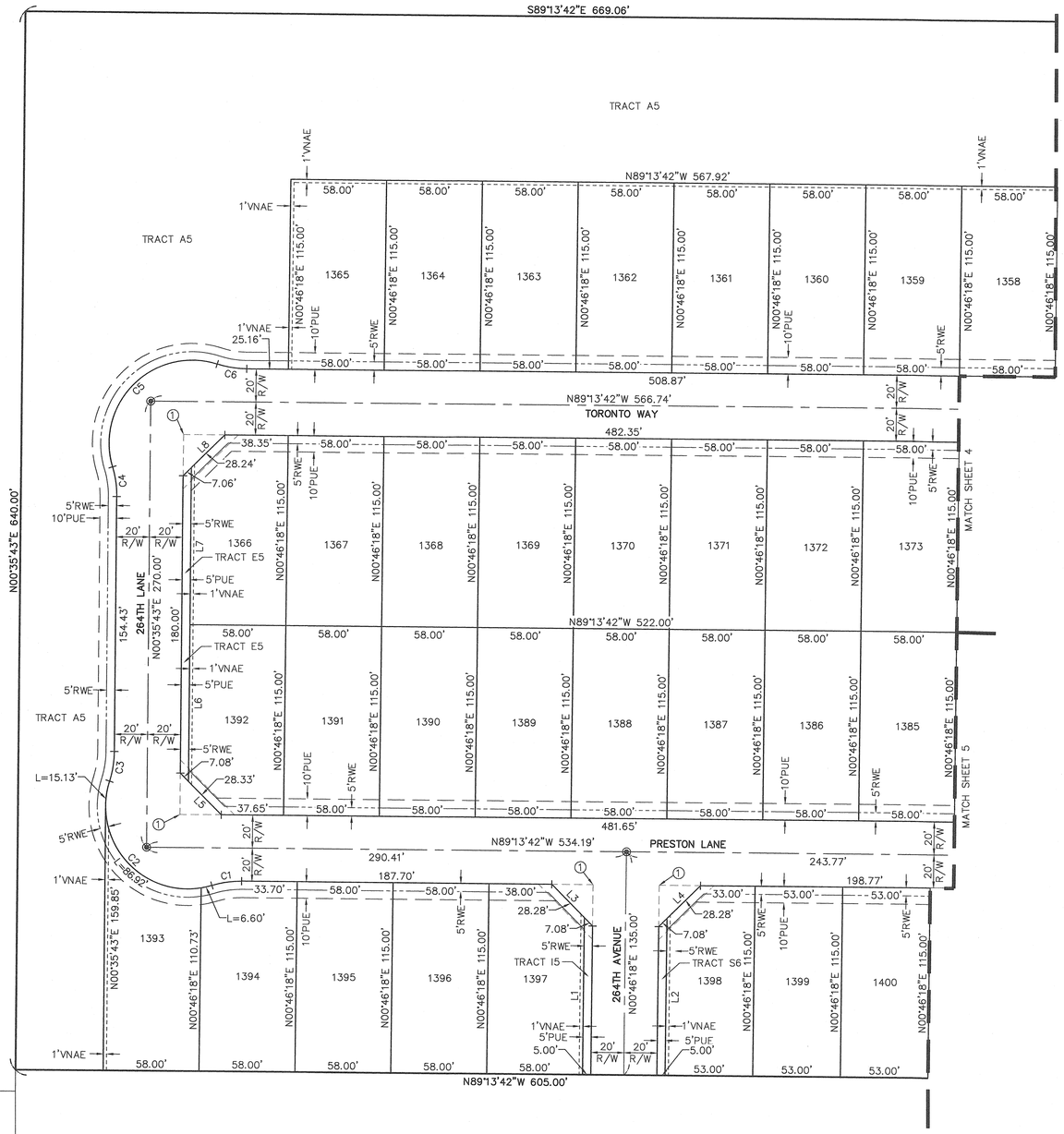
PROFESSIONAL LAND SURVEYOR
CERTIFICATE NO.
22282
JAMES G. SPRING
Date Signed 7/31/24
ARIZONA U.S.A.
Expires 6-30-2025

CITY OF BUCKEYE PLANNING NO. PLZS 23-00015

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 7N\21001100 WESTPARK 7N FP.DWG SAVEDATE:7/31/2024 12:43 PM PLOTDATE:7/31/2024 12:45 PM

COPYRIGHT © 2024 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC

POWER OZ 261 LLC
APN 504-27-006M



POWER OZ 261 LLC
APN 504-27-006M

POWER OZ 261 LLC
APN 504-27-017R

WESTPARK
PARCEL 7S

LOT TABLE			LOT TABLE		
LOT	AREA SQ FT	AREA ACRES	LOT	AREA SQ FT	AREA ACRES
1358	6670	0.153	1385	6670	0.153
1359	6670	0.153	1386	6670	0.153
1360	6670	0.153	1387	6670	0.153
1361	6670	0.153	1388	6670	0.153
1362	6670	0.153	1389	6670	0.153
1363	6670	0.153	1390	6670	0.153
1364	6670	0.153	1391	6670	0.153
1365	6670	0.153	1392	6450	0.148
1366	6490	0.149	1393	6933	0.159
1367	6670	0.153	1394	6631	0.152
1368	6670	0.153	1395	6670	0.153
1369	6670	0.153	1396	6670	0.153
1370	6670	0.153	1397	6470	0.149
1371	6670	0.153	1398	5895	0.135
1372	6670	0.153	1399	6095	0.140
1373	6670	0.153	1400	6095	0.140

LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	N00°46'18"E	95.00'
L2	N00°46'18"E	95.00'
L3	N44°13'42"W	28.28'
L4	N45°46'18"E	28.28'
L5	N44°19'00"W	28.33'
L6	N00°35'43"E	95.00'
L7	N00°35'43"E	95.00'
L8	N45°41'00"E	28.24'

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C1	18.16'	60.00'	017°20'29"
C2	108.65'	50.00'	124°30'24"
C3	18.16'	60.00'	017°20'29"
C4	18.16'	60.00'	017°20'29"
C5	108.96'	50.00'	124°51'33"
C6	18.16'	60.00'	017°20'29"

(1)=SVT 33'X33' TYPICAL

PROFESSIONAL LAND SURVEYOR
CERTIFICATE NO.
22282
JAMES G. SPRING
Date Signed 7/31/24
ARIZONA, U.S.A.
Expires 6-30-2025

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 13 & 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT

WESTPARK PHASE 2.2 "PARCEL 7N"

CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

ATWELL

P.M. J. SPRING
DR. R. GILES
JOB NO. 21001100
SCALE 0 20' 40'
1" = 40 FEET

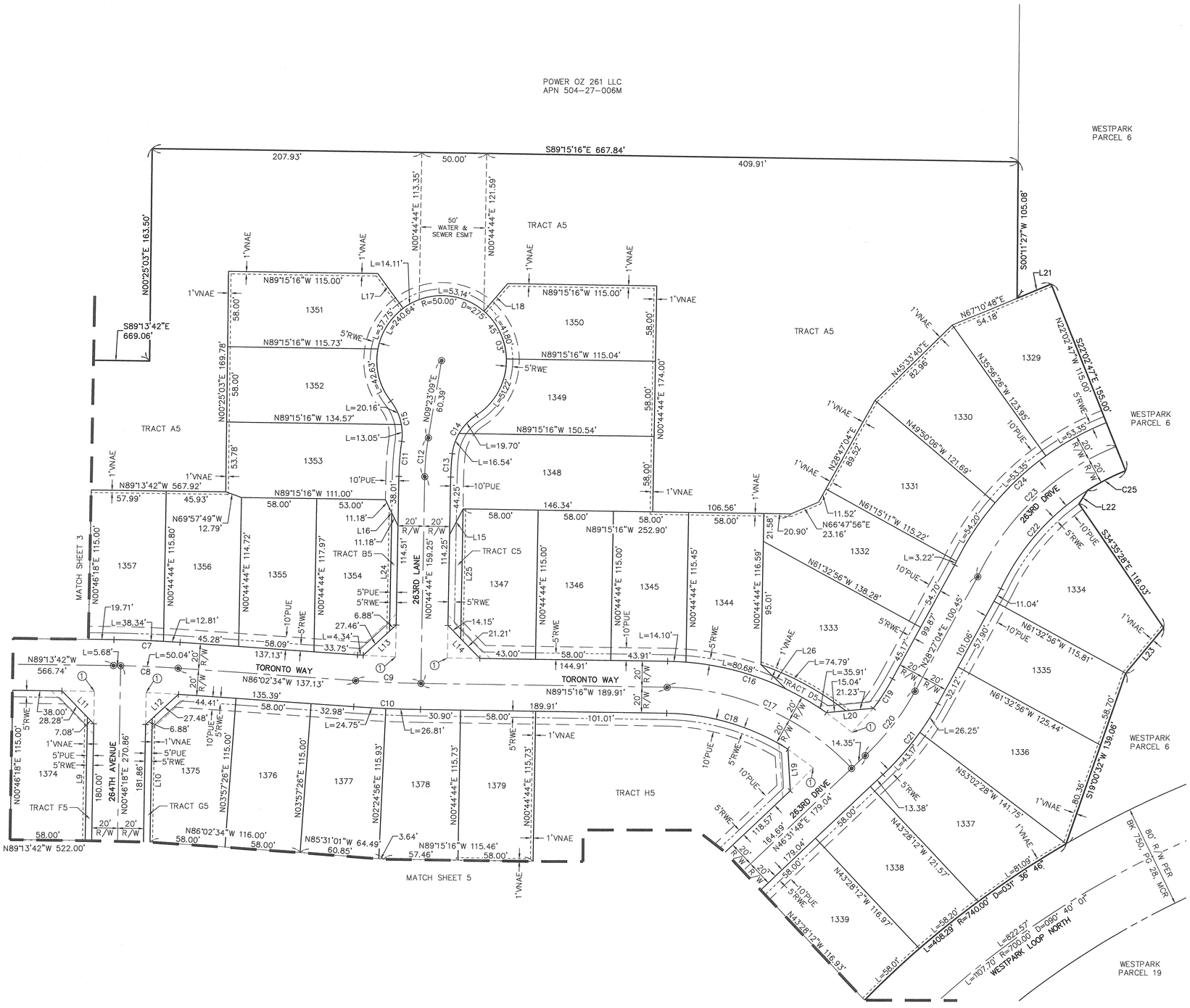
21001100 WESTPARK 7N FP.DWG

SHEET NO. 3 OF 5

CITY OF BUCKEYE PLANNING NO. PLZS 23-00015

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 7N\21001100 WESTPARK 7N FP.DWG SAVEDATE:7/31/2024 12:43 PM PLOTDATE:7/31/2024 12:45 PM

COPYRIGHT © 2024 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC



LOT TABLE			LOT TABLE		
LOT	AREA SQ FT	AREA ACRES	LOT	AREA SQ FT	AREA ACRES
1329	7966	0.183	1350	7075	0.162
1330	8242	0.189	1351	7173	0.165
1331	7698	0.177	1352	7077	0.162
1332	7611	0.175	1353	7839	0.180
1333	9468	0.217	1354	6712	0.154
1334	8886	0.204	1355	6748	0.155
1335	6984	0.160	1356	6780	0.156
1336	9043	0.208	1357	6682	0.153
1344	7057	0.162	1374	6470	0.149
1345	6672	0.153	1375	6838	0.157
1346	6670	0.153	1376	6670	0.153
1347	6557	0.151	1377	6838	0.157
1348	9119	0.209	1378	6878	0.158
1349	7376	0.169	1379	6712	0.154

LINE TABLE			LINE TABLE		
LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH
L9	N00°46'18"E	95.00'	L18	N40°33'04"E	28.10'
L10	N00°46'18"E	95.19'	L19	N03°39'03"W	32.02'
L11	N44°13'42"W	35.36'	L20	N84°32'28"E	36.27'
L12	N47°21'52"E	34.36'	L21	N67°10'48"E	28.42'
L13	N47°21'49"E	34.34'	L22	S32°24'56"W	12.26'
L14	N44°15'16"W	35.36'	L23	S39°49'09"W	45.62'
L15	N27°18'39"E	11.18'	L24	N00°44'44"E	91.23'
L16	N25°49'10"W	22.36'	L25	N00°44'44"E	100.00'
L17	N36°30'30"W	33.23'	L26	N46°09'31"W	27.10'

CURVE TABLE				CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA	CURVE #	LENGTH	RADIUS	DELTA
C7	51.15'	920.00'	003°11'08"	C17	159.82'	200.00'	045°47'03"
C8	50.04'	900.00'	003°11'08"	C18	98.77'	180.00'	031°26'26"
C9	50.45'	900.00'	003°12'41"	C19	27.04'	180.00'	008°36'31"
C10	51.57'	920.00'	003°12'41"	C20	63.11'	200.00'	018°04'43"
C11	27.08'	220.00'	007°03'09"	C21	69.42'	220.00'	018°04'43"
C12	30.16'	200.00'	008°38'25"	C22	102.37'	180.00'	032°35'02"
C13	18.10'	180.02'	005°45'40"	C23	149.75'	200.00'	042°53'59"
C14	36.24'	41.00'	050°38'16"	C24	164.12'	220.00'	042°44'30"
C15	33.21'	41.00'	046°24'17"	C25	32.99'	180.00'	010°29'58"
C16	130.70'	220.00'	034°02'16"				

(1)=SVT 33'X33' TYPICAL

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 13 & 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT
WESTPARK PHASE 2.2 "PARCEL 7N"
CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

ATWELL

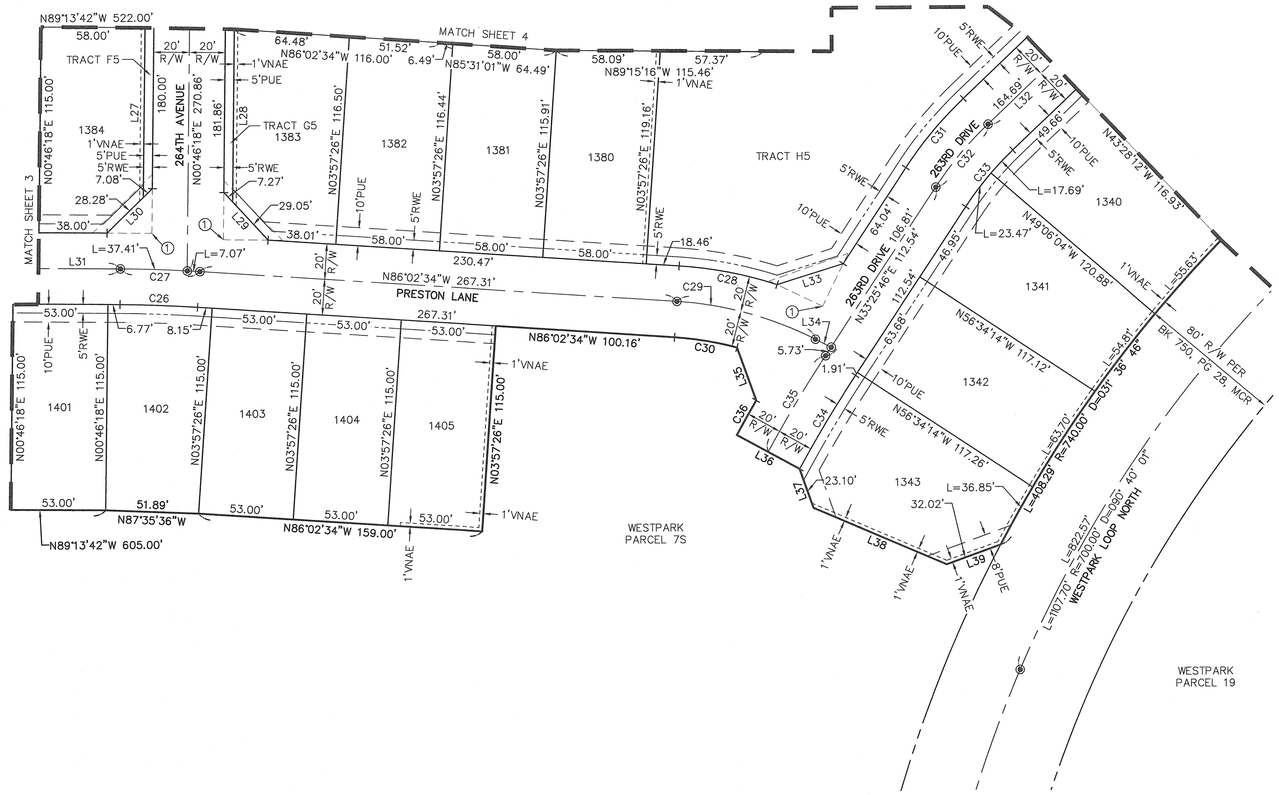
PM. J. SPRING
DR. R. GILES
JOB NO. 21001100
SCALE 0 20' 40'
1" = 40 FEET
21001100 WESTPARK 7N FP.DWG
SHEET NO. 4 OF 5

PROFESSIONAL LAND SURVEYOR CERTIFICATE NO. 22282 JAMES G. SPRING Date Signed 7/31/24 ARIZONA U.S.A. Expires 6-30-2025

CITY OF BUCKEYE PLANNING NO. PLZS 23-00015

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 7N\21001100 WESTPARK 7N FP.DWG SAVEDATE:7/31/2024 12:43 PM PLOTDATE:7/31/2024 12:45 PM

COPYRIGHT © 2024 ATWELL LLC NO REPRODUCTION SHALL BE MADE WITHOUT THE PRIOR WRITTEN CONSENT OF ATWELL LLC



LOT TABLE		
LOT	AREA SQ FT	AREA ACRES
1380	6817	0.156
1381	6738	0.155
1382	6757	0.155
1383	6935	0.159
1384	6470	0.149
1401	6095	0.140
1402	6352	0.146
1403	6095	0.140
1404	6095	0.140
1405	6095	0.140

LINE TABLE			LINE TABLE		
LINE #	DIRECTION	LENGTH	LINE #	DIRECTION	LENGTH
L27	N00°46'18"E	95.00'	L34	S62°52'14"E	9.87'
L28	N00°46'18"E	96.69'	L35	S19°47'06"E	31.47'
L29	N42°38'08"W	36.32'	L36	N61°24'52"W	40.00'
L30	N45°46'18"E	35.36'	L37	N19°32'06"W	23.10'
L31	S89°13'42"E	243.77'	L38	N66°39'39"W	80.96'
L32	N46°31'48"E	179.04'	L39	S70°04'54"W	32.02'
L33	N72°36'04"E	38.76'			

CURVE TABLE				CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA	CURVE #	LENGTH	RADIUS	DELTA
C26	43.37'	780.00'	003°11'08"	C32	45.73'	200.00'	013°06'01"
C27	44.48'	800.00'	003°11'08"	C33	41.16'	180.00'	013°06'01"
C28	55.90'	220.00'	014°33'31"	C34	60.87'	720.00'	004°50'38"
C29	80.89'	200.00'	023°10'21"	C35	62.56'	740.00'	004°50'38"
C30	35.45'	180.00'	011°17'08"	C36	22.25'	760.00'	001°40'38"
C31	50.30'	220.00'	013°06'01"				

(1)=SVT 33'X33' TYPICAL

ATWELL
866.850.4200 www.atwell-group.com
4700 E. SOUTHERN AVENUE
MESA, AZ 85206
480.218.8831

COUNTY: MARICOPA
SECTION: 13 & 24
TOWNSHIP: 1 NORTH
RANGE: 4 WEST

FINAL PLAT

WESTPARK PHASE 2.2 "PARCEL 7N"

CITY OF BUCKEYE, ARIZONA

JULY 2024

REVISIONS:

ATWELL

PM. J. SPRING
DR. R. GILES
JOB NO. 21001100

SCALE 0 20' 40'
1" = 40 FEET

21001100 WESTPARK 7N FP.DWG

SHEET NO. 5 OF 5

PROFESSIONAL LAND SURVEYOR
CERTIFICATE NO. 22282
JAMES G. SPRING
Date Signed 7/31/24
ARIZONA U.S.A.
Expires 6-30

K:\21001100 - WESTPARK PHASES 2.2\DWG\SURVEY\FINAL PLAT\PHASE 7N\21001100 WESTPARK 7N FP.DWG SAVEDATE:7/31/2024 12:43 PM PLOTDATE:7/31/2024 12:45 PM

CITY OF BUCKEYE PLANNING NO. PLZS 23-00015

STATE OF ARIZONA
DEPARTMENT OF WATER RESOURCES
CERTIFICATE OF ASSURED WATER SUPPLY

This is to certify that

KEMF WP 2.2, LLC, an Arizona limited liability company, Owner, D.R.Horton, Inc., a Delaware corporation, Buyer, Century Communities of Arizona , an Arizona limited liability company, Buyer and GDC WP 2.2, LLC, an Arizona limited liability company, Buyer,

have met the requirements of A.R.S. §§ 45-576 and A.A.C.R12-15-701 et. seq., and

By powers vested in the Director of the Arizona Department of Water Resources by the State of Arizona, and subject to the conditions contained in A.A.C. R12-15-701 et seq.,

Are issued this Certificate of Assured Water Supply for

Westpark Phase 2.2 Parcels 7N, 7S, 8, 19 and 20N
Township 1 North, Range 4 West, Sections 13 and 24
GSRB&M Maricopa County, PHOENIX AMA

The referenced subdivision consists of **446 lots** as described in the preliminary plat on file with the Department, and has an estimated water demand of **199.52 acre-feet per year.** The subdivision will be served **groundwater** by **the City of Buckeye.**

This Certificate is invalid as to any entity not named above.
This Certificate may be assigned pursuant to A.A.C. R12-15-705.

Certificate Number: 31-402138.0001
Original Issue Date: October 19, 2007

ARIZONA DEPARTMENT OF WATER RESOURCES

Carol M. Ward

Assistant Director

July 29, 2024
Date

TYPE A CERTIFICATE

CITY OF BUCKEYE
Regular Council Meeting
COUNCIL ACTION REPORT

MEETING DATE: 09/03/24	**AGENDA ITEM:** 4.K. DS - Buckeye Ten 85 - Final Plat - PLZS-22-00055
DATE PREPARED: 08/29/24	**DISTRICT NO.:** Council District 1
STAFF LIAISON: Bart Wingard, Principal Planner, hwingard@buckeyeaz.gov, (623) 208-8830	
DEPARTMENT: Development Services	**AGENDA ITEM TYPE:** Consent Agenda Items / New Business

ACTION/MOTION: (This language identifies the formal motion to be made by the Council)
Council to take action on a Final Plat for Buckeye Ten 85, generally located at the southeast corner of State Route 85 and West Southern Avenue.

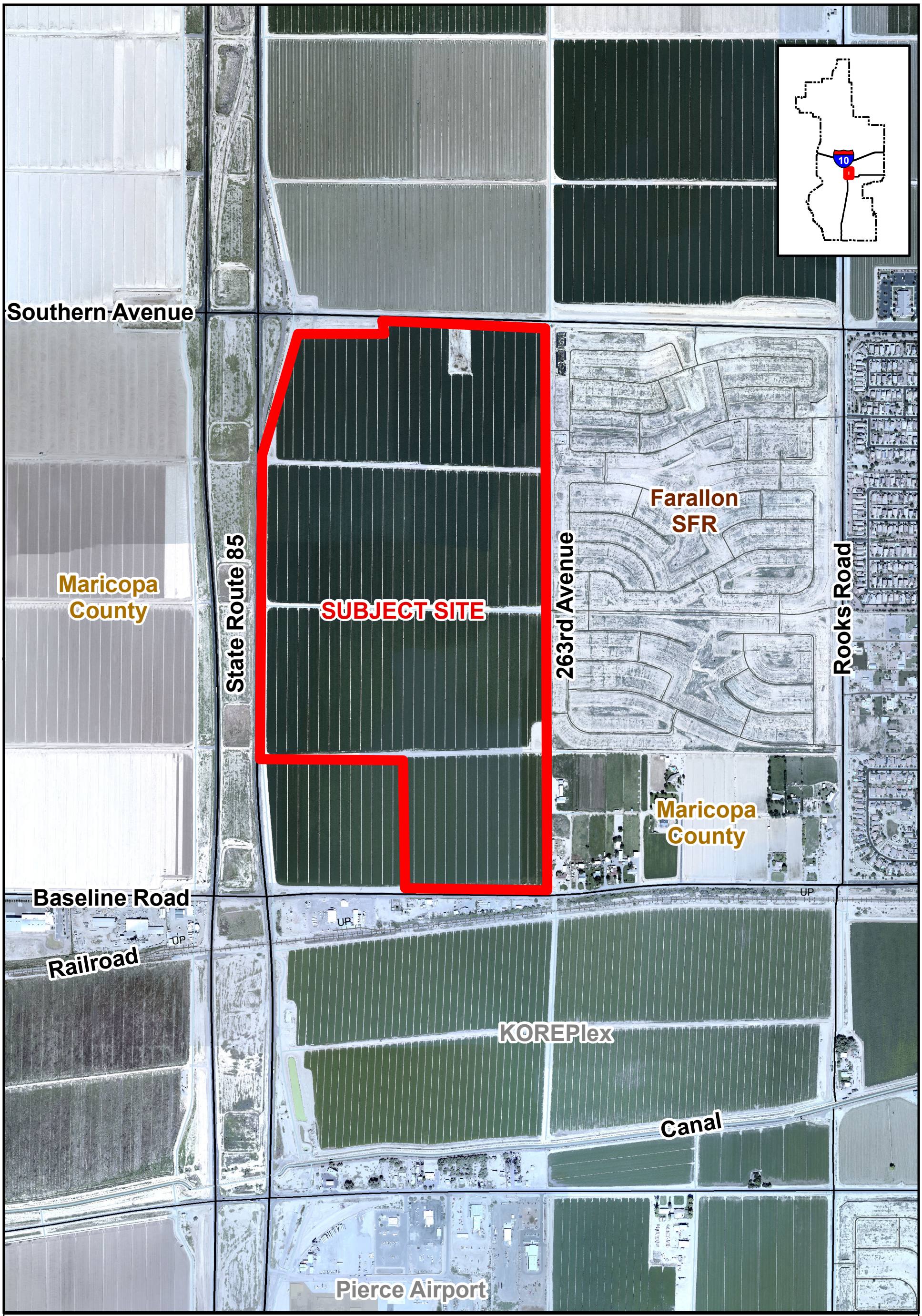
SUMMARY

PROJECT DESCRIPTION:
The Final Plat for Buckeye Ten 85 consisting of approximately 265 acres will create four (4) developable light industrial lots and four (4) well tracts. The developable parcels range from 39.36 to 81.59 acres while the well tracts average one half (1/2) acre.

BENEFITS:
The subject Final Plat will provide developable lots for light industrial uses resulting in enhanced employment opportunities for the residents of Buckeye. Additionally, the subject well tracts will contribute to the overall water solution for the area.

FINANCIAL IMPACT STATEMENT:
Although a fiscal impact analysis has not been conducted on this specific project, all new development will have an ongoing fiscal impact on the city. The development is responsible for construction of all infrastructure necessary to serve the site and will generate one-time revenue for the city such as permit fees, construction sales tax and development impact fees. Longer term fiscal impacts include increased demands for municipal services, the costs of which may or may not be offset by increased property values/tax levies, city sales tax, state shared revenues and the increased demand for commercial and retail development. Any areas that will be maintained by the city are constructed by the developer and then conveyed to the city two (2) years after construction.

Items related to a project or facility location must include an attached vicinity map for Council Review.
ATTACHMENTS:
Exhibit A - PLZS-22-00055 - Ten 85 FP - Vicinity Map.pdf
Exhibit B - PLZS-22-00055 - Ten 85 FP- Narrative.pdf
Exhibit C - PLZS-22-00055 - Ten 85 FP - Final Plat.pdf



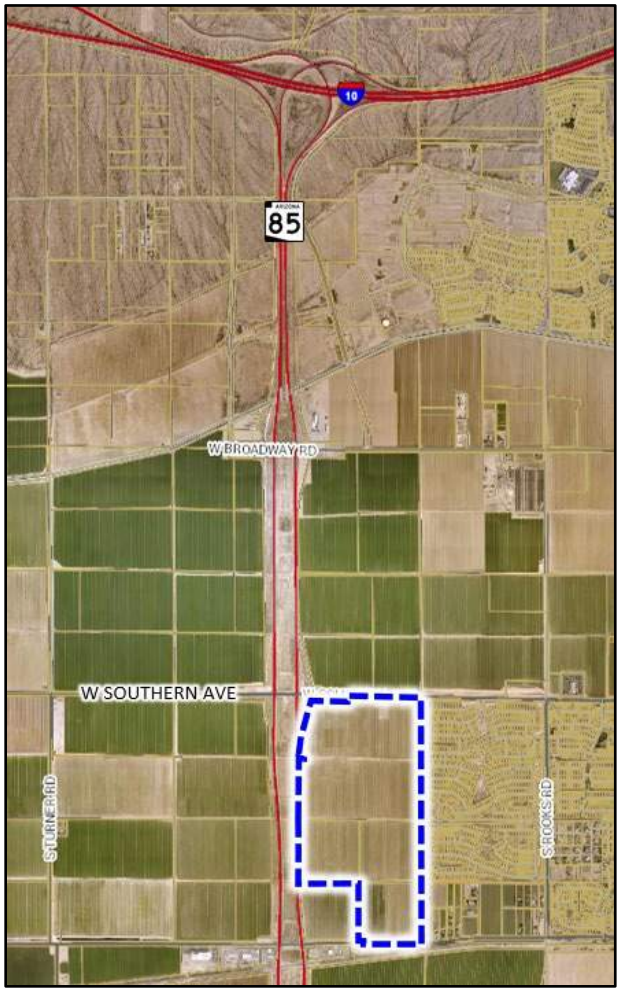
VICINITY MAP

PLZS-22-00055
Ten | 85 Light Industrial Park
City Council District #1

BUCKEYE, AZ

N
W E
S

Buckeye Ten | 85
Preliminary Plat Narrative
Southeast corner of SR85 and W. Southern Ave



Preliminary Plat Request
Development Narrative
(PLZS-22-00029)

1st Submittal: August 1, 2022

2nd Submittal: November 1, 2022

Gammage & Burnham PLC | Stephen W. Anderson | sanderson@gblaw.com

Development Team

Developer	**Creation RE LLC** Jagger Everett 1200 N. 52nd Street Phoenix, AZ 85008 Phone (602) 600-6363 E-mail jaggere@creationequity.com
Landscape Architect and Civil Engineer	**Jagger Everett** Creation RE LLC 1200 N. 52nd Street Scottsdale, AZ 85008 Phone (602) 600-6363 E-mail jaggere@creationequity.com
Engineer	**Hunter Engineering** Jeff Hunter 10450 N. 74th Street, Suite 200 Scottsdale, AZ 85258 Phone (480) 991-3985 E-mail jhunter@hunterengineeringpc.com
Traffic Engineer	**Southwest Traffic Engineering, LLC** Andrew Smigielski, PE, PTOE, PTP 3838 N. Central Avenue, Suite 1810 Phoenix, AZ 85012 Phone (602) 266-7983 E-mail smig@SWTE.US
Legal Representative	**Gammage & Burnham, PLC** Stephen Anderson 40 N. Central Avenue, 20th Floor Phoenix, AZ 85004 phone (602) 256-4422 fax (602) 256-4475 E-mail sanderson@gblaw.com

TABLE OF CONTENTS

Contents

Introduction 4
Current General Plan Designation 4
Current Zoning 4
Vicinity Information 4
Project Description 5
Roadway Circulation 5
Water, Sewer, and Refuse Providers 5
Fire Protection 5
Police Protection 5
Impact to Local Schools 5
Design and Landscaping 6
Parks, Open Space and Trails 6
Phasing 6
Conclusion 6

EXHIBITS

Exhibit 1 – Aerial Map
Exhibit 2 – Approved Site Plan
Exhibit 3 – Existing General Plan Land Use Map
Exhibit 4 – Existing Zoning Map
Exhibit 5 – Approved Landscape Plan

Buckeye Ten|85
Preliminary Plat Request

Southeast Corner of SR 85 and Southern Avenue

APNs 504-39-027C; 504-39-028J; 504-39-028G; 504-39-028B and 504-39-028K

Introduction

Creation RE LLC ("Applicant" or "Creation") is requesting approval of a Preliminary Plat to facilitate the development of the vacant, 265-acre property located at the southeast corner of SR 85 and W. Southern Avenue, specifically Maricopa County Assessor Parcel Numbers (APNs) 504-39-027C; 504-39-028J; 504-39-028G; 504-39-028B and 504-39-028K (the "Property" or "Site") to accommodate new office-flex buildings and associated site improvements. See **Exhibits 1 and 2**, **Aerial Map and Approved Site Plan**. On October 25, 2022, the Site Plan for this project was approved by the Planning & Zoning Commission.

Current General Plan Designation

The Site is approximately 265 acres of vacant, agricultural land. It is relatively flat and does not contain any structures. The General Plan Land Use Designation is Employment. See **Exhibit 3, Existing General Plan Land Use Map**.

Current Zoning

As shown in **Exhibit 4, Existing Zoning Map,** the Property's zoning designation is Light Industrial (I-1).

Vicinity Information

Location	Current Zoning	Description
Subject Property	Light Industrial (I-1)	Vacant agricultural
North	Planned Residential	Vacant agricultural
East	Planned Residential	Undeveloped residential subdivision
South	RU-43 (County)	Vacant agricultural
West	RU-43 (County)	Vacant agricultural

There is a small, 0.08 acre parcel of land (APN 504-39-031) located in between the north and south portions of the subject property, at the intersection of SR85 and the W. Maricopa Road alignment; this parcel is under the jurisdiction of the Arizona Department of Transportation (ADOT) and is not a part of this preliminary plat application.

Project Description

The Applicant is proposing to develop four (4), single-story office/flex buildings to accommodate light industrial uses. The proposed development will bring more than four million square feet of office/flex space to vacant land that is conveniently located adjacent to the SR85 highway and about two miles south of the I-10 freeway.

Roadway Circulation

The Property enjoys close proximity to SR85 and Interstate 10. SR85 abuts the west side of the Property. The I-10 freeway is approximately 2.4 miles to the north.

In the initial phase of development, there will be two (2) access points on Southern Avenue and two (2) access points on Baseline Road. The timing and installation of additional access points will be implemented as determined by the Traffic Impact Analysis (TIA) approved by the City of Buckeye and in coordination with City Engineer.

The Applicant will form a Streetlight Improvement District (SLID) for the purposes of paying for the power to the streetlights on public streets either within or adjacent to the Property. The SLID will include the centerline of adjacent arterial roadways in accordance with the requirements in City Code, Chapter 20.

Water, Sewer, and Refuse Providers

Water and sewer services will be provided by the City of Buckeye. A refuse service provider will be identified further along in the development process. The Property requires a well site for on-site needs. The Property can accommodate four well sites, and the Applicant is working with the City to provide three additional well sites for municipal use.

Fire Protection

Fire protection will be provided by the Buckeye Fire-Medical-Rescue Department. The closest fire station is Fire Station 701 at 404 S. Miller Road, which is approximately 2.3 miles southeast of the Property. As shown on the enclosed Site Plan, a potential fire pump house is proposed next to the primary well site, southwest of Building C. The fire pump house is proposed to be developed in Phase I.

Police Protection

Law enforcement services will be provided by the Buckeye Police Department. The nearest police station is approximately 2.6 miles southeast of the Property at 100 N. Apache Road #D.

Impact to Local Schools

The proposed industrial development will neither increase nor decrease the number of students, and thus will not impact local schools.

Design and Landscaping

The Property has been thoughtfully designed to be compatible with the surrounding uses. There will be a minimum of 20% landscaping provided, as shown in **Exhibit 5, Approved Landscape Plan**.

Parks, Open Space and Trails

The proposed project will not create a need for parks, open space or trails. As shown on the Approved Site Plan, 20% of the property will be developed as open space, with 2% of the site allocated to employee gathering areas. The retention areas have been strategically located along the perimeter of the Site to provide a buffer between future surrounding uses. Landscaping and screen walls will provide additional buffers to ensure that the proposed use is compatible with the surrounding area. Specifically, the Project will work to develop a streetscape appearance that complements the Farallon subdivision on the east side of 263rd Avenue.

Phasing

The project will be developed in two phases. The southern 141 acres will be developed in Phase I, and the remaining 124 acres in the northern portion will be developed in Phase II.

Conclusion

Creation RE is proposing to provide approximately four million square feet to accommodate office/flex users in response to the need for employment space that has resulted from the explosion of industrial development in the West Valley. Creation RE looks forward to transforming this vacant land into an industrious space that will provide substantial employment opportunities in the City of Buckeye for years to come.

Exhibit 1
Aerial Map

Aerial Map

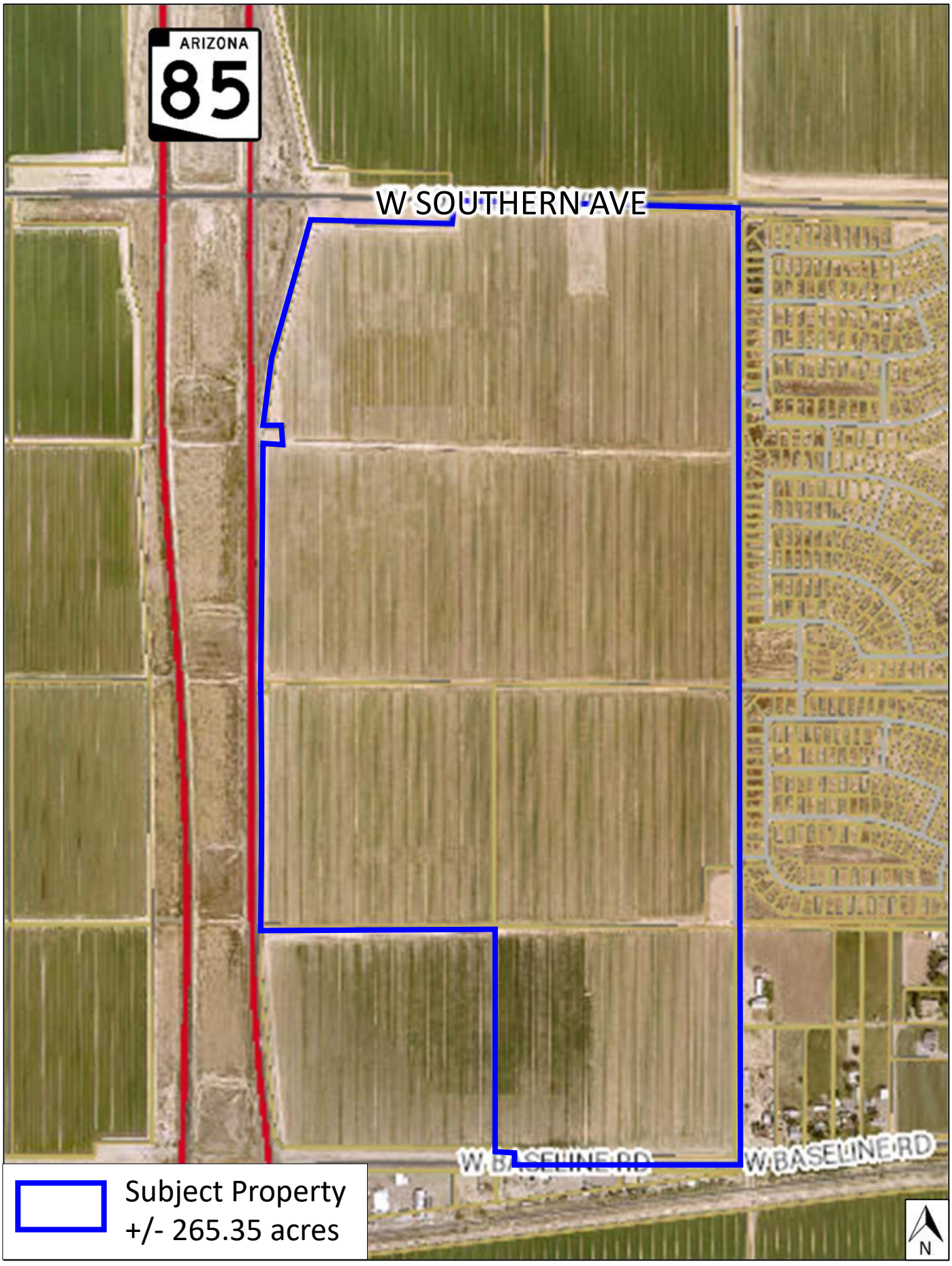
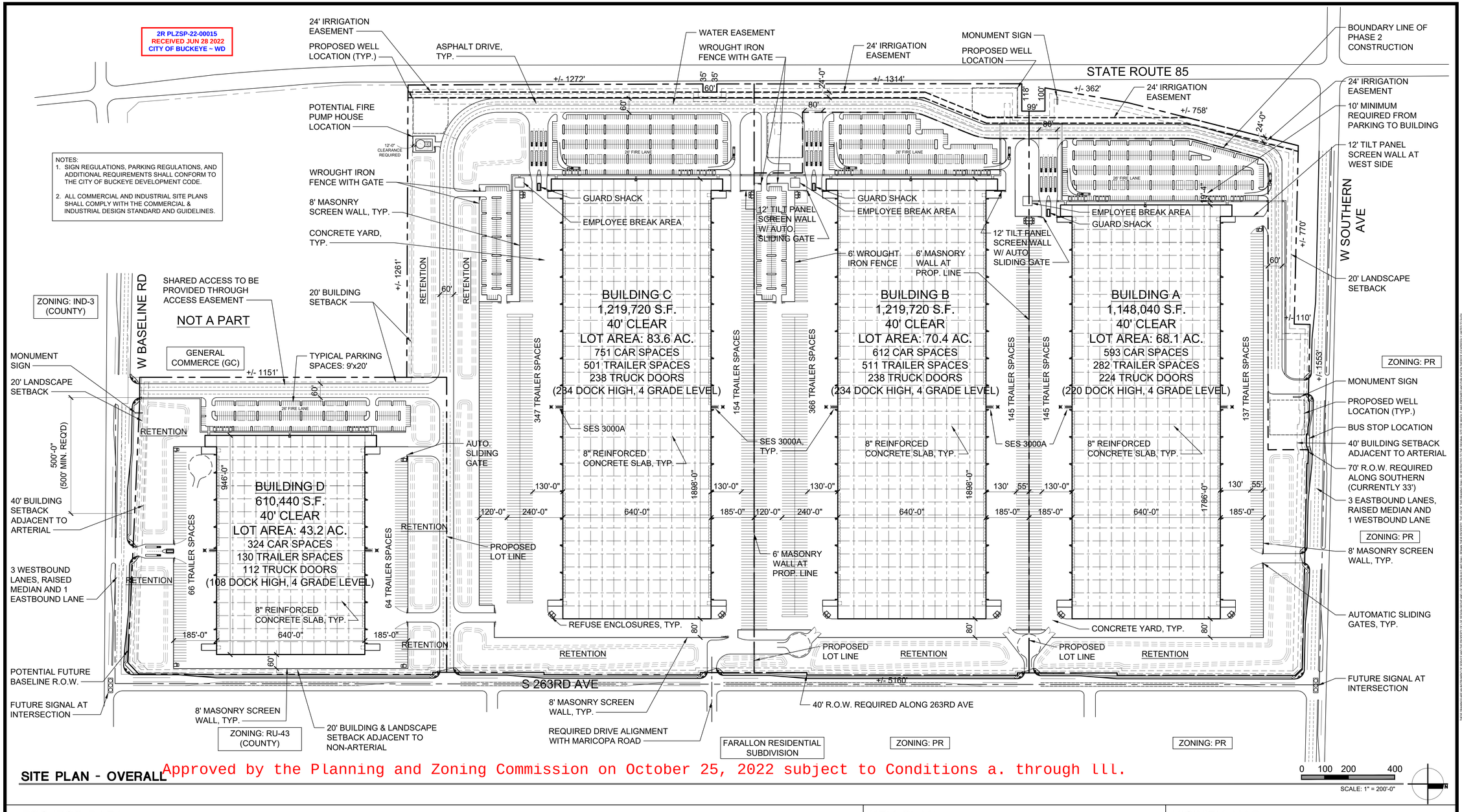

ARIZONA
85
W SOUTHERN AVE
W BASELINE RD
W BASELINE RD
N
Subject Property
+/- 265.35 acres

Exhibit 2
Approved Site Plan

2R PLZSP-22-00015
RECEIVED JUN 28 2022
CITY OF BUCKEYE ~ WD

NOTES:
1. SIGN REGULATIONS, PARKING REGULATIONS, AND ADDITIONAL REQUIREMENTS SHALL CONFORM TO THE CITY OF BUCKEYE DEVELOPMENT CODE.
2. ALL COMMERCIAL AND INDUSTRIAL SITE PLANS SHALL COMPLY WITH THE COMMERCIAL & INDUSTRIAL DESIGN STANDARD AND GUIDELINES.



SITE PLAN - OVERALL

Approved by the Planning and Zoning Commission on October 25, 2022 subject to Conditions a. through lll.

0 100 200 400
SCALE: 1" = 200'-0"

PROJECT DATA

PROJECT ADDRESS:	SEC OF SOUTHERN AVE & STATE ROUTE 85 BUCKEYE, AZ
OWNER:	CREATION, LLC CONTACT: JAGGER EVERETT 1200 N 52ND STREET PHOENIX, AZ 85008 PHONE: 480-966-4001 EMAIL: JAGGERE@CREATIONEQUITY.COM
ARCHITECT:	LGE DESIGN GROUP CONTACT: DANNY MACIAS 1200 NORTH 52ND STREET PHOENIX, AZ. 85008 PHONE: 480-966-4001 E-MAIL: DANNYM@LGEDESIGNGROUP.COM
PROJECT SCOPE:	FOUR OFFICE / WAREHOUSE BUILDINGS
ASSESSOR PARCEL NO.:	504-39-027C, 504-39-028J, 504-39-028G, 504-39-028B, 504-39-028K
CURRENT ZONING:	CC (COMMERCIAL CENTER), SF-43
PROPOSED ZONING:	I-1
GENERAL PLAN:	NEIGHBORHOOD
SITE AREA:	NET: +/- 11,177,554 S.F. (256.60 ACRES) GROSS: +/- 11,558,541 S.F. (265.35 ACRES)
LOT COVERAGE:	37.6% (MAX 80%)
F.A.R.:	0.38
STORIES:	ONE STORY

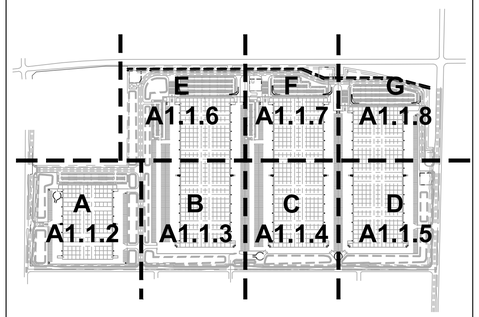
LANDSCAPE AREA %:	20.0%
OPEN SPACE AREA %:	20.0%
TOTAL BUILDING AREA:	4,197,920 S.F.
BUILDING A:	1,148,040 S.F.
BUILDING B:	1,219,720 S.F.
BUILDING C:	1,219,720 S.F.
BUILDING D:	610,440 S.F.
OCCUPANCY:	B, S-1
CONSTRUCTION TYPE:	V-B W/ A.F.E.S.
SPRINKLERS:	YES/FULLY SPRINKLED
BUILDING HEIGHT:	+/- 51'-0"
MAX. BUILDING HEIGHT:	65' AT SETBACK, 120' MAX. TOTAL

VEHICULAR PARKING CALCS:

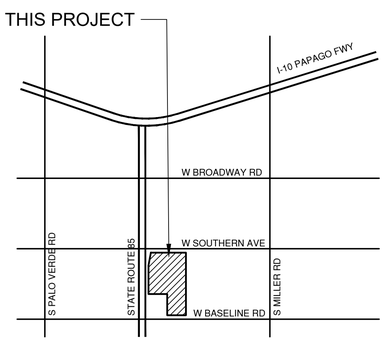
	USE	SQUARE FT.	FACTOR	TOTAL
BUILDING A:	OFFICE	+/- 10,000 S.F.	1 / 300	34 SPACES
	WAREHOUSE	1,138,040 S.F.	1 / 1250	911 SPACES
	PARKING REQUIRED:			945 SPACES
	PARKING PROVIDED:			593 SPACES
BUILDING B:	OFFICE	+/- 10,000 S.F.	1 / 300	34 SPACES
	WAREHOUSE	1,209,720 S.F.	1 / 1250	968 SPACES
	PARKING REQUIRED:			1,002 SPACES
	PARKING PROVIDED:			612 SPACES
BUILDING C:	OFFICE	+/- 10,000 S.F.	1 / 300	34 SPACES
	WAREHOUSE	1,209,720 S.F.	1 / 1250	968 SPACES
	PARKING REQUIRED:			1,002 SPACES
	PARKING PROVIDED:			751 SPACES
BUILDING D:	OFFICE	+/- 10,000 S.F.	1 / 300	34 SPACES
	WAREHOUSE	600,440 S.F.	1 / 1250	481 SPACES
	PARKING REQUIRED:			515 SPACES
	PARKING PROVIDED:			324 SPACES
OVERALL PARKING PROVIDED:				2,280 SPACES
OVERALL PARKING/BUILDING RATIO:				0.54 CARS PER 1,000 S.F.

ACCESSIBLE PARKING CALCS:
20, PLUS 1 FOR EACH 100 OVER 1000 PROVIDED
REQUIRED: 35 SPACES
PROVIDED: 64 SPACES

KEY PLAN



VICINITY MAP



LGE DESIGNGROUP
1200 N. 52nd Street ▪ Phoenix, AZ ▪ 85008
P: 480.966.4001

TEN | 85
SOUTHEAST CORNER OF SOUTHERN AVE & STATE ROUTE 85
BUCKEYE, AZ

LGE DESIGNBUILD

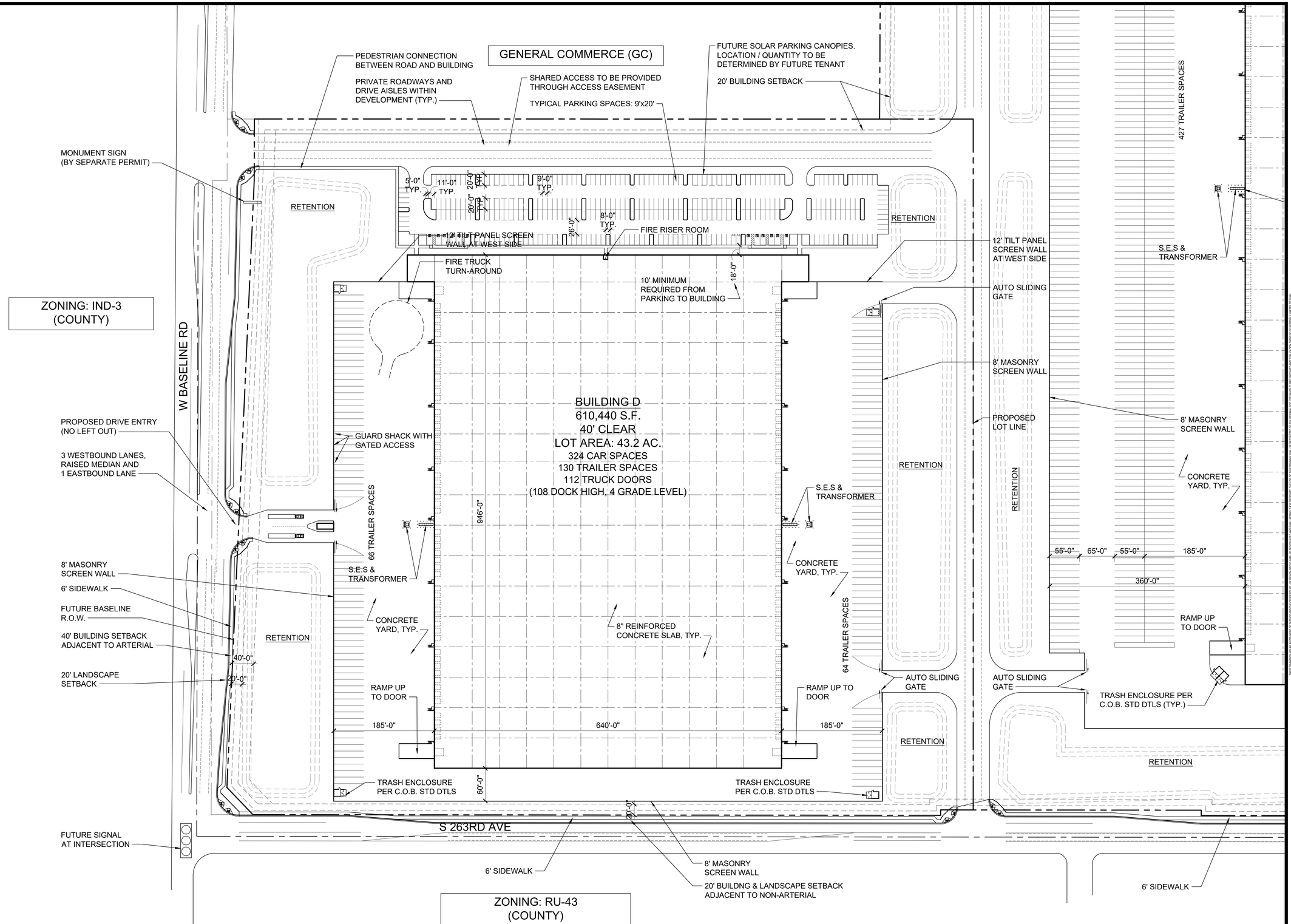
NUMBER	REVISION	DATE

SHEET TITLE: SITE PLAN
ISSUE DATE: 6/16/2022
DRAWN BY:
CHECKED BY: BJM
PROJECT No.:

SHEET: A1.1.1

THE DESIGNS AND DRAWINGS AS INSTRUMENTS OF SERVICE ARE AND SHALL REMAIN THE PROPERTY OF LGE DESIGNGROUP AND LGE DESIGNBUILD AND NO USE SHALL BE MADE OF THE DESIGNS AND DRAWINGS EXCEPT FOR THE ORIGINAL SITE FOR WHICH THEY WERE PREPARED AND PUBLICATION THEREOF IS EXPRESSLY LIMITED TO SUCH

SITE PLAN SUBMITTAL - 06/20/2022 CASE # PLZSP-22-00015



SITE PLAN - SECTION A

0 40 80 160

SCALE: 1" = 80'-0"

LGE | DESIGNGROUP
1200 N. 52nd Street ▪ Phoenix, AZ ▪ 85008
P: 480.966.4001

TEN | 85

SOUTHEAST CORNER OF SOUTHERN AVE & STATE ROUTE 85
BUCKEYE, AZ

LGE | DESIGNBUILD

NUMBER	REVISION	DATE

SHEET TITLE: SITE PLAN
ISSUE DATE: 6/16/2022
DRAWN BY:
CHECKED BY: BJM
PROJECT No.:

SHEET: A1.1.2

SITE PLAN SUBMITTAL - 06/20/2022 CASE # PLZSP-22-00015

MMERCE (GC)

CESS TO BE PROVIDED
ACCESS EASEMENT

RKING SPACES: 9'x20'

FUTURE SOLAR PARKING CANOPIES. LOCATION / QUANTITY TO BE DETERMINED BY FUTURE TENANT

20' BUILDING SETBACK

8'-0" TYP.

FIRE RISER ROOM

RETENTION

12' TILT PANEL SCREEN WALL AT WEST SIDE

10' MINIMUM REQUIRED FROM PARKING TO BUILDING

18'-0"

AUTO SLIDING GATE

8' MASONRY SCREEN WALL

PROPOSED LOT LINE

BUILDING D
610,440 S.F.
40' CLEAR
AREA: 43.2 AC.
24 CAR SPACES
TRAILER SPACES
2 TRUCK DOORS
K HIGH, 4 GRADE LEVEL)

RETENTION

S.E.S & TRANSFORMER

CONCRETE YARD, TYP.

8" REINFORCED CONCRETE SLAB, TYP.

64 TRAILER SPACES

AUTO SLIDING GATE

RAMP UP TO DOOR

640'-0"

185'-0"

RETENTION

TRASH ENCLOSURE PER C.O.B. STD DTLS

427 TRAILER SPACES

1898'-0"

S.E.S 3000A

S.E.S & TRANSFORMER

8' MASONRY SCREEN WALL

CONCRETE YARD, TYP.

55'-0" 65'-0" 55'-0" 185'-0"

360'-0"

RAMP UP TO DOOR

AUTO SLIDING GATE

TRASH ENCLOSURE PER C.O.B. STD DTLS (TYP.)

RETENTION

BUILDING C
1,219,720 S.F.
40' CLEAR
LOT AREA: 83.6 AC.
751 CAR SPACES
501 TRAILER SPACES
238 TRUCK DOORS
(234 DOCK HIGH, 4 GRADE LEVEL)

8" REINFORCED CONCRETE SLAB, TYP.

640'-0"

185'-0"

80'-0"

AUTO SLIDING GATE

8' MASONRY SCREEN WALL

154 TRAILER SPACES

S.E.S & TRANSFORMER

S.E.S 3000A

6' MASONRY WALL AT PROPERTY LINE

CONCRETE YARD, TYP.

55'-0" 65'-0" 55'-0" 185'-0"

360'-0"

446 TRAILER SPACES

S.E.S 3000A

CONCRETE YARD, TYP.

55'-0" 65'-0" 55'-0" 185'-0"

360'-0"

PROPOSED LOT LINE

SWING GATE

S 263RD AVE

8' MASONRY SCREEN WALL

20' BUILDNG & LANDSCAPE SETBACK ADJACENT TO NON-ARTERIAL

6' SIDEWALK

8' P.U.E.

20' BUILDNG & LANDSCAPE SETBACK ADJACENT TO NON-ARTERIAL

BOUNDARY LINE OF PHASE 2 CONSTRUCTION

6' SIDEWALK

FARALLON RESIDENTIAL SUBDIVISION

SITE PLAN - SECTION B

0 40 80 160

SCALE: 1" = 80'-0"

N

LGE | DESIGNGROUP
1200 N. 52nd Street ▪ Phoenix, AZ ▪ 85008
P: 480.966.4001

TEN | 85

SOUTHEAST CORNER OF SOUTHERN AVE & STATE ROUTE 85
BUCKEYE, AZ

LGE | DESIGNBUILD

NUMBER	REVISION	DATE

SHEET TITLE: SITE PLAN
ISSUE DATE: 6/16/2022
DRAWN BY:
CHECKED BY: BJM
PROJECT No.:

SHEET: A1.1.3

SITE PLAN SUBMITTAL - 06/20/2022 CASE # PLZSP-22-00015

BUILDING C
1,219,720 S.F.
40' CLEAR
LOT AREA: 83.6 AC.
751 CAR SPACES
501 TRAILER SPACES
238 TRUCK DOORS
DOCK HIGH, 4 GRADE LEVEL)

BUILDING B
1,219,720 S.F.
40' CLEAR
LOT AREA: 70.4 AC.
612 CAR SPACES
511 TRAILER SPACES
238 TRUCK DOORS
(234 DOCK HIGH, 4 GRADE LEVEL)

BUILDING A
1,148,040 S.F.
40' CLEAR
LOT AREA: 68.1 AC.
593 CAR SPACES
282 TRAILER SPACES
224 TRUCK DOORS
(220 DOCK HIGH, 4 GRADE LEVEL)

154 TRAILER SPACES
446 TRAILER SPACES
145 TRAILER SPACES
145 TRAILER SPACES
1898'-0"
1848'-0"
S.E.S & TRANSFORMER
S.E.S 3000A
S.E.S 3000A
S.E.S & TRANSFORMER
S.E.S 3000A
S.E.S 3000A
6' MASONRY WALL AT PROPERTY LINE
6' MASONRY WALL AT PROPERTY LINE
CONCRETE YARD, TYP.
CONCRETE YARD, TYP.
CONCRETE YARD, TYP.
CONCRETE YARD, TYP.
8" REINFORCED CONCRETE SLAB, TYP.
8" REINFORCED CONCRETE SLAB, TYP.
8" REINFORCED CONCRETE SLAB, TYP.
55'-0" 65'-0" 55'-0" 185'-0"
640'-0" 185'-0" 360'-0" 640'-0" 185'-0" 185'-0" 640'-0"
PROPOSED LOT LINE
AUTO SLIDING GATE
SWING GATE
80'-0"
SWING GATE
SWING GATE
80'-0"
8' MASONRY SCREEN WALL
RETENTION
8' MASONRY SCREEN WALL
PROPOSED LOT LINE
RETENTION
S 263RD AVE
S 263RD AVE
S 263RD AVE
BOUNDARY LINE OF PHASE 2 CONSTRUCTION
6' SIDEWALK
8' P.U.E.
20' BUILDNG & LANDSCAPE SETBACK ADJACENT TO NON-ARTERIAL
BOUNDARY LINE OF PHASE 2 CONSTRUCTION
& LANDSCAPE SETBACK TO NON-ARTERIAL
FARALLON RESIDENTIAL SUBDIVISION
ZONING: PR
ZONI

SITE PLAN - SECTION C

0 40 80 160
SCALE: 1" = 80'-0"

LGE | DESIGNGROUP
1200 N. 52nd Street ▪ Phoenix, AZ ▪ 85008
P: 480.966.4001

TEN | 85
SOUTHEAST CORNER OF SOUTHERN AVE & STATE ROUTE 85
BUCKEYE, AZ

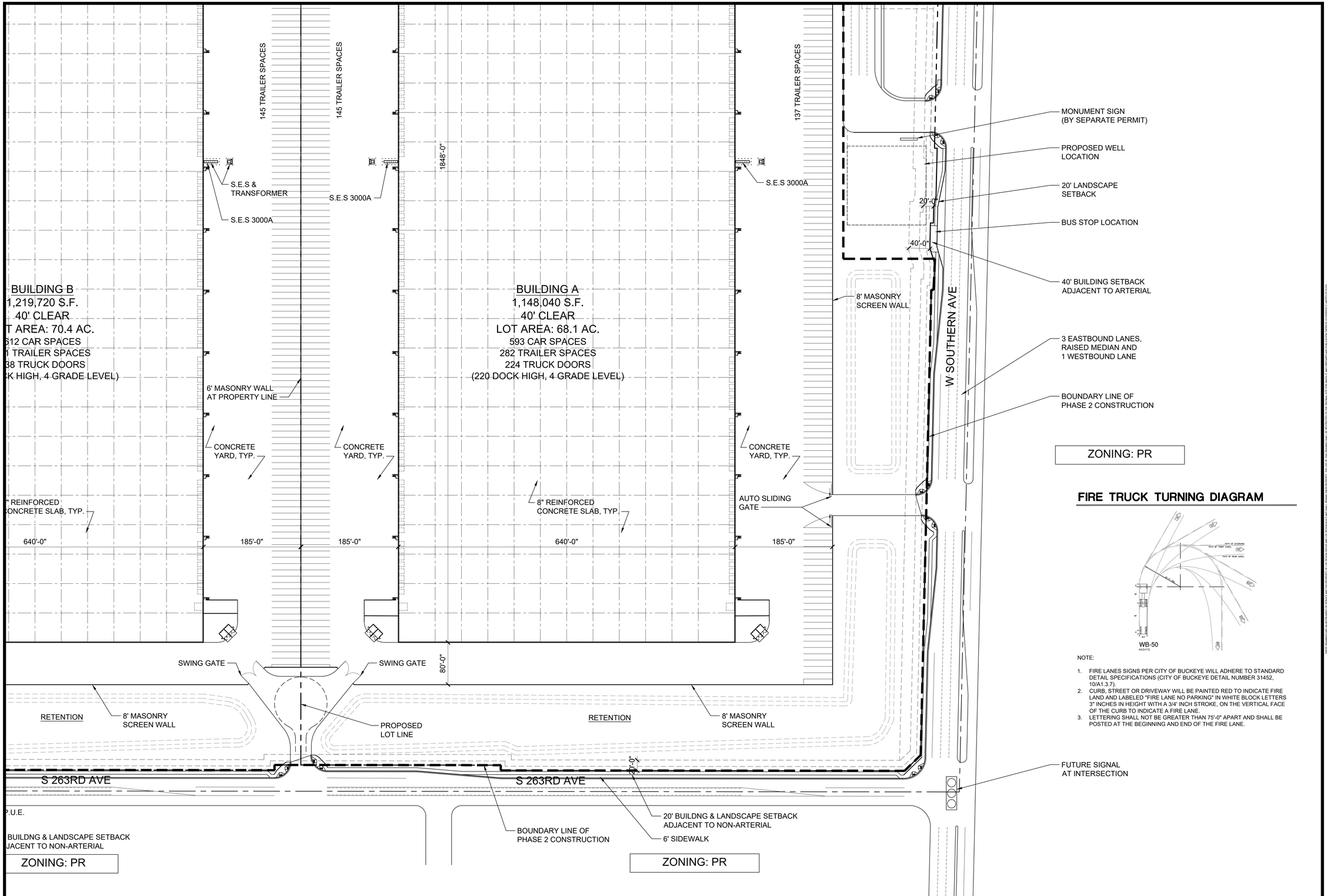
LGE | DESIGNBUILD

NUMBER	REVISION	DATE

SHEET TITLE: SITE PLAN
ISSUE DATE: 6/16/2022
DRAWN BY:
CHECKED BY: BJM
PROJECT No.:

SHEET: A1.1.4

SITE PLAN SUBMITTAL - 06/20/2022 CASE # PLZSP-22-00015



FIRE TRUCK TURNING DIAGRAM

NOTE:

1. FIRE LANES SIGNS PER CITY OF BUCKEYE WILL ADHERE TO STANDARD DETAIL SPECIFICATIONS (CITY OF BUCKEYE DETAIL NUMBER 31452, 10/A1.3.7).
2. CURB, STREET OR DRIVEWAY WILL BE PAINTED RED TO INDICATE FIRE LAND AND LABELED "FIRE LANE NO PARKING" IN WHITE BLOCK LETTERS 3" INCHES IN HEIGHT WITH A 3/4' INCH STROKE, ON THE VERTICAL FACE OF THE CURB TO INDICATE A FIRE LANE.
3. LETTERING SHALL NOT BE GREATER THAN 75'-0" APART AND SHALL BE POSTED AT THE BEGINNING AND END OF THE FIRE LANE.

SITE PLAN - SECTION D

0 40 80 160

SCALE: 1" = 80'-0"

LGE | DESIGNGROUP
1200 N. 52nd Street ▪ Phoenix, AZ ▪ 85008
P: 480.966.4001

TEN | 85

SOUTHEAST CORNER OF SOUTHERN AVE & STATE ROUTE 85
BUCKEYE, AZ

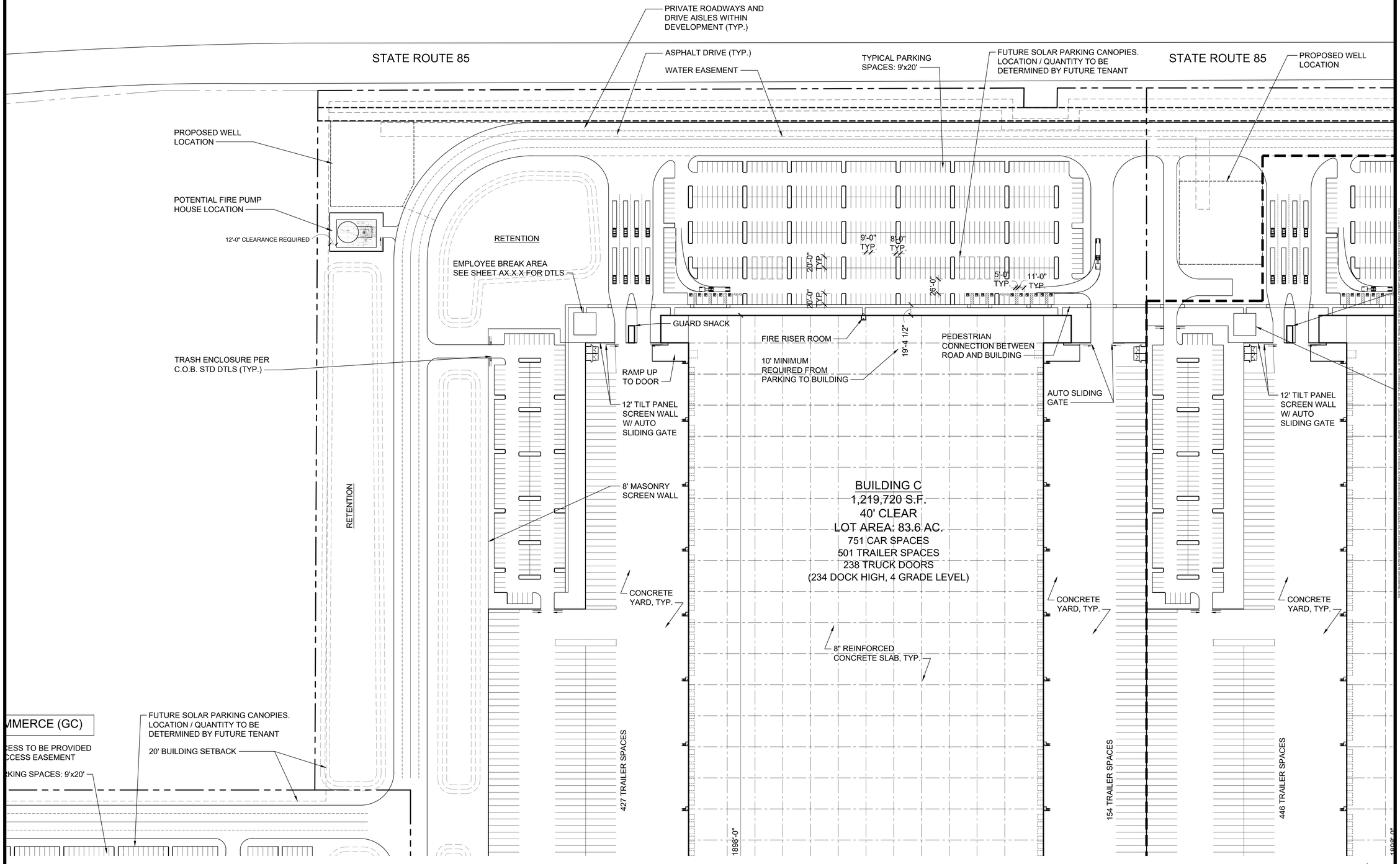
LGE | DESIGNBUILD

NUMBER	REVISION	DATE

SHEET TITLE: SITE PLAN
ISSUE DATE: 6/16/2022
DRAWN BY:
CHECKED BY: BJM
PROJECT No.:

SHEET: A1.1.5

SITE PLAN SUBMITTAL - 06/20/2022 CASE # PLZSP-22-00015



SITE PLAN - SECTION E

0 40 80 160

SCALE: 1" = 80'-0"

N

LGE | DESIGNGROUP
1200 N. 52nd Street ■ Phoenix, AZ ■ 85008
P: 480.966.4001

TEN | 85

SOUTHEAST CORNER OF SOUTHERN AVE & STATE ROUTE 85
BUCKEYE, AZ

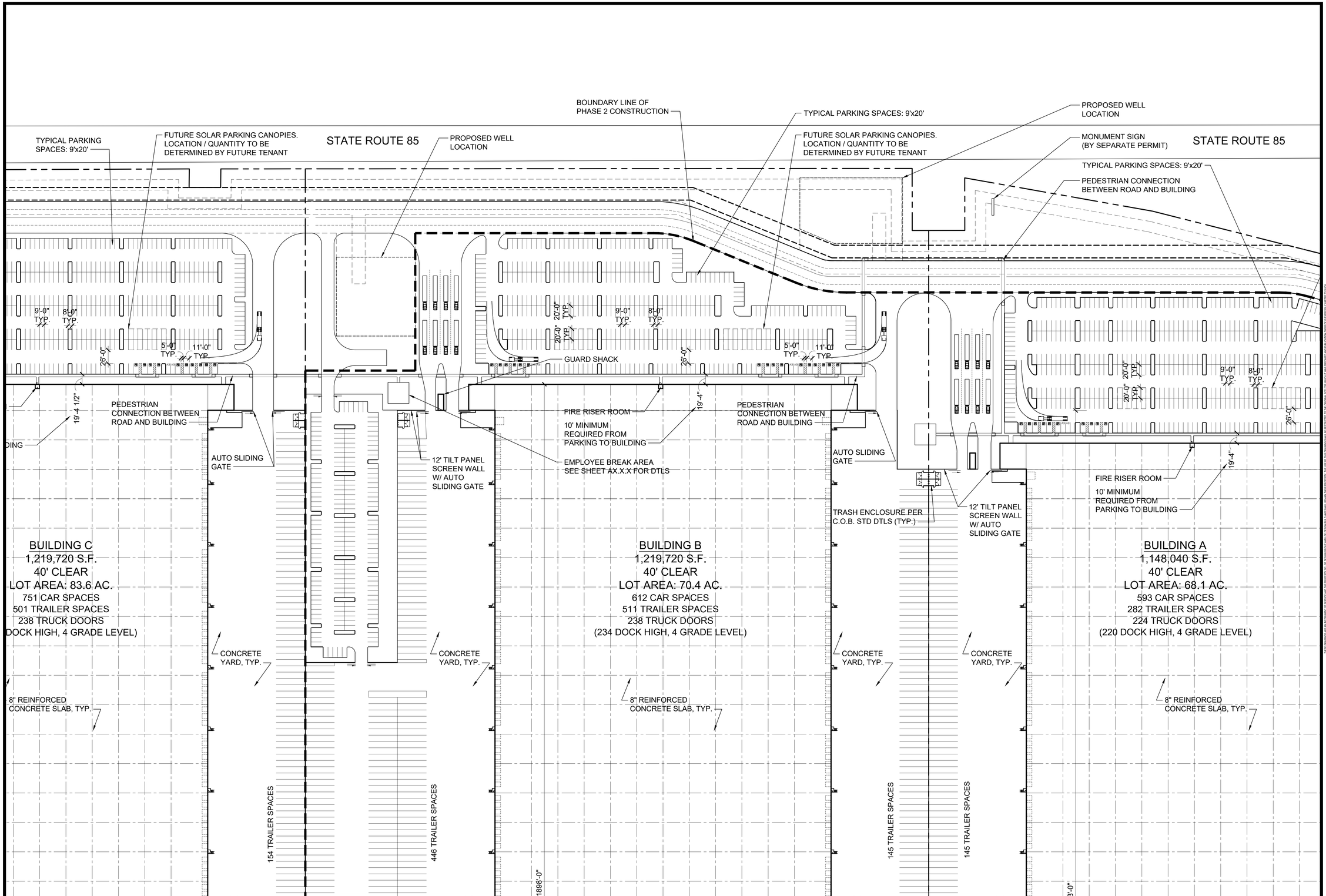
LGE | DESIGNBUILD

NUMBER	REVISION	DATE

SHEET TITLE: SITE PLAN
ISSUE DATE: 6/16/2022
DRAWN BY:
CHECKED BY: BJM
PROJECT No.:
SHEET: A1.1.6

SITE PLAN SUBMITTAL - 06/20/2022 CASE # PLZSP-22-00015

THESE DRAWINGS ARE AN INSTRUMENT OF SERVICE AND ARE PROPERTY OF LGE DESIGNGROUP, PLC. USE OF THIS DRAWING SHALL BE RESTRICTED TO THE ORIGINAL SITE FOR WHICH IT WAS PREPARED AND PUBLICATION THEREOF IS EXPRESSLY LIMITED TO SUCH.



SITE PLAN - SECTION F

0 40 80 160

SCALE: 1" = 80'-0"

LGE | DESIGNGROUP
1200 N. 52nd Street ■ Phoenix, AZ ■ 85008
P: 480.966.4001

TEN | 85

SOUTHEAST CORNER OF SOUTHERN AVE & STATE ROUTE 85
BUCKEYE, AZ

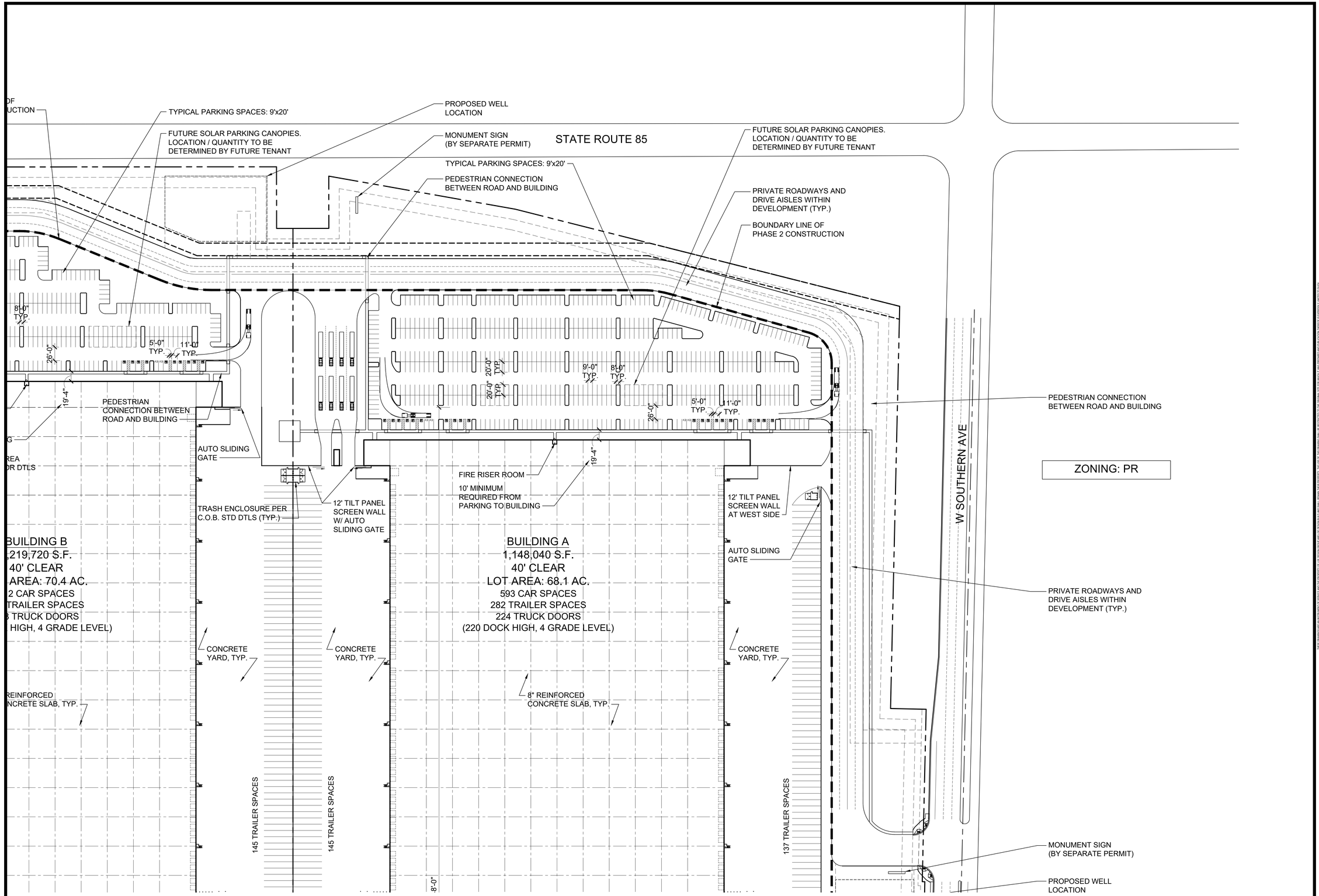
LGE | DESIGNBUILD

NUMBER	REVISION	DATE

SHEET TITLE: SITE PLAN
ISSUE DATE: 6/16/2022
DRAWN BY:
CHECKED BY: BJM
PROJECT No.:

SHEET: A1.1.7

SITE PLAN SUBMITTAL - 06/20/2022 CASE # PLZSP-22-00015



SITE PLAN - SECTION G

0 40 80 160

SCALE: 1" = 80'-0"

N

LGE | DESIGNGROUP
1200 N. 52nd Street ▪ Phoenix, AZ ▪ 85008
P: 480.966.4001

TEN | 85

SOUTHEAST CORNER OF SOUTHERN AVE & STATE ROUTE 85
BUCKEYE, AZ

LGE | DESIGNBUILD

NUMBER	REVISION	DATE

SHEET TITLE: SITE PLAN

ISSUE DATE: 6/16/2022

DRAWN BY:

CHECKED BY: BJM

PROJECT No.:

SHEET: A1.1.8

SITE PLAN SUBMITTAL - 06/20/2022 CASE # PLZSP-22-00015

ALL USE OF THIS DRAWING SHALL BE RESTRICTED TO THE ORIGINAL SITE FOR WHICH IT WAS PREPARED AND PUBLICATION THEREOF IS EXPRESSLY LIMITED TO SUCH

Exhibit 3
Existing General Plan Land Use Map

Existing General Plan Land Use Map

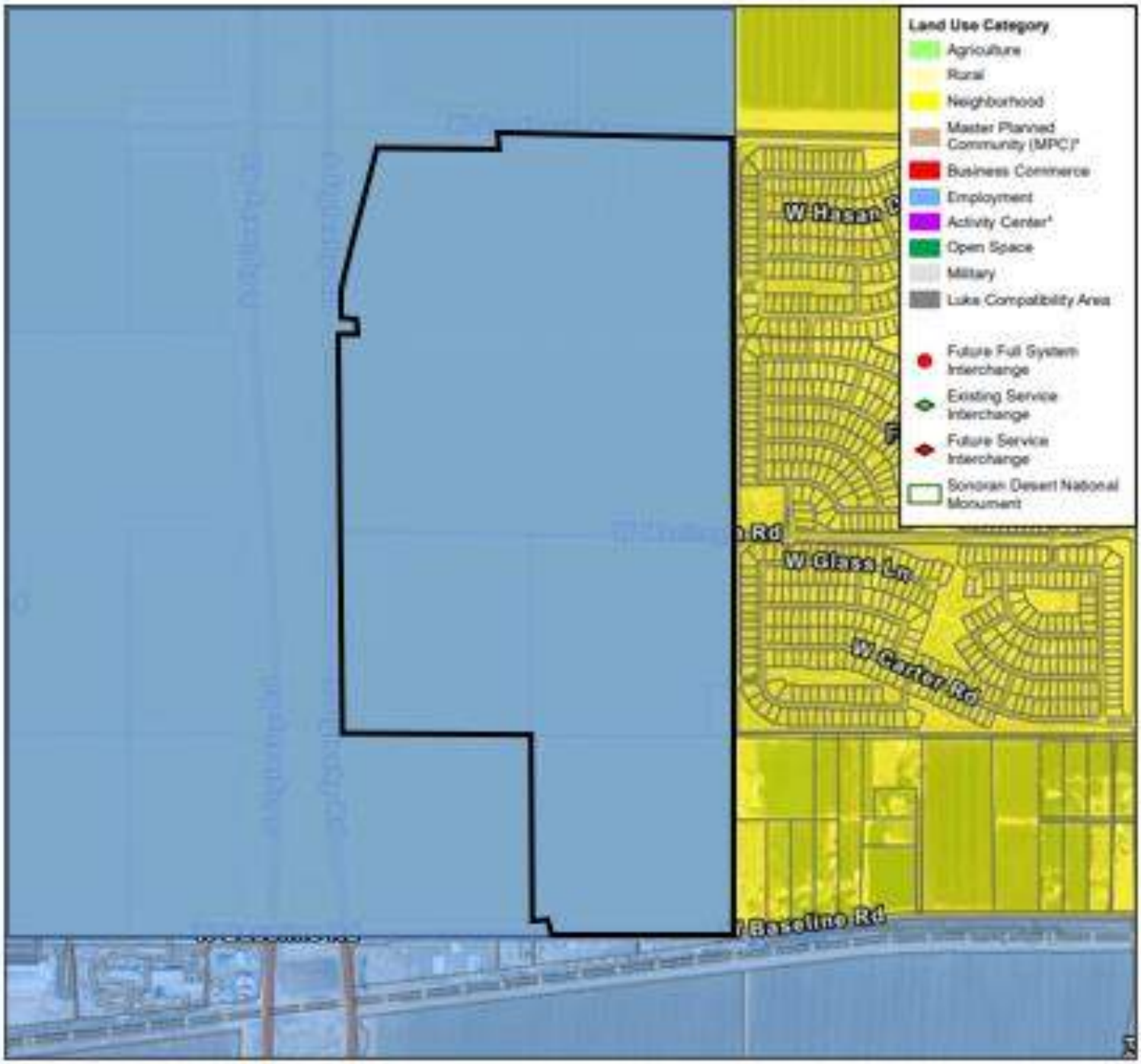


Exhibit 4
Existing Zoning Map

Existing Zoning Map

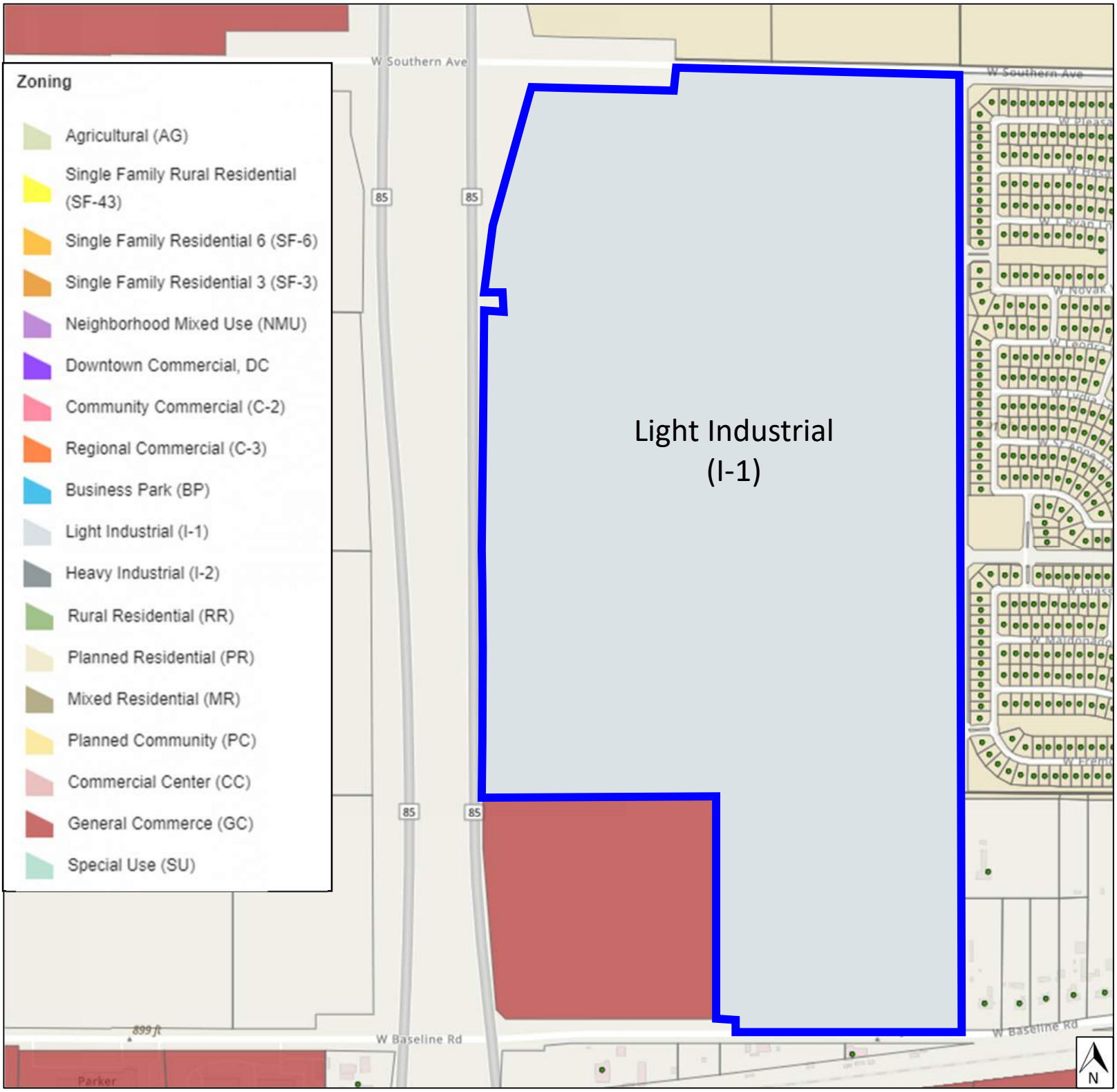


Exhibit 5
Approved Landscape Plan

TEN | 85
CONCEPTUAL LANDSCAPE PLAN

2R PLZSP-22-00015
RECEIVED JUN 28 2022
CITY OF BUCKEYE ~ WD

VISIBILITY EASEMENT RESTRICTIONS

1. Any object, wall, structure, mound or landscaping (mature) over 24" in height is not allowed within the visibility easement.
2. Trees canopies overhanging the easement shall be kept trimmed to a height no less than 7'.
3. No trees are to be installed within 6' of any fire hydrant.
4. No Trees, boulders are to be installed in the VNAE, PUE, R/W or within 6' back of curb.
5. Any vegetation including trees, shrubs, or ground-cover, may be removed for any reason if deemed necessary by by the City of Buckeye.

C.O.B EASEMENT RESTRICTION

In easements for the exclusive use of water, sanitary sewer, reclaimed water or any combination thereof, only ground-cover and bushes are allowed to be planted within the easement areas. No trees or boulders are allowed.

DRAINAGE EASEMENT RESTRICTION

No structures or vegetation of any kind that would impede the flow though the easement may be constructed, planted or allowed to grow within the drainage easement.

CIVIL COMPLIANCE NOTE:

ALL RIP RAP, UNDERGROUND PIPE, UTILITIES AND METERS HAVE BEEN COORDINATED WITH THE CIVIL ENGINEERING FIRM.

ROOT BARRIER NOTE:

All trees located in the public right of way shall recieve vertical 'Root Barrier'

a. Linear Root Barrier shall be used along public improvements that are only on one side of the tree.
b. Surrounded Root Barriers shall be used when a tree is near the sidewalk, or within the median.

Trees extending into the right of ways shall be trimmed to the following minimums standards.

a. 18'-0" over any public roadways.
b. 7'-0" over any public sidewalk.

All trees in or adjacent to the public ROW who's canopy at full maturity should overhang the public ROW

GENERAL LANDSCAPING NOTES

1. The Landscape Architect, or his representative, reserve the right to refuse any plant materials he deems unacceptable. (See specifications)
2. For clarification of discrepancies between the drawings and the site, it should be brought to the attention of the Landscape Architect prior to beginning work.
3. The Landscape Architect and the Planning division of development Services is to approve any and all substitutions.
4. Plant list provided for contractor's convenience only. Plans take precedence.
5. Double stake all 15 gallon, 24", and 36" box trees as required.
6. Sprinkler Contractor must guarantee 100% coverage.
7. Exposed soil in planters shall be raked and free from rocks, roots, weeds, etc.
8. Finished grade in groundcover, granite and lawn areas shall be 1" below adjacent header, paving, curbing, etc. 100 % coverage in all landscape areas.
9. Plants shall be quality material having a growth habit which is normal for the species and be sound, vigorous, healthy, and free from insects and injury.
10. Groundcover and/or decomposed granite shall extend under shrubs unless noted.
11. After all work is completed, the contractor shall remove all materials not incorporated in the Scope of Work from the job site.
12. Grading shall include all excavation, settlement, handling, import, distribution, transportation, and disposal necessary to bring ground to finish grade as shown on the plan. (once general contractor has provided finish grade within 1/10 of 1')
13. All earthwork is to be done so that all water drains away from all structures.
14. A pre-emergent herbicide is to be applied to all granite areas after the granite has been laid. Include all river rock areas, if applicable.
15. All underground conduits are to be located before digging. If doubt exists call Blue Stake at (602) 263-1100.
16. All material to be guaranteed for a period of ONE (1) YEAR after final acceptance.
17. Landscape contractor shall provide arbor guards to all trees located in turf areas.
18. Contractor is responsible for all required sleeving whether it is shown on on the plans or not.

CITY OF BUCKEYE GENERAL NOTES:

1. All lighting, signs, walls and ramadas and other structures require separate building approval and permits.
2. All plant material in rights-of-way are in compliance. with the Arizona Department of Water Resources Low Water Use Plant List for the Phoenix active Management Area.
3. All plant material and specifications are to conform to the Az Nurseryman association current standards.
4. All plant material will be guaranteed for a min. of (60) sixty days from the date of final approval. Any plant material that has to be replaced under the terms of the guarantee shall be guaranteed for an additional sixty days from the date of replacement.
5. If sidewalks and paving are part of landscape improvements indicate that all on-site paving will meet design and construction requirements of the Americans with disabilities act (ADA)
6. Maricopa County Dust Control and Landscape permits are required for all landscape work in residential, commercial, and industrial subdivisions.
7. Prior acceptance of any BACKFLOW device, it must be tested by a state certified tester.
8. All BACKFLOW devices shall be recertified yearly.
9. Contractor shall ensure a 24" inch clearance between sidewalks and plant material.
10. Sprinkler contractor must guarantee 100% coverage in all landscape areas.
11. Erosion control shall be required at all inlet/outlet locations.
12. An 18 gauge tracer wire, of a different color than the controller wires, shall be installed w/ 2" inch and larger main lines.
13. No vegetation shall be planted within drainage easements or tracts which would impede the flow of water over, under, or through the drainage easements or tracts.

CITY OF BUCKEYE NOTES FOR CONSTRUCTION

1. Substitutions in type, and/or deviation in size or quantity from the approved landscape or irrigation plans shall not be premitted without prior written approval from the city of Buckeye and Landscape Architect.
   a. (City contact information 623-349-6200)
   b. (Landscape Architect contact information 602-265-0320)
2. All existing landscape including trees, shrubs and irrigation systems that are designated to remain in the approved landscape plans, and are damaged or destroyed during construction, will be replaced in kind by the contractor.
3. The City shall be notified 24 hours prior to any construction work and inspections (623)-349-6200. Construction work concealed without inspection from the City shall be subject to exposure at the contractor's expense.
4. All construction shall conform with the latest MAG Standard Details and specifications and the City's Supplemental details and Specifications.
5. This set of plans will be reviewed for compliance with City requirements prior to issuance of construction permits. However, such review shall not prevent the City from requiring correction of errors in plans found to be in volition of any law or ordinance.
6. The approval is valid for a period of 1 year. Construction permits shall be obtained during this period or the plans shall be resubmitted for review and approval.
7. An approved set of plans shall be available on the job site at all times.
8. Right-of-way improvements shall not be accepted until 'As-Built' plans have been submitted and approved by the City. (See as-built requirements).
9. The developer is responsible for the removal or relocation of all obstructions with in the right-of-way prior to starting new construction.
10. The developer is responsible for arranging the relocation and associated costs of all utilities. A utility relocation schedule shall be submitted prior to the issuance of permits.
11. The developer is responsible for obtaining or dedicating all required rights-of -way and easements to the City prior to issuance of permits.
12. The contractor shall contact (Arizona 811) (602-263-1100) at least 48 hours prior to construction.
13. The contractor shall barricade construction sites at all times per the (City of Buckeye) Traffic Barricade Manual. When required by the City, a traffic control plan shall be submitted for approval in advance of construction.
14. The contractor may request a fire hydrant meter for construction water from the public works department Department. This meter should be ordered two working days prior to the start of construction. The unlawful removal of water from a fire hydrant is a violation of the municipal code, punishable by fine and/or imprisonment. Note: potable water not available for construction purposes.
15. Private on-site water and sewer lines shall be constructed in accordance with the Uniform Plumbing Code, N.F.P.A. and the Uniform Fire Code as adopted by the City.
16. Irrigation lines serving landscaping within public right of way shall be inspected by the public works dept. 623-349-6800 before backfilling.
17. Any above ground mechanical units that are placed adjacent to city right-of-way shall be properly screened in accordance with the development code.

14. Visibility restrictions:
    Any object, wall, structure, mound or landscaping (mature) over 24" in height is not allowed within the visibility easement.
    Trees canopies overhanging the easement shall be kept trimmed to a height no less than 7'.
    Trees canopies overhanging STREETS SHALL BE FOREVER MAINTAINED AT 18'-0" CLEAR.
    No trees are to be installed within 6' of any fire hydrant.
    No Trees, boulders are to be installed in the VNAE, PUE, R/W or within 6' back of curb.
    Any vegetation including trees, shrubs, or ground-cover, may be removed for any reason if deemed necessary by by the City of Buckeye.
15. This owner will provide all maintenance for this project (INCLUDING LANDSCAPE IN THE R.O.W.)
16. DG will be used for dust control, litter will be picked up weekly or more often if needed, weed control will be provided weekly
17. City of Buckeye is the supplier of potable water for this site.

Approved by the Planning and Zoning Commission on October 25, 2022 subject to Conditions a. through lll.

KEY MAP

NOT TO SCALE



UTILITY PROVIDERS

WATER PROVIDER: BUCKEYE WATER (POTABLE WATER)
ELECTRIC PROVIDER: APS

PROJECT DIRECTORY

ARCHITECT: LGE DESIGN GROUP
1200 NORTH 52ND STREET
PHOENIX, AZ 85008
ARCHITECT: BEN McRAE
PROJECT DIRECTOR: DANNY MACIAS
PHONE: 480-966-4001
E-MAIL: JOHNM@LGEDESIGNGROUP.COM

CIVIL ENGINEER: HUNTER ENGINEERING
"LITTLE LARRY" TALBOTT
10450 N. 74TH STREET #200
SCOTTSDALE, AZ 85258
480-991-3985
LTALBOTT@HUNTERENGINEERINGPC.COM

LANDSCAPE MAINTENANCE PROVIDER

LGE DESIGN BUILD
1200 N. 52ND STREET PHOENIX, AZ 85008
GRANT BLUNT 480-966-4001

CITY LANDSCAPE MAINTENANCE

THERE ARE NO PORTIONS OF THIS PROJECT THAT WILL BE MAINTAINED BY THE CITY.

TREE SIZE MATRIX

TOTAL TREES:	2,117
24" BOX TREES:	1,188 (56%)
36" BOX TREES:	542 (26%)
48" BOX TREES:	387 (18%)

T.J. McQUEEN & ASSOCIATES, INC.
LANDSCAPE ARCHITECTURE
URBAN DESIGN
SITE PLANNING
10450 N. 74th Street , Suite 120
Scottsdale, Arizona 85258
P.(602)265-0320
EMAIL: timmcqueen@tjmla.net

T.J. McQUEEN & ASSOC., INC. LANDSCAPE ARCHITECTURE (TJMLA) EXPRESSLY RESERVES ITS COMMON LAW COPYRIGHT AND OTHER PROPERTY RIGHTS IN THESE PLANS. THESE PLANS ARE NOT TO BE REPRODUCED, CHANGED OR COPIED IN ANY FORM OR MANNER WHATSOEVER, NOR ARE THEY TO BE ASSIGNED TO ANY THIRD PARTY WITHOUT FIRST OBTAINING THE EXPRESSED WRITTEN PERMISSION & CONSENT FROM TJMLA.

LGE DESIGNGROUP
1200 N. 52nd Street ■ Phoenix, AZ 85008
P: 480.966.4001

THESE DRAWINGS ARE AN INSTRUMENT OF SERVICE AND THE PROPERTY OF LGE DESIGN GROUP AND LGE DESIGN GROUP AND SHALL REMAIN THEIR PROPERTY. THE USE OF THESE DRAWINGS SHALL BE RESTRICTED TO THE ORIGINAL SITE FOR WHICH THEY WERE PREPARED AND PUBLICATION THEREOF IS EXPRESSLY LIMITED TO SUCH

TEN | 85
SOUTHEAST CORNER OF SOUTHERN AVE & STATE ROUTE 85
BUCKEYE, AZ

LGE | DESIGNBUILD

NUMBER	REVISION	DATE

LANDSCAPE ARCHITECT
27166
TIMOTHY J
McQUEEN
Date Signed
06/22/22
ARIZONA, USA
EXPIRES 06/30/2023

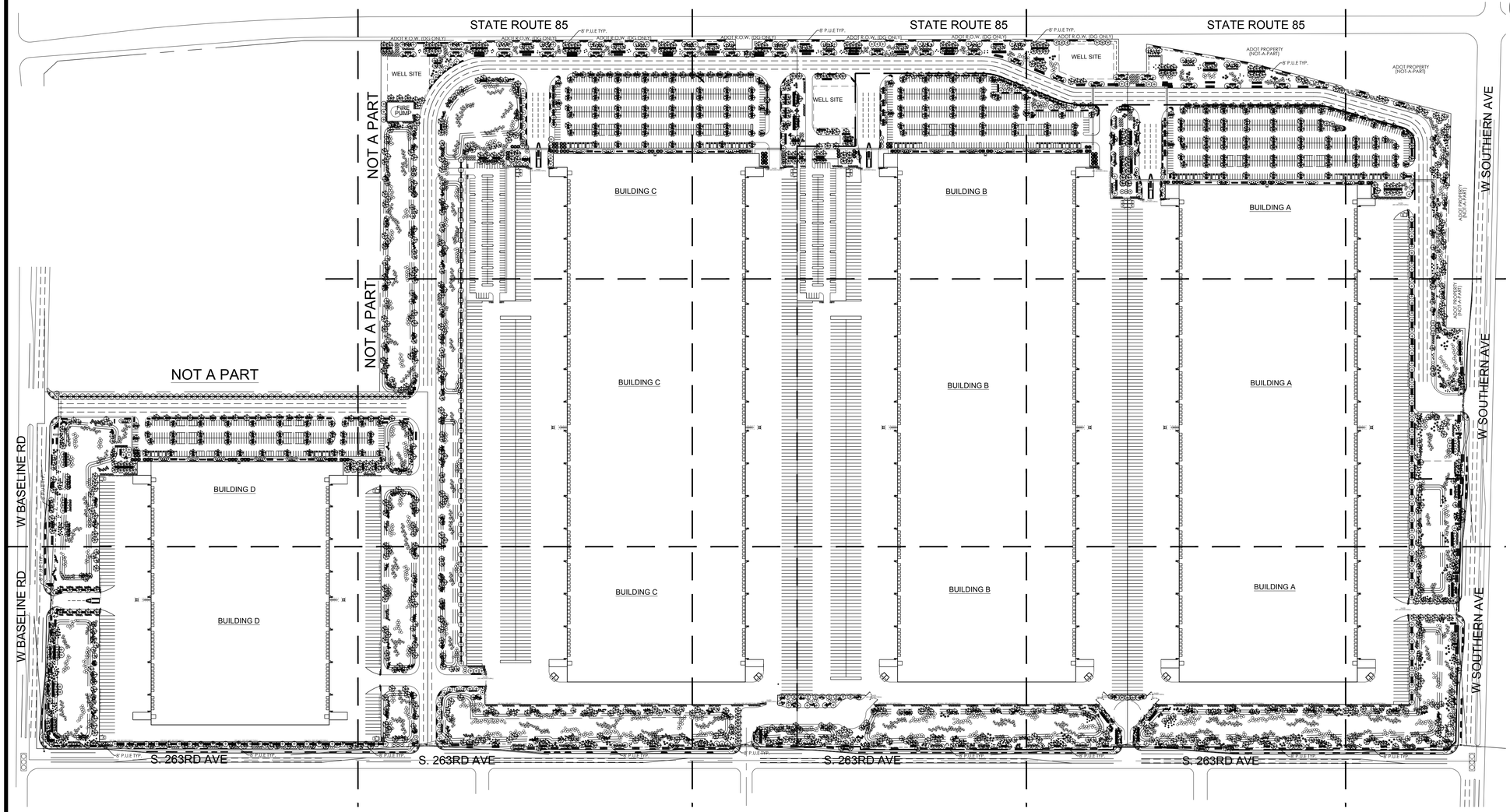
SHEET TITLE:

ISSUE DATE: 6/16/2022
DRAWN BY:
CHECKED BY: BJM
PROJECT No.:

SHEET: La.00

SITE PLAN SUBMITTAL - 06/20/2022 CASE # PLZSP-22-00015

PLZSP-22-00015



*DENOTE TREES THAT REQUIRE ROOT BARRIER

LANDSCAPE LEGEND

- CERCIDIUM 'HYBRID' DESERT MUSEUM PALO VERDE 24" BOX (993)
- ACACIA SALICINA WILLOW ACACIA 36" BOX (542)
- PROSOPIS 'RIO-SALADO' THORNLESS MESQUITE 48" BOX (387)
- SOPHORA SECUNDIFLORA TEXAS MOUNTAIN LAUREL 24" BOX (MULTI TRUNK) (106)
- CAESALPINIA CACALACO 'SMOOTHIE' CASCALOTE (SRP/APS APPROVED) 24" BOX (89)
- LEUCOPHYLLUM FRUTESCENS 'GREEN CLOUD' 5 GALLON (2324)
- MUHLENBERGIA RIGENS DEER GRASS 5 GALLON (1728)
- DODONEA VISCOSA HOP BUSH 5 GALLON (238)
- TECOMA 'ORANGE JUBILEE' ORANGE JUBILEE 5 GALLON (1753)
- HESPERALOE PARVIFLORA RED YUCCA 5 GALLON (2471)
- DASYLIRION WHEELERII DESERT SPOON 5 GALLON (1122)
- AGAVE GEMNIFLORA TWIN FLOWERED AGAVE 5 GALLON (608)
- BOUGAINVILLEA 'TORCH GLOW' BUSH BOUGAINVILLEA 5 GALLON (233)
- LANTANA MONTEVIDENSIS 'GOLD MOUND' 1 GALLON (3300)
- LANTANA MONTEVIDENSIS TRAILING PURPLE 1 GALLON (3376)
- ACACIA REDOLENS 'DESERT CARPET' tm 5 GALLON (1504)
- EREMOPHILA GLABRA MINGENEW GOLD 5 GALLON (1522)

1/2" SCREENED ROCK PROS MAHOGANY DECOMPOSED GRANITE
2" DEPTH IN ALL LANDSCAPE AREAS

6"-8" ROCK PROS MAHOGANY RIP-RAP
SEE CIVIL DRAWINGS FOR DEPTH

OVERALL PLAN
1"=200'-00"
(at 24" x 36" sheet size)

T.J. McQUEEN & ASSOCIATES, INC.
LANDSCAPE ARCHITECTURE
URBAN DESIGN
SITE PLANNING
10450 N. 74th Street , Suite 120
Scottsdale, Arizona 85258
P.(602)265-0320
EMAIL: timmcqueen@tjmla.net

T.J. McQUEEN & ASSOC., INC. LANDSCAPE ARCHITECTURE (TJMLA) EXPRESSLY RESERVES ITS COMMON LAW COPYRIGHT & OTHER PROPERTY RIGHTS IN THESE PLANS. THESE PLANS ARE NOT TO BE REPRODUCED, CHANGED OR COPIED IN COPIED IN ANY FORM OR MANNER WHATSOEVER, NOR ARE THEY TO BE ASSIGNED TO ANY THIRD PARTY WITHOUT FIRST OBTAINING THE EXPRESSED WRITTEN PERMISSION & CONSENT FROM TJMLA.

LGE | DESIGNGROUP
1200 N. 52nd Street ▪ Phoenix, AZ 85008
P: 480.966.4001

TEN | 85

SOUTHEAST CORNER OF SOUTHERN AVE & STATE ROUTE 85
BUCKEYE, AZ

LGE | DESIGNBUILD

NUMBER	REVISION	DATE

REGISTERED LANDSCAPE ARCHITECT
27166
TIMOTHY J. McQUEEN
Date Signed 05.05.22
ARIZONA USA
EXPIRES 06/30/2023

SHEET TITLE:

ISSUE DATE: 6/16/2022

DRAWN BY:

CHECKED BY: BJM

PROJECT No.:

SHEET: La.01

SITE PLAN SUBMITTAL - 06/20/2022 CASE # PLZSP-22-00015

397

STATE ROUTE 85

ADOT R.O.W. (DG ONLY)

ADOT R.O.W. (DG ONLY)

8' P.U.E TYP.

ADOT R.O.W. (DG ONLY)

NOT A PART

WELL SITE

FIRE PUMP

SITE WALL (SEE ARCHITECTURAL)

GATES (SEE ARCHITECTURAL)

SITE WALL (SEE ARCHITECTURAL)

SITE WALL (SEE ARCHITECTURAL)

BUILDING C

MATCH LINE SEE SHEET La.03

MATCH LINE SEE SHEET La.07

*DENOTE TREES THAT REQUIRE ROOT BARRIER

LANDSCAPE LEGEND

- CERCIDIUM 'HYBRID' DESERT MUSEUM PALO VERDE 24" BOX (993)
- ACACIA SALICINA WILLOW ACACIA 36" BOX (542)
- PROSOPIS 'RIO-SALADO' THORNLESS MESQUITE 48" BOX (387)
- SOPHORA SECUNDIFLORA TEXAS MOUNTAIN LAUREL 24" BOX (MULTI TRUNK) (106)
- CAESALPINIA CACALACO 'SMOOTHIE' CASCALOTE (SRP/APS APPROVED) 24" BOX (89)
- LEUCOPHYLLUM FRUTESCENS 'GREEN CLOUD' 5 GALLON (2324)
- MUHLENBERGIA RIGENS DEER GRASS 5 GALLON (1728)
- DODONEA VISCOSA HOP BUSH 5 GALLON (238)
- TECOMA 'ORANGE JUBILEE' ORANGE JUBILEE 5 GALLON (1753)
- HESPERALOE PARVIFLORA RED YUCCA 5 GALLON (2471)
- DASYLIRION WHEELERII DESERT SPOON 5 GALLON (1122)
- AGAVE GEMNIFLORA TWIN FLOWERED AGAVE 5 GALLON (608)
- BOUGAINVILLEA 'TORCH GLOW' BUSH BOUGAINVILLEA 5 GALLON (233)
- LANTANA MONTEVIDENSIS 'GOLD MOUND' 1 GALLON (3300)
- LANTANA MONTEVIDENSIS TRAILING PURPLE 1 GALLON (3376)
- ACACIA REDOLENS 'DESERT CARPET' tm 5 GALLON (1504)
- EREMOPHILA GLABRA MINGENEW GOLD 5 GALLON (1522)

1/2" SCREENED ROCK PROS MAHOGANY DECOMPOSED GRANITE 2" DEPTH IN ALL LANDSCAPE AREAS

6"-8" ROCK PROS MAHOGANY RIP-RAP SEE CIVIL DRAWINGS FOR DEPTH

LANDSCAPE PLAN

0' 25' 50' 100'

SCALE: 1"=50'-00"

T.J. McQUEEN & ASSOCIATES, INC.
LANDSCAPE ARCHITECTURE
URBAN DESIGN
SITE PLANNING
10450 N. 74th Street , Suite 120
Scottsdale, Arizona 85258
P.(602)265-0320
EMAIL: timmcqueen@tjmla.net

T.J. McQUEEN & ASSOC., INC. LANDSCAPE ARCHITECTURE (TJMLA) EXPRESSLY RESERVES ITS COMMON LAW COPYRIGHT & OTHER PROPERTY RIGHTS IN THESE PLANS. THESE PLANS ARE NOT TO BE REPRODUCED, CHANGED OR COPIED IN ANY FORM OR MANNER WHATSOEVER, NOR ARE THEY TO BE ASSIGNED TO ANY THIRD PARTY WITHOUT FIRST OBTAINING THE EXPRESSED WRITTEN PERMISSION & CONSENT FROM TJMLA.

LGE | DESIGNGROUP
1200 N. 52nd Street ▪ Phoenix, AZ 85008
P: 480.966.4001

THESE DRAWINGS ARE AN INSTRUMENTS OF SERVICE AND THE PROPERTY OF LGE DESIGNGROUP AND LGE DESIGNGROUP AND LGE DESIGNBUILD AND SHALL REMAIN THEIR PROPERTY. THE USE OF THIS DRAWING SHALL BE RESTRICTED TO THE ORIGINAL SITE FOR WHICH IT WAS PREPARED AND PUBLICATION THEREOF IS EXPRESSLY LIMITED TO SUCH

TEN | 85

SOUTHEAST CORNER OF SOUTHERN AVE & STATE ROUTE 85
BUCKEYE, AZ

LGE | DESIGNBUILD

NUMBER	REVISION	DATE

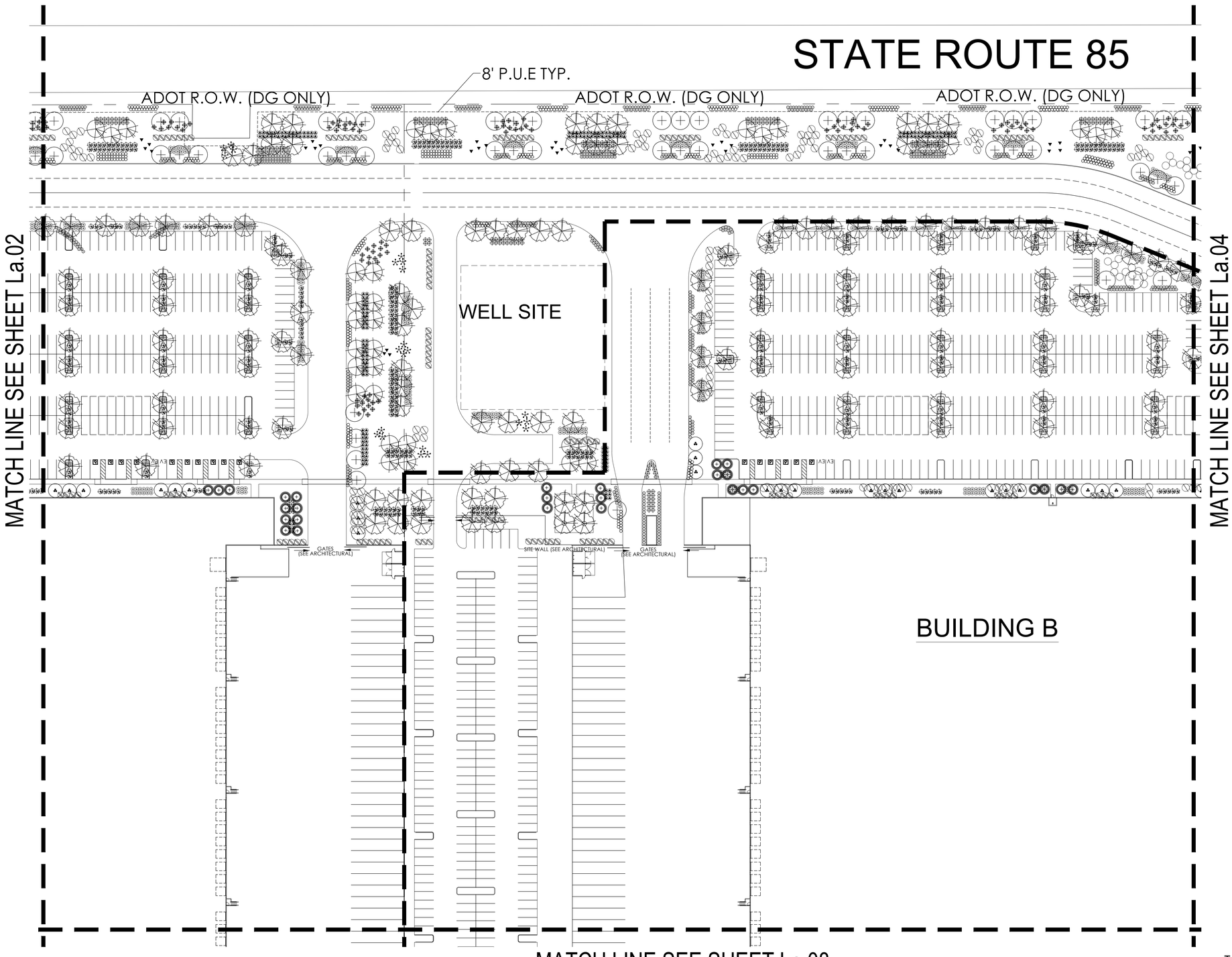
27166
TIMOTHY J.
McQUEEN
06.22.22
Date Signed
ARIZONA U.S.A.
EXPIRES 06/30/2023

SHEET TITLE:

ISSUE DATE: 6/16/2022
DRAWN BY:
CHECKED BY: BJM
PROJECT No.:

SHEET: La.02

SITE PLAN SUBMITTAL - 06/20/2022 CASE # PLZSP-22-00015



*DENOTE TREES THAT REQUIRE ROOT BARRIER

LANDSCAPE LEGEND

- CERCIDIUM 'HYBRID' DESERT MUSEUM PALO VERDE 24" BOX (993)
- ACACIA SALICINA WILLOW ACACIA 36" BOX (542)
- PROSOPIS 'RIO-SALADO' THORNLESS MESQUITE 48" BOX (387)
- SOPHORA SECUNDIFLORA TEXAS MOUNTAIN LAUREL 24" BOX (MULTI TRUNK) (106)
- CAESALPINIA CACALACO 'SMOOTHIE' CASCALOTE (SRP/APS APPROVED) 24" BOX (89)
- LEUCOPHYLLUM FRUTESCENS 'GREEN CLOUD' 5 GALLON (2324)
- MUHLENBERGIA RIGENS DEER GRASS 5 GALLON (1728)
- DODONEA VISCOSA HOP BUSH 5 GALLON (238)
- TECOMA 'ORANGE JUBILEE' ORANGE JUBILEE 5 GALLON (1753)
- HESPERALOE PARVIFLORA RED YUCCA 5 GALLON (2471)
- DASYLIRION WHEELERII DESERT SPOON 5 GALLON (1122)
- AGAVE GEMNIFLORA TWIN FLOWERED AGAVE 5 GALLON (608)
- BOUGAINVILLEA 'TORCH GLOW' BUSH BOUGAINVILLEA 5 GALLON (233)
- LANTANA MONTEVIDENSIS 'GOLD MOUND' 1 GALLON (3300)
- LANTANA MONTEVIDENSIS TRAILING PURPLE 1 GALLON (3376)
- ACACIA REDOLENS 'DESERT CARPET' tm 5 GALLON (1504)
- EREMOPHILA GLABRA MINGENEW GOLD 5 GALLON (1522)

1/2" SCREENED ROCK PROS MAHOGANY DECOMPOSED GRANITE 2" DEPTH IN ALL LANDSCAPE AREAS

6"-8" ROCK PROS MAHOGANY RIP-RAP SEE CIVIL DRAWINGS FOR DEPTH

LANDSCAPE PLAN

0' 25' 50' 100'
SCALE: 1"=50'-00"

T.J. McQUEEN & ASSOCIATES, INC.
LANDSCAPE ARCHITECTURE
URBAN DESIGN
SITE PLANNING
10450 N. 74th Street , Suite 120
Scottsdale, Arizona 85258
P.(602)265-0320
EMAIL: timmcqueen@tjmla.net

T.J. McQUEEN & ASSOC., INC. LANDSCAPE ARCHITECTURE (T.J.M.L.A.) EXPRESSLY RESERVES ITS COMMON LAW COPYRIGHT & OTHER PROPERTY RIGHTS IN THESE PLANS. THESE PLANS ARE NOT TO BE REPRODUCED, CHANGED OR COPIED IN ANY FORM OR MANNER WHATSOEVER, NOR ARE THEY TO BE ASSIGNED TO ANY THIRD PARTY WITHOUT FIRST OBTAINING THE EXPRESSED WRITTEN PERMISSION & CONSENT FROM T.J.M.L.A.

LGE | DESIGNGROUP
1200 N. 52nd Street ▪ Phoenix, AZ 85008
P: 480.966.4001

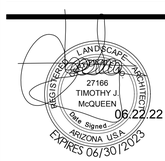
THESE DRAWINGS ARE AN INSTRUMENTS OF SERVICE AND THE PROPERTY OF LGE DESIGN GROUP AND LGE DESIGN BUILD AND SHALL REMAIN THEIR PROPERTY. THE USE OF THIS DRAWING SHALL BE RESTRICTED TO THE ORIGINAL SITE FOR WHICH IT WAS PREPARED AND PUBLICATION THEREOF IS EXPRESSLY LIMITED TO SUCH

TEN | 85

SOUTHEAST CORNER OF SOUTHERN AVE & STATE ROUTE 85
BUCKEYE, AZ

LGE | DESIGNBUILD

NUMBER	REVISION	DATE

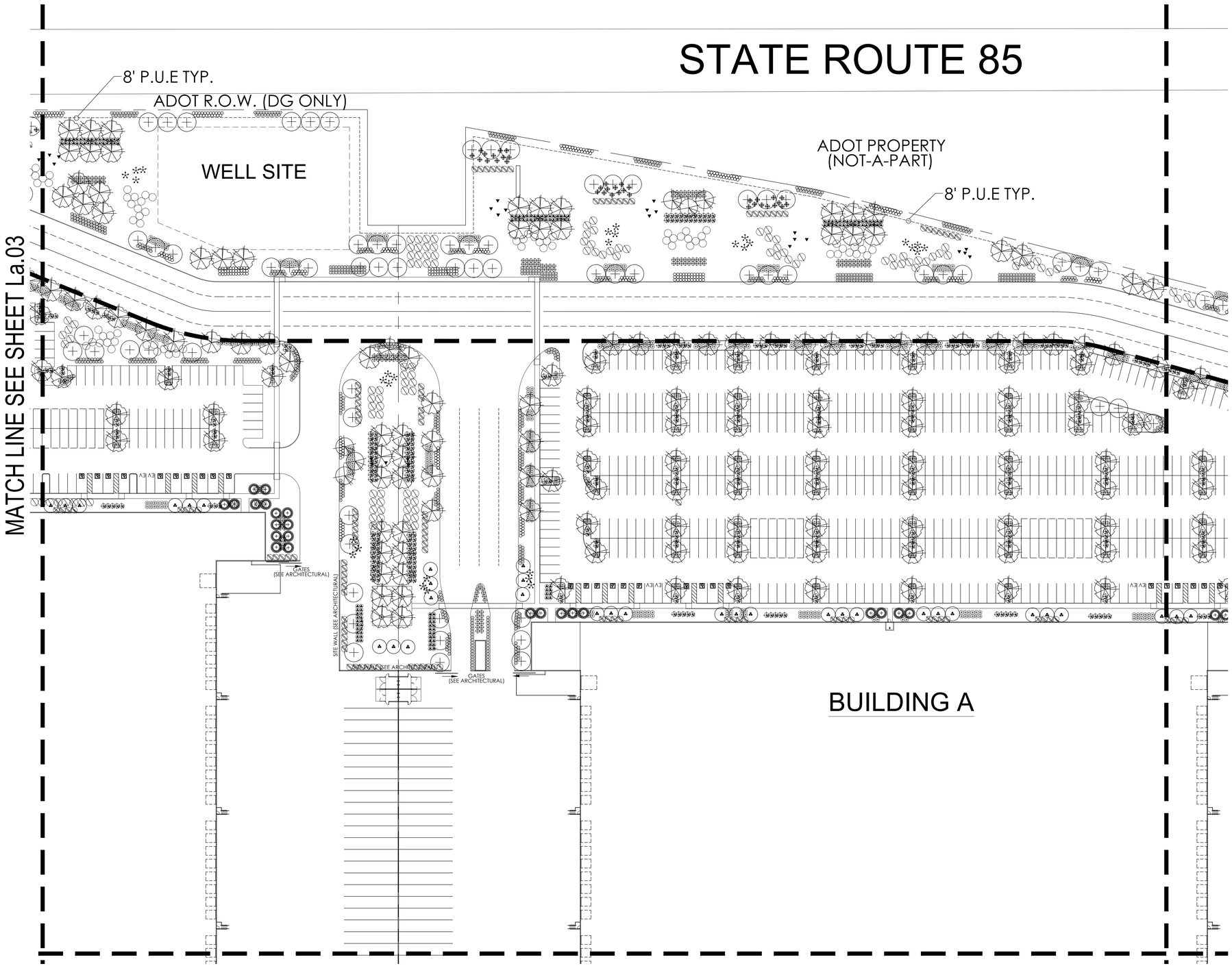


SHEET TITLE:

ISSUE DATE: 6/16/2022
DRAWN BY:
CHECKED BY: BJM
PROJECT No.:

SHEET: La.03

SITE PLAN SUBMITTAL - 06/20/2022 CASE # PLZSP-22-00015



*DENOTE TREES THAT REQUIRE ROOT BARRIER

LANDSCAPE LEGEND

- CERCIDIUM 'HYBRID' DESERT MUSEUM PALO VERDE 24" BOX (993)
- ACACIA SALICINA WILLOW ACACIA 36" BOX (542)
- PROSOPIS 'RIO-SALADO' THORNLESS MESQUITE 48" BOX (387)
- SOPHORA SECUNDIFLORA TEXAS MOUNTAIN LAUREL 24" BOX (MULTI TRUNK) (106)
- CAESALPINIA CACALACO 'SMOOTHIE' CASCALOTE (SRP/APS APPROVED) 24" BOX (89)
- LEUCOPHYLLUM FRUTESCENS 'GREEN CLOUD' 5 GALLON (2324)
- MUHLENBERGIA RIGENS DEER GRASS 5 GALLON (1728)
- DODONEA VISCOSA HOP BUSH 5 GALLON (238)
- TECOMA 'ORANGE JUBILEE' ORANGE JUBILEE 5 GALLON (1753)
- HESPERALOE PARVIFLORA RED YUCCA 5 GALLON (2471)
- DASYLIRION WHEELERII DESERT SPOON 5 GALLON (1122)
- AGAVE GEMNIFLORA TWIN FLOWERED AGAVE 5 GALLON (608)
- BOUGAINVILLEA 'TORCH GLOW' BUSH BOUGAINVILLEA 5 GALLON (233)
- LANTANA MONTEVIDENSIS 'GOLD MOUND' 1 GALLON (3300)
- LANTANA MONTEVIDENSIS TRAILING PURPLE 1 GALLON (3376)
- ACACIA REDOLENS 'DESERT CARPET' tm 5 GALLON (1504)
- EREMOPHILA GLABRA MINGENEW GOLD 5 GALLON (1522)

1/2" SCREENED ROCK PROS MAHOGANY DECOMPOSED GRANITE
2" DEPTH IN ALL LANDSCAPE AREAS

6"-8" ROCK PROS MAHOGANY RIP-RAP
SEE CIVIL DRAWINGS FOR DEPTH

LANDSCAPE PLAN

0' 25' 50' 100'
SCALE: 1"=50'-00"

T.J. McQUEEN & ASSOCIATES, INC.
LANDSCAPE ARCHITECTURE
URBAN DESIGN
SITE PLANNING
10450 N. 74th Street , Suite 120
Scottsdale, Arizona 85258
P.(602)265-0320
EMAIL: timmcqueen@tjmla.net

THESE DRAWINGS ARE AN INSTRUMENT OF SERVICE AND THE PROPERTY OF LGE DESIGN GROUP AND LGE DESIGN BUILD AND SHALL REMAIN THEIR PROPERTY. THE USE OF THIS DRAWING SHALL BE RESTRICTED TO THE ORIGINAL SITE FOR WHICH IT WAS PREPARED AND PUBLICATION THEREOF IS EXPRESSLY LIMITED TO SUCH
T.J. McQUEEN & ASSOC., INC. LANDSCAPE ARCHITECTURE (TJMLA) EXPRESSLY RESERVES ITS COMMON LAW COPYRIGHT & OTHER PROPERTY RIGHTS IN THESE PLANS. THESE PLANS ARE NOT TO BE REPRODUCED, CHANGED OR COPIED IN COPIED IN ANY FORM OR MANNER WHATSOEVER, NOR ARE THEY TO BE ASSIGNED TO ANY THIRD PARTY WITHOUT FIRST OBTAINING THE EXPRESSED WRITTEN PERMISSION & CONSENT FROM TJMLA.

LGE | DESIGNGROUP
1200 N. 52nd Street ▪ Phoenix, AZ 85008
P: 480.966.4001

TEN | 85
SOUTHEAST CORNER OF SOUTHERN AVE & STATE ROUTE 85
BUCKEYE, AZ

LGE | DESIGNBUILD

NUMBER	REVISION	DATE

REGISTERED LANDSCAPE ARCHITECT
27166
TIMOTHY J McQUEEN
06.22.22
Date Signed
ARIZONA U.S.A.
EXPIRES 06/30/2023

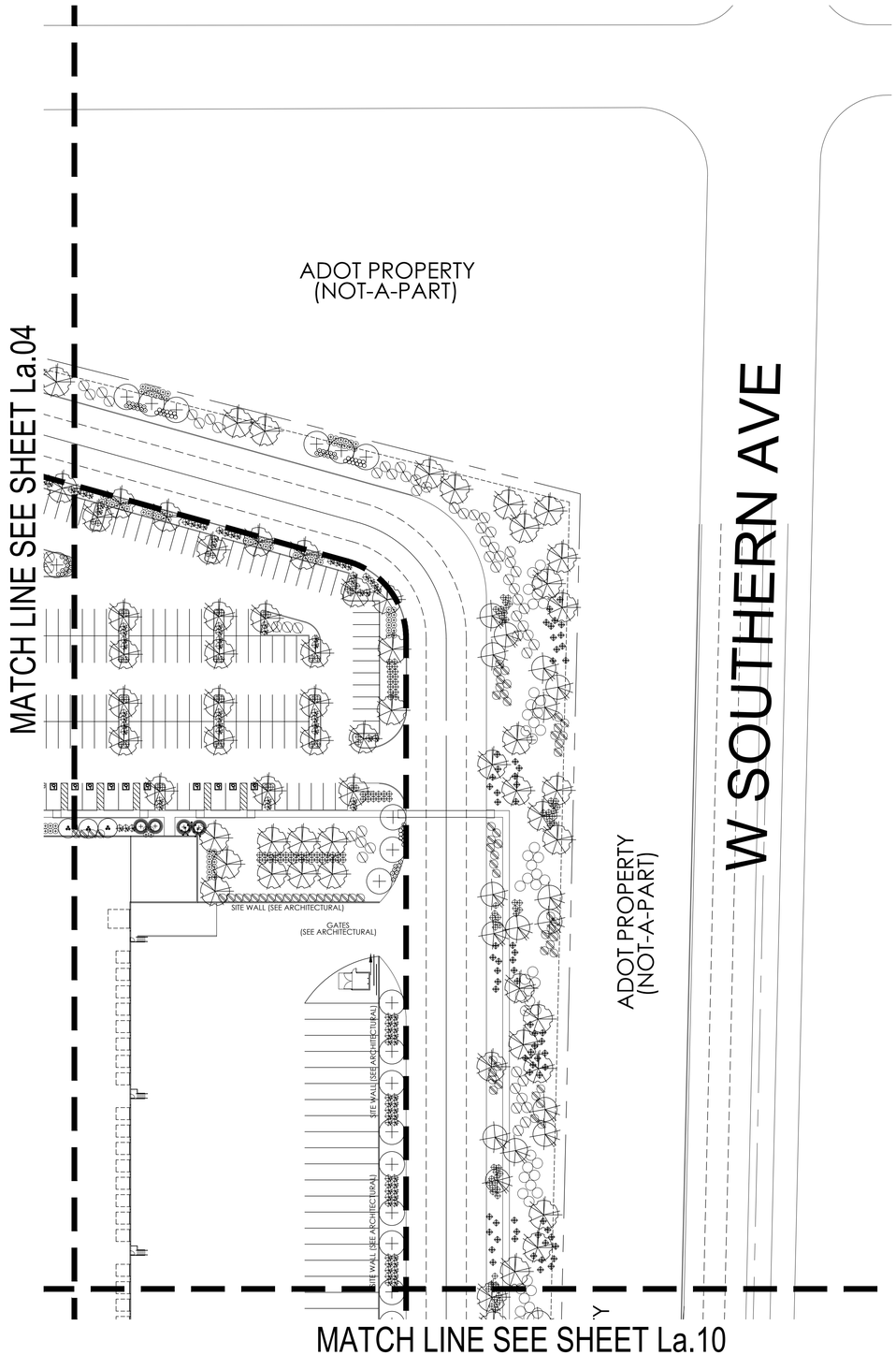
SHEET TITLE:

ISSUE DATE: 6/16/2022
DRAWN BY:
CHECKED BY: BJM
PROJECT No.:

SHEET: La.04

SITE PLAN SUBMITTAL - 06/20/2022
CASE # PLZSP-22-00015

PLZSP-22-00015



*DENOTE TREES THAT REQUIRE ROOT BARRIER

LANDSCAPE LEGEND

- CERCIDIUM 'HYBRID' DESERT MUSEUM PALO VERDE 24" BOX (993)
- ACACIA SALICINA WILLOW ACACIA 36" BOX (542)
- PROSOPIS 'RIO-SALADO' THORNLESS MESQUITE 48" BOX (387)
- SOPHORA SECUNDIFLORA TEXAS MOUNTAIN LAUREL 24" BOX (MULTI TRUNK) (106)
- CAESALPINIA CACALACO 'SMOOTHIE' CASCALOTE (SRP/APS APPROVED) 24" BOX (89)
- LEUCOPHYLLUM FRUTESCENS 'GREEN CLOUD' 5 GALLON (2324)
- MUHLENBERGIA RIGENS DEER GRASS 5 GALLON (1728)
- DODONEA VISCOSA HOP BUSH 5 GALLON (238)
- TECOMA 'ORANGE JUBILEE' ORANGE JUBILEE 5 GALLON (1753)
- HESPERALOE PARVIFLORA RED YUCCA 5 GALLON (2471)
- DASYLIRION WHEELERII DESERT SPOON 5 GALLON (1122)
- AGAVE GEMNIFLORA TWIN FLOWERED AGAVE 5 GALLON (608)
- BOUGAINVILLEA 'TORCH GLOW' BUSH BOUGAINVILLEA 5 GALLON (233)
- LANTANA MONTEVIDENSIS 'GOLD MOUND' 1 GALLON (3300)
- LANTANA MONTEVIDENSIS TRAILING PURPLE 1 GALLON (3376)
- ACACIA REDOLENS 'DESERT CARPET' tm 5 GALLON (1504)
- EREMOPHILA GLABRA MINGENEW GOLD 5 GALLON (1522)

1/2" SCREENED ROCK PROS MAHOGANY DECOMPOSED GRANITE
2" DEPTH IN ALL LANDSCAPE AREAS

- 6"-8" ROCK PROS MAHOGANY RIP-RAP SEE CIVIL DRAWINGS FOR DEPTH

LANDSCAPE PLAN

0' 25' 50' 100'
SCALE: 1"=50'-00"

T.J. McQUEEN & ASSOCIATES, INC.
LANDSCAPE ARCHITECTURE
URBAN DESIGN
SITE PLANNING

10450 N. 74th Street , Suite 120
Scottsdale, Arizona 85258
P.(602)265-0320

EMAIL: timmcqueen@tjmla.net

T.J. McQUEEN & ASSOC., INC. LANDSCAPE ARCHITECTURE (TJMLA) EXPRESSLY RESERVES ITS COMMON LAW COPYRIGHT & OTHER PROPERTY RIGHTS IN THESE PLANS. THESE PLANS ARE NOT TO BE REPRODUCED, CHANGED OR COPIED IN ANY FORM OR MANNER WHATSOEVER, NOR ARE THEY TO BE ASSIGNED TO ANY THIRD PARTY WITHOUT FIRST OBTAINING THE EXPRESSED WRITTEN PERMISSION & CONSENT FROM TJMLA.

LGE | DESIGNGROUP
1200 N. 52nd Street ▪ Phoenix, AZ 85008
P: 480.966.4001

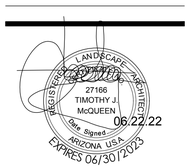
TEN | 85

SOUTHEAST CORNER OF SOUTHERN AVE & STATE ROUTE 85
BUCKEYE, AZ

THESE DRAWINGS ARE AN INSTRUMENTS OF SERVICE AND THE PROPERTY OF LGE DESIGN GROUP AND USE DESIGN BUILD AND SHALL REMAIN THEIR PROPERTY. THE USE OF THIS DRAWING SHALL BE RESTRICTED TO THE ORIGINAL SITE FOR WHICH IT WAS PREPARED AND PUBLICATION THEREOF IS EXPRESSLY LIMITED TO SUCH

LGE | DESIGNBUILD

NUMBER	REVISION	DATE



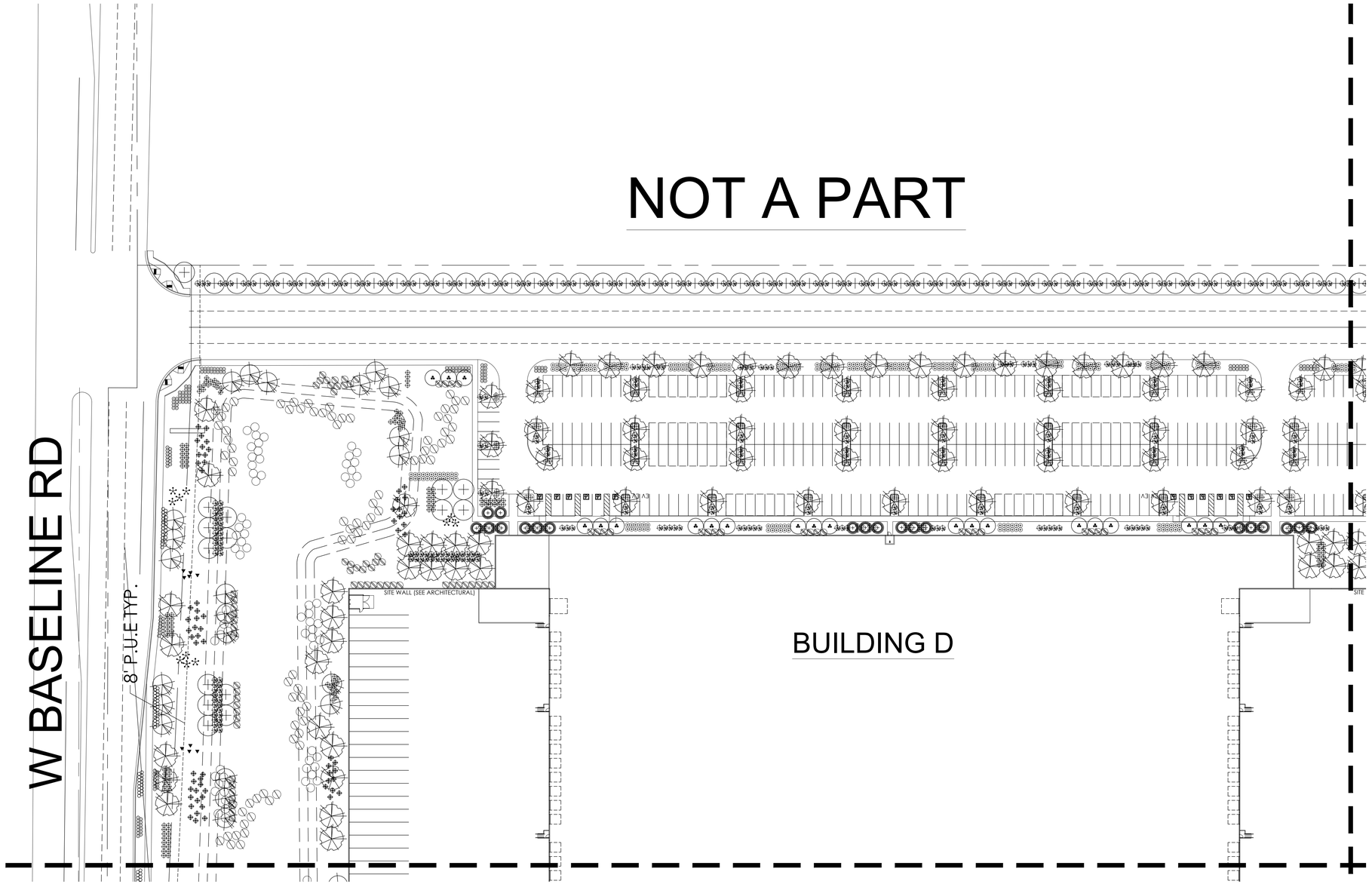
SHEET TITLE:

ISSUE DATE: 6/16/2022
DRAWN BY:
CHECKED BY: BJM
PROJECT No.:

SHEET: La.05

SITE PLAN SUBMITTAL - 06/20/2022
CASE # PLZSP-22-00015

NOT A PART



*DENOTE TREES THAT REQUIRE ROOT BARRIER

LANDSCAPE LEGEND

- CERCIDIUM 'HYBRID' DESERT MUSEUM PALO VERDE 24" BOX (993)
- ACACIA SALICINA WILLOW ACACIA 36" BOX (542)
- PROSOPIS 'RIO-SALADO' THORNLESS MESQUITE 48" BOX (387)
- SOPHORA SECUNDIFLORA TEXAS MOUNTAIN LAUREL 24" BOX (MULTI TRUNK) (106)
- CAESALPINIA CACALACO 'SMOOTHIE' CASCALOTE (SRP/APS APPROVED) 24" BOX (89)
- LEUCOPHYLLUM FRUTESCENS 'GREEN CLOUD' 5 GALLON (2324)
- MUHLENBERGIA RIGENS DEER GRASS 5 GALLON (1728)
- DODONEA VISCOSA HOP BUSH 5 GALLON (238)
- TECOMA 'ORANGE JUBILEE' ORANGE JUBILEE 5 GALLON (1753)
- HESPERALOE PARVIFLORA RED YUCCA 5 GALLON (2471)
- DASYLIRION WHEELERII DESERT SPOON 5 GALLON (1122)
- AGAVE GEMNIFLORA TWIN FLOWERED AGAVE 5 GALLON (608)
- BOUGAINVILLEA 'TORCH GLOW' BUSH BOUGAINVILLEA 5 GALLON (233)
- LANTANA MONTEVIDENSIS 'GOLD MOUND' 1 GALLON (3300)
- LANTANA MONTEVIDENSIS TRAILING PURPLE 1 GALLON (3376)
- ACACIA REDOLENS 'DESERT CARPET' tm 5 GALLON (1504)
- EREMOPHILA GLABRA MINGENEW GOLD 5 GALLON (1522)

1/2" SCREENED ROCK PROS MAHOGANY DECOMPOSED GRANITE
2" DEPTH IN ALL LANDSCAPE AREAS

6"-8" ROCK PROS MAHOGANY RIP-RAP
SEE CIVIL DRAWINGS FOR DEPTH

LANDSCAPE PLAN

0' 25' 50' 100'
SCALE: 1"=50'-00"

T.J. McQUEEN & ASSOCIATES, INC.
LANDSCAPE ARCHITECTURE
URBAN DESIGN
SITE PLANNING
10450 N. 74th Street , Suite 120
Scottsdale, Arizona 85258
P.(602)265-0320
EMAIL: timmcqueen@tjmla.net

T.J. McQUEEN & ASSOC., INC. LANDSCAPE ARCHITECTURE (TJMLA) EXPRESSLY RESERVES ITS COMMON LAW COPYRIGHT & OTHER PROPERTY RIGHTS IN THESE PLANS. THESE PLANS ARE NOT TO BE REPRODUCED, CHANGED OR COPIED IN COPIED IN ANY FORM OR MANNER WHATSOEVER, NOR ARE THEY TO BE ASSIGNED TO ANY THIRD PARTY WITHOUT FIRST OBTAINING THE EXPRESSED WRITTEN PERMISSION & CONSENT FROM TJMLA.

LGE | DESIGNGROUP
1200 N. 52nd Street ▪ Phoenix, AZ 85008
P: 480.966.4001

TEN | 85
SOUTHEAST CORNER OF SOUTHERN AVE & STATE ROUTE 85
BUCKEYE, AZ

THESE DRAWINGS ARE AN INSTRUMENT OF SERVICE AND THE PROPERTY OF LGE DESIGN GROUP AND LGE DESIGN BUILD AND SHALL REMAIN THEIR PROPERTY. THE USE OF THIS DRAWING SHALL BE RESTRICTED TO THE ORIGINAL SITE FOR WHICH IT WAS PREPARED AND PUBLICATION THEREOF IS EXPRESSLY LIMITED TO SUCH

LGE | DESIGNBUILD

NUMBER	REVISION	DATE

REGISTERED LANDSCAPE ARCHITECT
27166
TIMOTHY J McQUEEN
06.22.22
Date Signed
ARIZONA U.S.A.
EXPIRES 06/30/2023

SHEET TITLE:

ISSUE DATE: 6/16/2022
DRAWN BY:
CHECKED BY: BJM
PROJECT No.:

SHEET: La.06

SITE PLAN SUBMITTAL - 06/20/2022
CASE # PLZSP-22-00015

PLZSP-22-00015

NOT A PART

MATCH LINE SEE SHEET La.06

SITE WALL (SEE ARCHITECTURAL)

BUILDING C

MATCH LINE SEE SHEET La.08

MATCH LINE SEE SHEET La.12

*DENOTE TREES THAT REQUIRE ROOT BARRIER

LANDSCAPE LEGEND

- CERCIDIUM 'HYBRID' DESERT MUSEUM PALO VERDE 24" BOX (993)
- ACACIA SALICINA WILLOW ACACIA 36" BOX (542)
- PROSOPIS 'RIO-SALADO' THORNLESS MESQUITE 48" BOX (387)
- SOPHORA SECUNDIFLORA TEXAS MOUNTAIN LAUREL 24" BOX (MULTI TRUNK) (106)
- CAESALPINIA CACALACO 'SMOOTHIE' CASCALOTE (SRP/APS APPROVED) 24" BOX (89)
- LEUCOPHYLLUM FRUTESCENS 'GREEN CLOUD' 5 GALLON (2324)
- MUHLENBERGIA RIGENS DEER GRASS 5 GALLON (1728)
- DODONEA VISCOSA HOP BUSH 5 GALLON (238)
- TECOMA 'ORANGE JUBILEE' ORANGE JUBILEE 5 GALLON (1753)
- HESPERALOE PARVIFLORA RED YUCCA 5 GALLON (2471)
- DASYLIRION WHEELERII DESERT SPOON 5 GALLON (1122)
- AGAVE GEMNIFLORA TWIN FLOWERED AGAVE 5 GALLON (608)
- BOUGAINVILLEA 'TORCH GLOW' BUSH BOUGAINVILLEA 5 GALLON (233)
- LANTANA MONTEVIDENSIS 'GOLD MOUND' 1 GALLON (3300)
- LANTANA MONTEVIDENSIS TRAILING PURPLE 1 GALLON (3376)
- ACACIA REDOLENS 'DESERT CARPET' tm 5 GALLON (1504)
- EREMOPHILA GLABRA MINGENEW GOLD 5 GALLON (1522)

1/2" SCREENED ROCK PROS MAHOGANY DECOMPOSED GRANITE
2" DEPTH IN ALL LANDSCAPE AREAS

6"-8" ROCK PROS MAHOGANY RIP-RAP
SEE CIVIL DRAWINGS FOR DEPTH

LANDSCAPE PLAN

0' 25' 50' 100'
SCALE: 1"=50'-00"

T.J. McQUEEN & ASSOCIATES, INC.
LANDSCAPE ARCHITECTURE
URBAN DESIGN
SITE PLANNING
10450 N. 74th Street , Suite 120
Scottsdale, Arizona 85258
P.(602)265-0320
EMAIL: timmcqueen@tjmla.net

THESE DRAWINGS ARE AN INSTRUMENT OF SERVICE AND THE PROPERTY OF LGE DESIGN GROUP AND LGE DESIGN BUILD AND SHALL REMAIN THEIR PROPERTY. THE USE OF THIS DRAWING SHALL BE RESTRICTED TO THE ORIGINAL SITE FOR WHICH IT WAS PREPARED AND PUBLICATION THEREOF IS EXPRESSLY LIMITED TO SUCH
T.J. McQUEEN & ASSOC., INC. LANDSCAPE ARCHITECTURE (TJMLA) EXPRESSLY RESERVES ITS COMMON LAW COPYRIGHT & OTHER PROPERTY RIGHTS IN THESE PLANS. THESE PLANS ARE NOT TO BE REPRODUCED, CHANGED OR COPIED IN COPIED IN ANY FORM OR MANNER WHATSOEVER, NOR ARE THEY TO BE ASSIGNED TO ANY THIRD PARTY WITHOUT FIRST OBTAINING THE EXPRESSED WRITTEN PERMISSION & CONSENT FROM TJMLA.

LGE | DESIGNGROUP
1200 N. 52nd Street ▪ Phoenix, AZ 85008
P: 480.966.4001

TEN | 85
SOUTHEAST CORNER OF SOUTHERN AVE & STATE ROUTE 85
BUCKEYE, AZ

LGE | DESIGNBUILD

NUMBER	REVISION	DATE

REGISTERED LANDSCAPE ARCHITECT
27166
TIMOTHY J
McQUEEN
06.22.22
Date Signed
ARIZONA U.S.A.
EXPIRES 06/30/2023

SHEET TITLE:

ISSUE DATE: 6/16/2022
DRAWN BY:
CHECKED BY: BJM
PROJECT No.:

SHEET: La.07

SITE PLAN SUBMITTAL - 06/20/2022
CASE # PLZSP-22-00015

PLZSP-22-00015

MATCH LINE SEE SHEET La.03

MATCH LINE SEE SHEET La.07

MATCH LINE SEE SHEET La.09

BUILDING B

MATCH LINE SEE SHEET La.13

*DENOTE TREES THAT REQUIRE ROOT BARRIER

LANDSCAPE LEGEND

- CERCIDIUM 'HYBRID' DESERT MUSEUM PALO VERDE 24" BOX (993)
- ACACIA SALICINA WILLOW ACACIA 36" BOX (542)
- PROSOPIS 'RIO-SALADO' THORNLESS MESQUITE 48" BOX (387)
- SOPHORA SECUNDIFLORA TEXAS MOUNTAIN LAUREL 24" BOX (MULTI TRUNK) (106)
- CAESALPINIA CACALACO 'SMOOTHIE' CASCALOTE (SRP/APS APPROVED) 24" BOX (89)
- LEUCOPHYLLUM FRUTESCENS 'GREEN CLOUD' 5 GALLON (2324)
- MUHLENBERGIA RIGENS DEER GRASS 5 GALLON (1728)
- DODONEA VISCOSA HOP BUSH 5 GALLON (238)
- TECOMA 'ORANGE JUBILEE' ORANGE JUBILEE 5 GALLON (1753)
- HESPERALOE PARVIFLORA RED YUCCA 5 GALLON (2471)
- DASYLIRION WHEELERII DESERT SPOON 5 GALLON (1122)
- AGAVE GEMNIFLORA TWIN FLOWERED AGAVE 5 GALLON (608)
- BOUGAINVILLEA 'TORCH GLOW' BUSH BOUGAINVILLEA 5 GALLON (233)
- LANTANA MONTEVIDENSIS 'GOLD MOUND' 1 GALLON (3300)
- LANTANA MONTEVIDENSIS TRAILING PURPLE 1 GALLON (3376)
- ACACIA REDOLENS 'DESERT CARPET' tm 5 GALLON (1504)
- EREMOPHILA GLABRA MINGENEW GOLD 5 GALLON (1522)

1/2" SCREENED ROCK PROS MAHOGANY DECOMPOSED GRANITE 2" DEPTH IN ALL LANDSCAPE AREAS

- 6"-8" ROCK PROS MAHOGANY RIP-RAP SEE CIVIL DRAWINGS FOR DEPTH

LANDSCAPE PLAN

0' 25' 50' 100'
SCALE: 1"=50'-00"

T.J. McQUEEN & ASSOCIATES, INC.
LANDSCAPE ARCHITECTURE
URBAN DESIGN
SITE PLANNING

10450 N. 74th Street , Suite 120
Scottsdale, Arizona 85258
P.(602)265-0320

EMAIL: timmcqueen@tjmla.net

T.J. McQUEEN & ASSOC., INC. LANDSCAPE ARCHITECTURE (T.J.M.A.) EXPRESSLY RESERVES ITS COMMON LAW COPYRIGHT & OTHER PROPERTY RIGHTS IN THESE PLANS. THESE PLANS ARE NOT TO BE REPRODUCED, CHANGED OR COPIED IN ANY FORM OR MANNER WHATSOEVER, NOR ARE THEY TO BE ASSIGNED TO ANY THIRD PARTY WITHOUT FIRST OBTAINING THE EXPRESSED WRITTEN PERMISSION & CONSENT FROM T.J.M.A.

LGE | DESIGNGROUP
1200 N. 52nd Street ▪ Phoenix, AZ 85008
P: 480.966.4001

THE DRAWINGS ARE AN INSTRUMENTS OF SERVICE AND THE PROPERTY OF LGE DESIGN GROUP AND USE DESIGNS ON THIS SHEET IS RESTRICTED TO THE ORIGINAL SITE FOR WHICH IT WAS PREPARED AND PUBLICATION THEREOF IS EXPRESSLY LIMITED TO SUCH

TEN | 85

SOUTHEAST CORNER OF SOUTHERN AVE & STATE ROUTE 85
BUCKEYE, AZ

LGE | DESIGNBUILD

NUMBER	REVISION	DATE

REGISTERED LANDSCAPE ARCHITECT
27166
TIMOTHY J. McQUEEN
06.22.22
Date Signed
ARIZONA U.S.A.
EXPIRES 06/30/2023

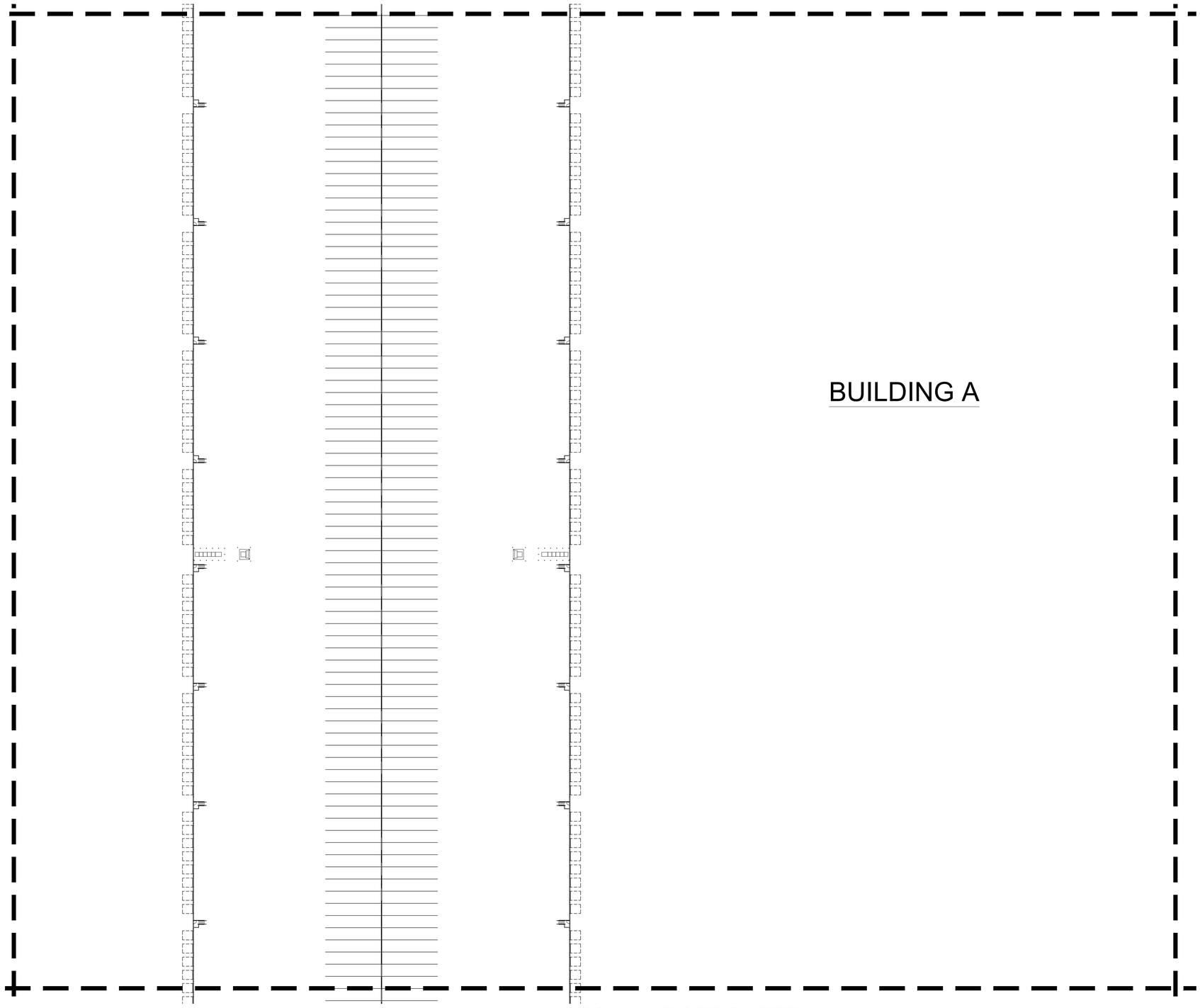
SHEET TITLE:

ISSUE DATE: 6/16/2022
DRAWN BY:
CHECKED BY: BJM
PROJECT No.:

SHEET: La.08

CASE # PLZSP-22-00015

SITE PLAN SUBMITTAL - 06/20/2022



*DENOTE TREES THAT REQUIRE ROOT BARRIER

LANDSCAPE LEGEND

- CERCIDIUM 'HYBRID' DESERT MUSEUM PALO VERDE 24" BOX (993)
- ACACIA SALICINA WILLOW ACACIA 36" BOX (542)
- PROSOPIS 'RIO-SALADO' THORNLESS MESQUITE 48" BOX (387)
- SOPHORA SECUNDIFLORA TEXAS MOUNTAIN LAUREL 24" BOX (MULTI TRUNK) (106)
- CAESALPINIA CACALACO 'SMOOTHIE' CASCALOTE (SRP/APS APPROVED) 24" BOX (89)
- LEUCOPHYLLUM FRUTESCENS 'GREEN CLOUD' 5 GALLON (2324)
- MUHLENBERGIA RIGENS DEER GRASS 5 GALLON (1728)
- DODONEA VISCOSA HOP BUSH 5 GALLON (238)
- TECOMA 'ORANGE JUBILEE' ORANGE JUBILEE 5 GALLON (1753)
- HESPERALOE PARVIFLORA RED YUCCA 5 GALLON (2471)
- DASYLIRION WHEELERII DESERT SPOON 5 GALLON (1122)
- AGAVE GEMNIFLORA TWIN FLOWERED AGAVE 5 GALLON (608)
- BOUGAINVILLEA 'TORCH GLOW' BUSH BOUGAINVILLEA 5 GALLON (233)
- LANTANA MONTEVIDENSIS 'GOLD MOUND' 1 GALLON (3300)
- LANTANA MONTEVIDENSIS TRAILING PURPLE 1 GALLON (3376)
- ACACIA REDOLENS 'DESERT CARPET' tm 5 GALLON (1504)
- EREMOPHILA GLABRA MINGENEW GOLD 5 GALLON (1522)

1/2" SCREENED ROCK PROS MAHOGANY DECOMPOSED GRANITE 2" DEPTH IN ALL LANDSCAPE AREAS

- 6"-8" ROCK PROS MAHOGANY RIP-RAP SEE CIVIL DRAWINGS FOR DEPTH

LANDSCAPE PLAN

0' 25' 50' 100'
SCALE: 1"=50'-00"

T.J. McQUEEN & ASSOCIATES, INC.
LANDSCAPE ARCHITECTURE
URBAN DESIGN
SITE PLANNING
10450 N. 74th Street . Suite 120
Scottsdale, Arizona 85258
P.(602)265-0320
EMAIL: timmcqueen@tjmla.net

THESE DRAWINGS ARE AN INSTRUMENT OF SERVICE AND THE PROPERTY OF LGE DESIGN GROUP AND LGE DESIGN BUILD AND SHALL REMAIN THEIR PROPERTY. THE USE OF THIS DRAWING SHALL BE RESTRICTED TO THE ORIGINAL SITE FOR WHICH IT WAS PREPARED AND PUBLICATION THEREOF IS EXPRESSLY LIMITED TO SUCH
T.J. McQUEEN & ASSOC., INC. LANDSCAPE ARCHITECTURE, IT,M&A,EXPRESSLY RESERVES ITS COMMON LAW COPYRIGHT & OTHER PROPERTY RIGHTS IN THESE PLANS. THESE PLANS ARE NOT TO BE REPRODUCED, CHANGED OR COPIED IN ANY FORM OR MANNER WHATSOEVER, NOR ARE THEY TO BE ASSIGNED TO ANY THIRD PARTY WITHOUT FIRST OBTAINING THE EXPRESSED WRITTEN PERMISSION & CONSENT FROM T.M&A.

LGE | DESIGNGROUP
1200 N. 52nd Street ▪ Phoenix, AZ 85008
P: 480.966.4001

TEN | 85
SOUTHEAST CORNER OF SOUTHERN AVE & STATE ROUTE 85
BUCKEYE, AZ

LGE | DESIGNBUILD

NUMBER	REVISION	DATE

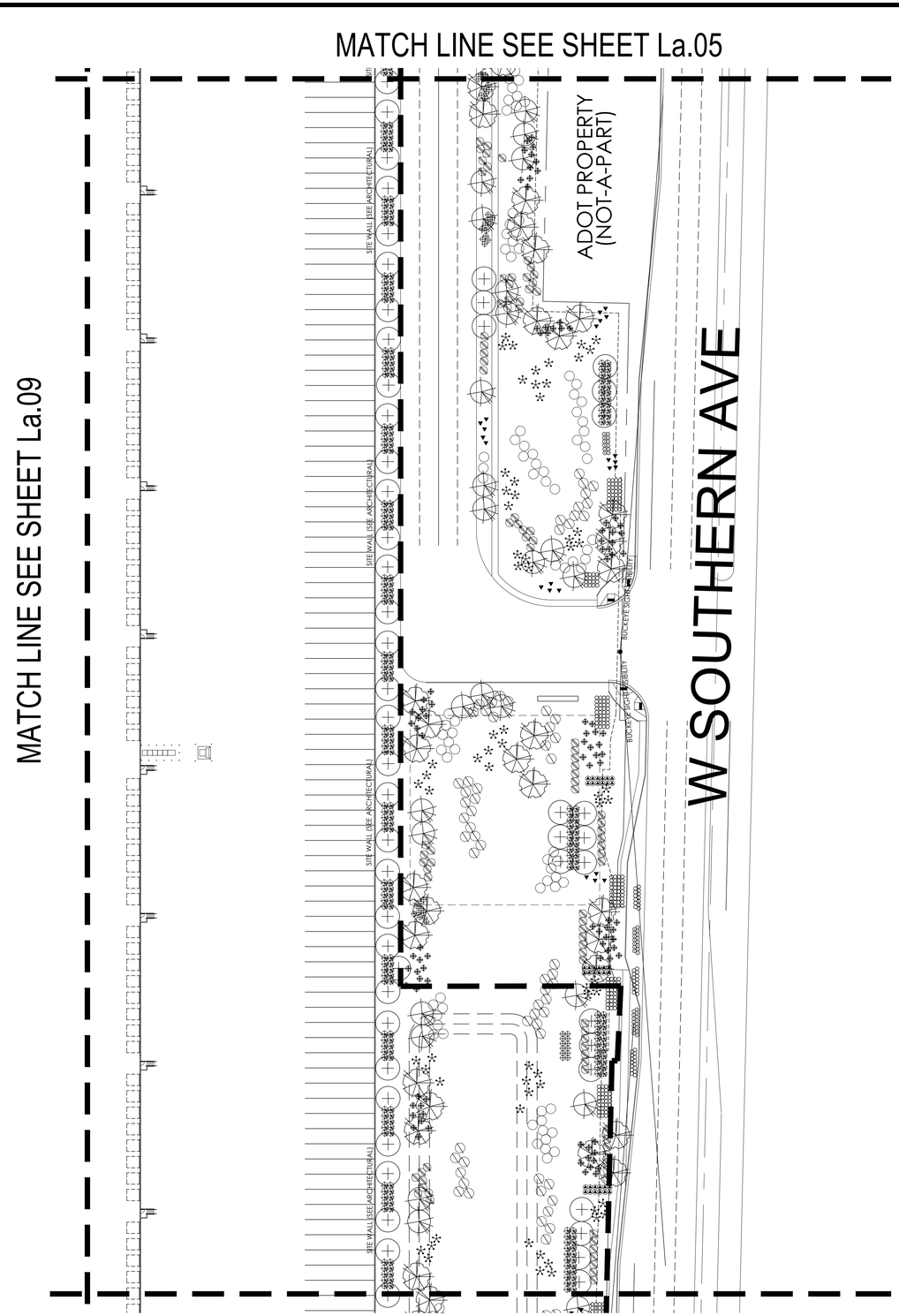


SHEET TITLE:

ISSUE DATE: 6/16/2022
DRAWN BY:
CHECKED BY: BJM
PROJECT No.:

SHEET: La.09

SITE PLAN SUBMITTAL - 06/20/2022
CASE # PLZSP-22-00015



*DENOTE TREES THAT REQUIRE ROOT BARRIER

LANDSCAPE LEGEND

- CERCIDIUM 'HYBRID' DESERT MUSEUM PALO VERDE 24" BOX (993)
- ACACIA SALICINA WILLOW ACACIA 36" BOX (542)
- PROSOPIS 'RIO-SALADO' THORNLESS MESQUITE 48" BOX (387)
- SOPHORA SECUNDIFLORA TEXAS MOUNTAIN LAUREL 24" BOX (MULTI TRUNK) (106)
- CAESALPINIA CACALACO 'SMOOTHIE' CASCALOTE (SRP/APS APPROVED) 24" BOX (89)
- LEUCOPHYLLUM FRUTESCENS 'GREEN CLOUD' 5 GALLON (2324)
- MUHLENBERGIA RIGENS DEER GRASS 5 GALLON (1728)
- DODONEA VISCOSA HOP BUSH 5 GALLON (238)
- TECOMA 'ORANGE JUBILEE' ORANGE JUBILEE 5 GALLON (1753)
- HESPERALOE PARVIFLORA RED YUCCA 5 GALLON (2471)
- DASYLIRION WHEELERII DESERT SPOON 5 GALLON (1122)
- AGAVE GEMNIFLORA TWIN FLOWERED AGAVE 5 GALLON (608)
- BOUGAINVILLEA 'TORCH GLOW' BUSH BOUGAINVILLEA 5 GALLON (233)
- LANTANA MONTEVIDENSIS 'GOLD MOUND' 1 GALLON (3300)
- LANTANA MONTEVIDENSIS TRAILING PURPLE 1 GALLON (3376)
- ACACIA REDOLENS 'DESERT CARPET' tm 5 GALLON (1504)
- EREMOPHILA GLABRA MINGENEW GOLD 5 GALLON (1522)

1/2" SCREENED ROCK PROS MAHOGANY DECOMPOSED GRANITE
2" DEPTH IN ALL LANDSCAPE AREAS

6"-8" ROCK PROS MAHOGANY RIP-RAP
SEE CIVIL DRAWINGS FOR DEPTH

LANDSCAPE PLAN

0' 25' 50' 100'
SCALE: 1"=50'-00"

T.J. McQUEEN & ASSOCIATES, INC.
LANDSCAPE ARCHITECTURE
URBAN DESIGN
SITE PLANNING
10450 N. 74th Street , Suite 120
Scottsdale, Arizona 85258
P.(602)265-0320
EMAIL: timmcqueen@tjmla.net

THESE DRAWINGS ARE AN INSTRUMENT OF SERVICE AND THE PROPERTY OF LGE DESIGN GROUP AND LGE DESIGN BUILD AND SHALL REMAIN THEIR PROPERTY. THE USE OF THIS DRAWING SHALL BE RESTRICTED TO THE ORIGINAL SITE FOR WHICH IT WAS PREPARED AND PUBLICATION THEREOF IS EXPRESSLY LIMITED TO SUCH
T.J. McQUEEN & ASSOC., INC. LANDSCAPE ARCHITECTURE (TJMLA) EXPRESSLY RESERVES ITS COMMON LAW COPYRIGHT & OTHER PROPERTY RIGHTS IN THESE PLANS. THESE PLANS ARE NOT TO BE REPRODUCED, CHANGED OR COPIED IN COPIED IN ANY FORM OR MANNER WHATSOEVER, NOR ARE THEY TO BE ASSIGNED TO ANY THIRD PARTY WITHOUT FIRST OBTAINING THE EXPRESSED WRITTEN PERMISSION & CONSENT FROM TJMLA.

LGE | DESIGNGROUP
1200 N. 52nd Street ▪ Phoenix, AZ 85008
P: 480.966.4001

TEN | 85
SOUTHEAST CORNER OF SOUTHERN AVE & STATE ROUTE 85
BUCKEYE, AZ

LGE | DESIGNBUILD

NUMBER	REVISION	DATE

REGISTERED LANDSCAPE ARCHITECT
27166
TIMOTHY J
McQUEEN
06.22.22
Date Signed
ARIZONA U.S.A.
EXPIRES 06/30/2023

SHEET TITLE:

ISSUE DATE: 6/16/2022
DRAWN BY:
CHECKED BY: BJM
PROJECT No.:

SHEET: La.10

SITE PLAN SUBMITTAL - 06/20/2022
CASE # PLZSP-22-00015

MATCH LINE SEE SHEET La.06

W BASELINE RD

8' P.U.E TYP.

BUILDING D

MATCH LINE SEE SHEET La.12

SITE WALL (SEE ARCHITECTURAL)

8' P.U.E TYP.

8' P.U.E TYP.

S. 263RD AVE

LANDSCAPE LEGEND

*DENOTE TREES THAT REQUIRE ROOT BARRIER

- CERCIDIUM 'HYBRID' DESERT MUSEUM PALO VERDE 24" BOX (993)
- ACACIA SALICINA WILLOW ACACIA 36" BOX (542)
- PROSOPIS 'RIO-SALADO' THORNLESS MESQUITE 48" BOX (387)
- SOPHORA SECUNDIFLORA TEXAS MOUNTAIN LAUREL 24" BOX (MULTI TRUNK) (106)
- CAESALPINIA CACALACO 'SMOOTHIE' CASCALOTE (SRP/APS APPROVED) 24" BOX (89)
- LEUCOPHYLLUM FRUTESCENS 'GREEN CLOUD' 5 GALLON (2324)
- MUHLENBERGIA RIGENS DEER GRASS 5 GALLON (1728)
- DODONEA VISCOSA HOP BUSH 5 GALLON (238)
- TECOMA 'ORANGE JUBILEE' ORANGE JUBILEE 5 GALLON (1753)
- HESPERALOE PARVIFLORA RED YUCCA 5 GALLON (2471)
- DASYLIRION WHEELERII DESERT SPOON 5 GALLON (1122)
- AGAVE GEMNIFLORA TWIN FLOWERED AGAVE 5 GALLON (608)
- BOUGAINVILLEA 'TORCH GLOW' BUSH BOUGAINVILLEA 5 GALLON (233)
- LANTANA MONTEVIDENSIS 'GOLD MOUND' 1 GALLON (3300)
- LANTANA MONTEVIDENSIS TRAILING PURPLE 1 GALLON (3376)
- ACACIA REDOLENS 'DESERT CARPET' tm 5 GALLON (1504)
- EREMOPHILA GLABRA MINGENEW GOLD 5 GALLON (1522)

1/2" SCREENED ROCK PROS MAHOGANY DECOMPOSED GRANITE 2" DEPTH IN ALL LANDSCAPE AREAS

- 6"-8" ROCK PROS MAHOGANY RIP-RAP SEE CIVIL DRAWINGS FOR DEPTH

LANDSCAPE PLAN

0' 25' 50' 100'
SCALE: 1"=50'-00"

T.J. McQUEEN & ASSOCIATES, INC.
LANDSCAPE ARCHITECTURE
URBAN DESIGN
SITE PLANNING

10450 N. 74th Street , Suite 120
Scottsdale, Arizona 85258
P.(602)265-0320

EMAIL: timmcqueen@tjmla.net

T.J. McQUEEN & ASSOC., INC. LANDSCAPE ARCHITECTURE IT (MA-A) EXPRESSLY RESERVES ITS COMMON LAW COPYRIGHT & OTHER PROPERTY RIGHTS IN THESE PLANS. THESE PLANS ARE NOT TO BE REPRODUCED, CHANGED OR COPIED IN COPIED IN ANY FORM OR MANNER WHATSOEVER, NOR ARE THEY TO BE ASSIGNED TO ANY THIRD PARTY WITHOUT FIRST OBTAINING THE EXPRESSED WRITTEN PERMISSION & CONSENT FROM TJMLA.

LGE | DESIGNGROUP
1200 N. 52nd Street ▪ Phoenix, AZ 85008
P: 480.966.4001

THESE DRAWINGS ARE AN INSTRUMENT OF SERVICE AND THE PROPERTY OF LGE DESIGN GROUP AND USE DESIGN BUILD AND SHALL REMAIN THEIR PROPERTY. THE USE OF THIS DRAWING SHALL BE RESTRICTED TO THE ORIGINAL SITE FOR WHICH IT WAS PREPARED AND PUBLICATION THEREOF IS EXPRESSLY LIMITED TO SUCH

TEN | 85

SOUTHEAST CORNER OF SOUTHERN AVE & STATE ROUTE 85
BUCKEYE, AZ

LGE | DESIGNBUILD

NUMBER	REVISION	DATE

REGISTERED LANDSCAPE ARCHITECT
27166
TIMOTHY J. McQUEEN
06/22/22
Date Signed
ARIZONA U.S.A.
EXPIRES 06/30/2023

SHEET TITLE:

ISSUE DATE: 6/16/2022
DRAWN BY:
CHECKED BY: BJM
PROJECT No.:

SHEET: La.11

SITE PLAN SUBMITTAL - 06/20/2022
CASE # PLZSP-22-00015

MATCH LINE SEE SHEET La.07

MATCH LINE SEE SHEET La.11

MATCH LINE SEE SHEET La.13

BUILDING C

SITE WALL (SEE ARCHITECTURAL)

GATES (SEE ARCHITECTURAL)

BUCKEYE SIGHT VISIBILITY

8' P.U.E TYP.

S. 263RD AVE

*DENOTE TREES THAT REQUIRE ROOT BARRIER

LANDSCAPE LEGEND

- CERCIDIUM 'HYBRID' DESERT MUSEUM PALO VERDE 24" BOX (993)
- ACACIA SALICINA WILLOW ACACIA 36" BOX (542)
- PROSOPIS 'RIO-SALADO' THORNLESS MESQUITE 48" BOX (387)
- SOPHORA SECUNDIFLORA TEXAS MOUNTAIN LAUREL 24" BOX (MULTI TRUNK) (106)
- CAESALPINIA CACALACO 'SMOOTHIE' CASCALOTE (SRP/APS APPROVED) 24" BOX (89)
- LEUCOPHYLLUM FRUTESCENS 'GREEN CLOUD' 5 GALLON (2324)
- MUHLENBERGIA RIGENS DEER GRASS 5 GALLON (1728)
- DODONEA VISCOSA HOP BUSH 5 GALLON (238)
- TECOMA 'ORANGE JUBILEE' ORANGE JUBILEE 5 GALLON (1753)
- HESPERALOE PARVIFLORA RED YUCCA 5 GALLON (2471)
- DASYLIRION WHEELERII DESERT SPOON 5 GALLON (1122)
- AGAVE GEMNIFLORA TWIN FLOWERED AGAVE 5 GALLON (608)
- BOUGAINVILLEA 'TORCH GLOW' BUSH BOUGAINVILLEA 5 GALLON (233)
- LANTANA MONTEVIDENSIS 'GOLD MOUND' 1 GALLON (3300)
- LANTANA MONTEVIDENSIS TRAILING PURPLE 1 GALLON (3376)
- ACACIA REDOLENS 'DESERT CARPET' tm 5 GALLON (1504)
- EREMOPHILA GLABRA MINGENEW GOLD 5 GALLON (1522)

1/2" SCREENED ROCK PROS MAHOGANY DECOMPOSED GRANITE 2" DEPTH IN ALL LANDSCAPE AREAS

- 6"-8" ROCK PROS MAHOGANY RIP-RAP SEE CIVIL DRAWINGS FOR DEPTH

LANDSCAPE PLAN

0' 25' 50' 100'

SCALE: 1"=50'-00"

T.J. McQUEEN & ASSOCIATES, INC.
LANDSCAPE ARCHITECTURE
URBAN DESIGN
SITE PLANNING

10450 N. 74th Street , Suite 120
Scottsdale, Arizona 85258
P.(602)265-0320

EMAIL: timmcqueen@tjmla.net

T.J. McQUEEN & ASSOC., INC. LANDSCAPE ARCHITECTURE (TJMLA) EXPRESSLY RESERVES ITS COMMON LAW COPYRIGHT & OTHER PROPERTY RIGHTS IN THESE PLANS. THESE PLANS ARE NOT TO BE REPRODUCED, CHANGED OR COPIED IN COPIED IN ANY FORM OR MANNER WHATSOEVER, NOR ARE THEY TO BE ASSIGNED TO ANY THIRD PARTY WITHOUT FIRST OBTAINING THE EXPRESSED WRITTEN PERMISSION & CONSENT FROM TJMLA.

LGE | DESIGNGROUP
1200 N. 52nd Street ▪ Phoenix, AZ 85008
P: 480.966.4001

THESE DRAWINGS ARE AN INSTRUMENT OF SERVICE AND THE PROPERTY OF LGE DESIGN GROUP AND LGE DESIGN BUILD AND SHALL REMAIN THEIR PROPERTY. THE USE OF THIS DRAWING SHALL BE RESTRICTED TO THE ORIGINAL SITE FOR WHICH IT WAS PREPARED AND PUBLICATION THEREOF IS EXPRESSLY LIMITED TO SUCH

TEN | 85

SOUTHEAST CORNER OF SOUTHERN AVE & STATE ROUTE 85
BUCKEYE, AZ

LGE | DESIGNBUILD

NUMBER	REVISION	DATE

REGISTERED LANDSCAPE ARCHITECT
27166
TIMOTHY J. McQUEEN
06.22.22
Date Signed
ARIZONA, U.S.A.
EXPIRES 06/30/2023

SHEET TITLE:

ISSUE DATE: 6/16/2022
DRAWN BY:
CHECKED BY: BJM
PROJECT No.:

SHEET: La.12

SITE PLAN SUBMITTAL - 06/20/2022 CASE # PLZSP-22-00015

MATCH LINE SEE SHEET La.08

MATCH LINE SEE SHEET La.12

MATCH LINE SEE SHEET La.14

BUILDING B

SITE WALL (SEE ARCHITECTURAL)

GATES (SEE ARCHITECTURAL)

SITE WALL (SEE ARCHITECTURAL)

GATES (SEE ARCHITECTURAL)

SITE WALL (SEE ARCHITECTURAL)

SITE WALL (SEE ARCHITECTURAL)

SITE WALL (SEE ARCHITECTURAL)

SITE WALL (SEE ARCHITECTURAL)

BUCKEYE SIGHT VISIBILITY

BUCKEYE SIGHT VISIBILITY

8' P.U.E TYP.

8' P.U.E TYP.

S. 263RD AVE

*DENOTE TREES THAT REQUIRE ROOT BARRIER

LANDSCAPE LEGEND

- CERCIDIUM 'HYBRID' DESERT MUSEUM PALO VERDE 24" BOX (993)
- ACACIA SALICINA WILLOW ACACIA 36" BOX (542)
- PROSOPIS 'RIO-SALADO' THORNLESS MESQUITE 48" BOX (387)
- SOPHORA SECUNDIFLORA TEXAS MOUNTAIN LAUREL 24" BOX (MULTI TRUNK) (106)
- CAESALPINIA CACALACO 'SMOOTHIE' CASCALOTE (SRP/APS APPROVED) 24" BOX (89)
- LEUCOPHYLLUM FRUTESCENS 'GREEN CLOUD' 5 GALLON (2324)
- MUHLENBERGIA RIGENS DEER GRASS 5 GALLON (1728)
- DODONEA VISCOSA HOP BUSH 5 GALLON (238)
- TECOMA 'ORANGE JUBILEE' ORANGE JUBILEE 5 GALLON (1753)
- HESPERALOE PARVIFLORA RED YUCCA 5 GALLON (2471)
- DASYLIRION WHEELERII DESERT SPOON 5 GALLON (1122)
- AGAVE GEMNIFLORA TWIN FLOWERED AGAVE 5 GALLON (608)
- BOUGAINVILLEA 'TORCH GLOW' BUSH BOUGAINVILLEA 5 GALLON (233)
- LANTANA MONTEVIDENSIS 'GOLD MOUND' 1 GALLON (3300)
- LANTANA MONTEVIDENSIS TRAILING PURPLE 1 GALLON (3376)
- ACACIA REDOLENS 'DESERT CARPET' tm 5 GALLON (1504)
- EREMOPHILA GLABRA MINGENEW GOLD 5 GALLON (1522)

1/2" SCREENED ROCK PROS MAHOGANY DECOMPOSED GRANITE 2" DEPTH IN ALL LANDSCAPE AREAS

6"-8" ROCK PROS MAHOGANY RIP-RAP SEE CIVIL DRAWINGS FOR DEPTH

LANDSCAPE PLAN

0' 25' 50' 100'

SCALE: 1"=50'-00"

T.J. McQUEEN & ASSOCIATES, INC.
LANDSCAPE ARCHITECTURE
URBAN DESIGN
SITE PLANNING

10450 N. 74th Street , Suite 120
Scottsdale, Arizona 85258
P.(602)265-0320

EMAIL: timmcqueen@tjmla.net

T.J. McQUEEN & ASSOC., INC. LANDSCAPE ARCHITECTURE (T.J.M.A.) EXPRESSLY RESERVES ITS COMMON LAW COPYRIGHT & OTHER PROPERTY RIGHTS IN THESE PLANS. THESE PLANS ARE NOT TO BE REPRODUCED, CHANGED OR COPIED IN COPIED IN ANY FORM OR MANNER WHATSOEVER, NOR ARE THEY TO BE ASSIGNED TO ANY THIRD PARTY WITHOUT FIRST OBTAINING THE EXPRESSED WRITTEN PERMISSION & CONSENT FROM T.M.A.

LGE | DESIGNGROUP
1200 N. 52nd Street ▪ Phoenix, AZ 85008
P: 480.966.4001

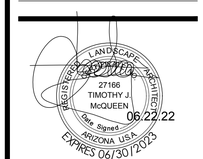
THESE DRAWINGS ARE AN INSTRUMENT OF SERVICE AND THE PROPERTY OF LGE DESIGN GROUP AND USE DESIGN BUILD AND SHALL REMAIN THEIR PROPERTY. THE USE OF THIS DRAWING SHALL BE RESTRICTED TO THE ORIGINAL SITE FOR WHICH IT WAS PREPARED AND PUBLICATION THEREOF IS EXPRESSLY LIMITED TO SUCH

TEN | 85

SOUTHEAST CORNER OF SOUTHERN AVE & STATE ROUTE 85
BUCKEYE, AZ

LGE | DESIGNBUILD

NUMBER	REVISION	DATE

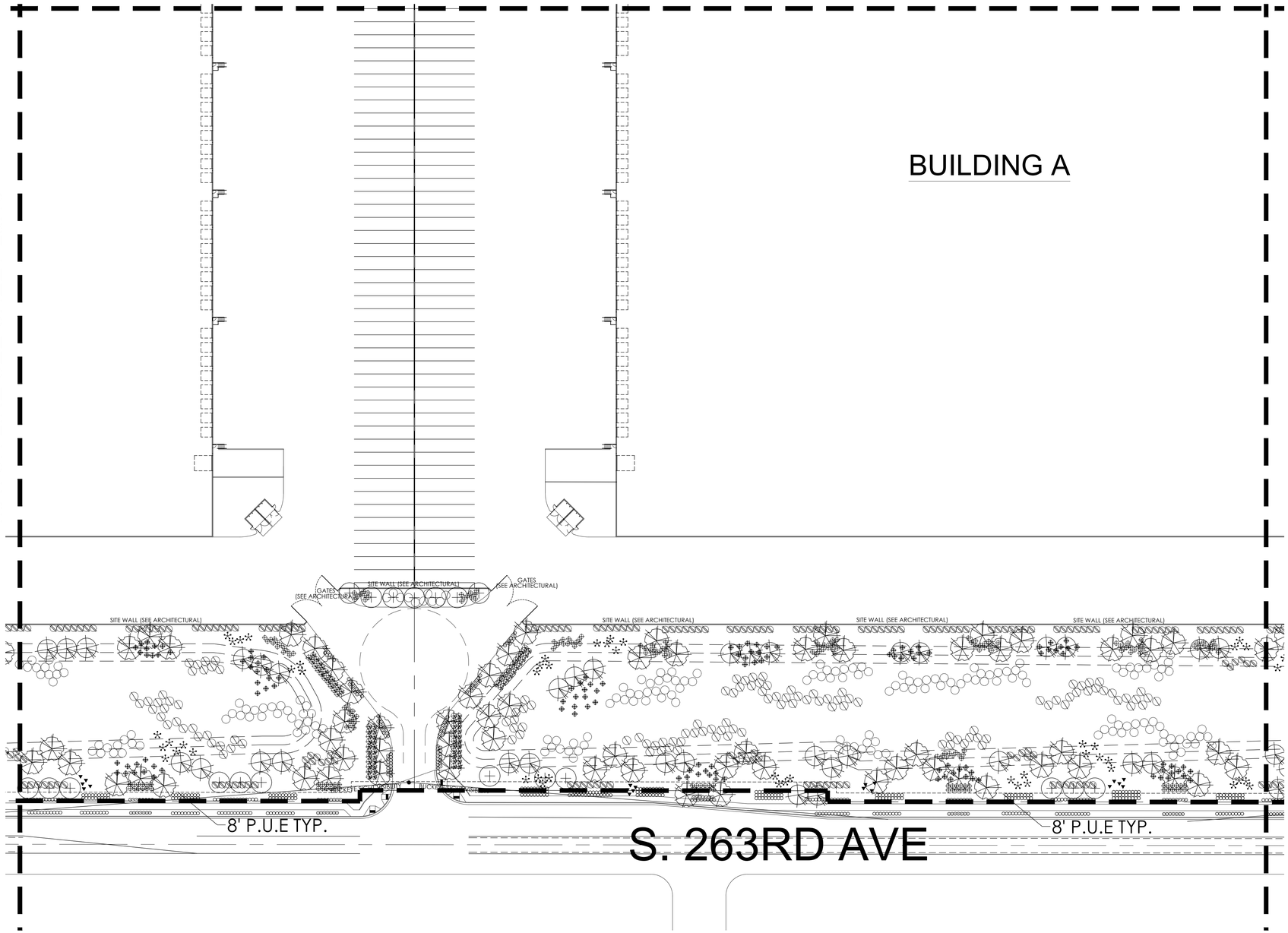


SHEET TITLE:

ISSUE DATE: 6/16/2022
DRAWN BY:
CHECKED BY: BJM
PROJECT No.:

SHEET: La.13

SITE PLAN SUBMITTAL - 06/20/2022 CASE # PLZSP-22-00015



*DENOTE TREES THAT REQUIRE ROOT BARRIER

LANDSCAPE LEGEND

- CERCIDIUM 'HYBRID' DESERT MUSEUM PALO VERDE 24" BOX (993)
- ACACIA SALICINA WILLOW ACACIA 36" BOX (542)
- PROSOPIS 'RIO-SALADO' THORNLESS MESQUITE 48" BOX (387)
- SOPHORA SECUNDIFLORA TEXAS MOUNTAIN LAUREL 24" BOX (MULTI TRUNK) (106)
- CAESALPINIA CACALACO 'SMOOTHIE' CASCALOTE (SRP/APS APPROVED) 24" BOX (89)
- LEUCOPHYLLUM FRUTESCENS 'GREEN CLOUD' 5 GALLON (2324)
- MUHLENBERGIA RIGENS DEER GRASS 5 GALLON (1728)
- DODONEA VISCOSA HOP BUSH 5 GALLON (238)
- TECOMA 'ORANGE JUBILEE' ORANGE JUBILEE 5 GALLON (1753)
- HESPERALOE PARVIFLORA RED YUCCA 5 GALLON (2471)
- DASYLIRION WHEELERII DESERT SPOON 5 GALLON (1122)
- AGAVE GEMNIFLORA TWIN FLOWERED AGAVE 5 GALLON (608)
- BOUGAINVILLEA 'TORCH GLOW' BUSH BOUGAINVILLEA 5 GALLON (233)
- LANTANA MONTEVIDENSIS 'GOLD MOUND' 1 GALLON (3300)
- LANTANA MONTEVIDENSIS TRAILING PURPLE 1 GALLON (3376)
- ACACIA REDOLENS 'DESERT CARPET' tm 5 GALLON (1504)
- EREMOPHILA GLABRA MINGENEW GOLD 5 GALLON (1522)

1/2" SCREENED ROCK PROS MAHOGANY DECOMPOSED GRANITE
2" DEPTH IN ALL LANDSCAPE AREAS

- 6"-8" ROCK PROS MAHOGANY RIP-RAP SEE CIVIL DRAWINGS FOR DEPTH

LANDSCAPE PLAN

0' 25' 50' 100'
SCALE: 1"=50'-00"

T.J. McQUEEN & ASSOCIATES, INC.
LANDSCAPE ARCHITECTURE
URBAN DESIGN
SITE PLANNING
10450 N. 74th Street , Suite 120
Scottsdale, Arizona 85258
P.(602)265-0320
EMAIL: timmcqueen@tjmla.net

T.J. McQUEEN & ASSOC., INC. LANDSCAPE ARCHITECTURE (TJMLA) EXPRESSLY RESERVES ITS COMMON LAW COPYRIGHT AND OTHER PROPERTY RIGHTS IN THESE PLANS. THESE PLANS ARE NOT TO BE CHANGED OR COPIED IN ANY FORM OR MANNER WHATSOEVER, NOR ARE THEY TO BE ASSIGNED TO ANY THIRD PARTY WITHOUT FIRST OBTAINING THE EXPRESSED WRITTEN PERMISSION & CONSENT FROM TJMLA.

LGE | DESIGNGROUP
1200 N. 52nd Street ▪ Phoenix, AZ 85008
P: 480.966.4001

THESE DRAWINGS ARE AN INSTRUMENTS OF SERVICE AND THE PROPERTY OF LGE DESIGNGROUP AND LGE DESIGNBUILD AND SHALL REMAIN THEIR PROPERTY. THE USE OF THIS DRAWING SHALL BE RESTRICTED TO THE ORIGINAL SITE FOR WHICH IT WAS PREPARED AND PUBLICATION THEREOF IS EXPRESSLY LIMITED TO SUCH

TEN | 85

SOUTHEAST CORNER OF SOUTHERN AVE & STATE ROUTE 85
BUCKEYE, AZ

LGE | DESIGNBUILD

NUMBER	REVISION	DATE

REGISTERED LANDSCAPE ARCHITECT
27166
TIMOTHY J. McQUEEN
06.22.22
Date Signed
ARIZONA U.S.A.
EXPIRES 06/30/2023

SHEET TITLE:

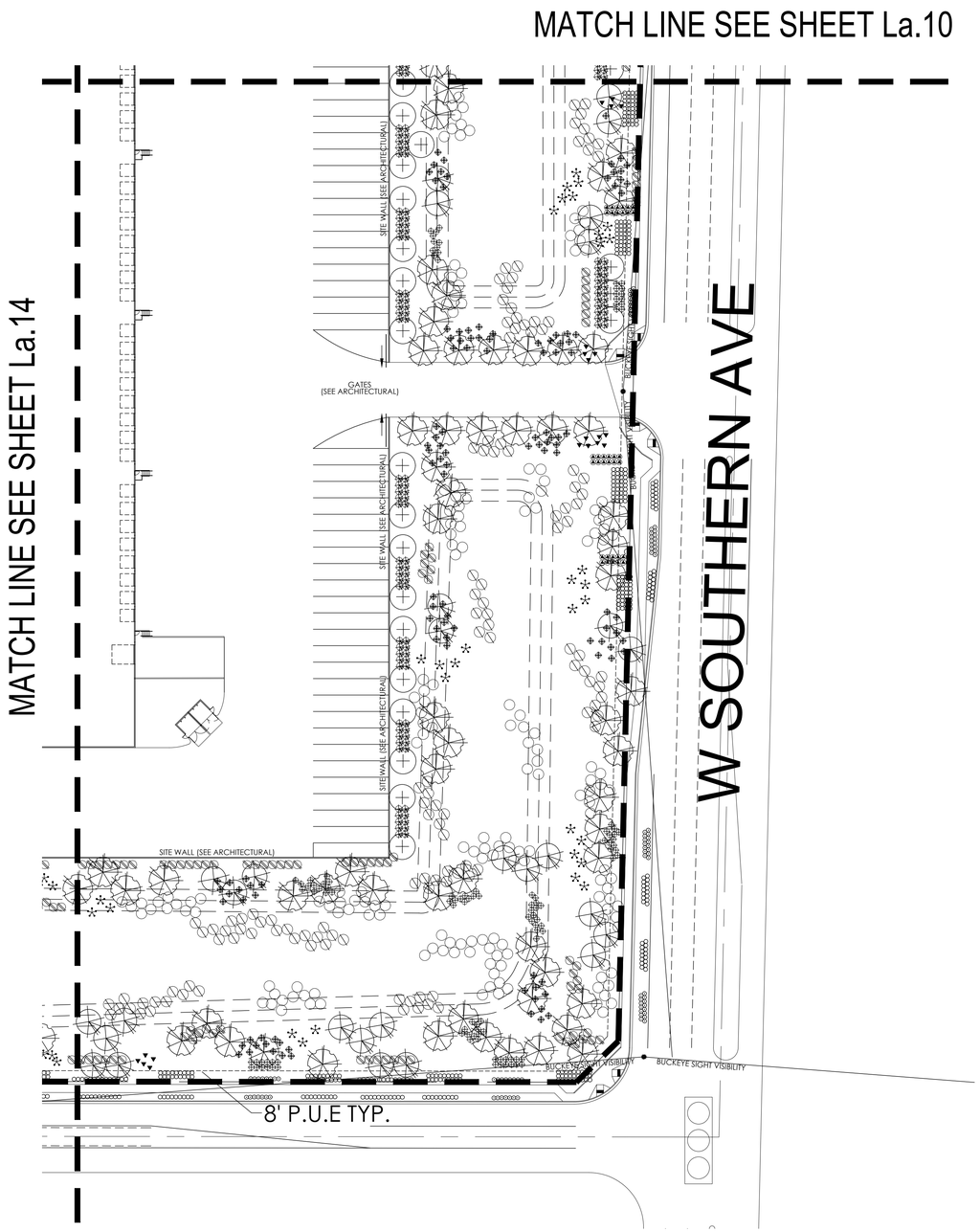
ISSUE DATE: 6/16/2022
DRAWN BY:
CHECKED BY: BJM
PROJECT No.:

SHEET: La.14

SITE PLAN SUBMITTAL - 06/20/2022
CASE # PLZSP-22-00015

PLZSP-22-00015

410



*DENOTE TREES THAT REQUIRE ROOT BARRIER

LANDSCAPE LEGEND

- CERCIDIUM 'HYBRID' DESERT MUSEUM PALO VERDE 24" BOX (993)
- ACACIA SALICINA WILLOW ACACIA 36" BOX (542)
- PROSOPIS 'RIO-SALADO' THORNLESS MESQUITE 48" BOX (387)
- SOPHORA SECUNDIFLORA TEXAS MOUNTAIN LAUREL 24" BOX (MULTI TRUNK) (106)
- CAESALPINIA CACALACO 'SMOOTHIE' CASCALOTE (SRP/APS APPROVED) 24" BOX (89)
- LEUCOPHYLLUM FRUTESCENS 'GREEN CLOUD' 5 GALLON (2324)
- MUHLENBERGIA RIGENS DEER GRASS 5 GALLON (1728)
- DODONEA VISCOSA HOP BUSH 5 GALLON (238)
- TECOMA 'ORANGE JUBILEE' ORANGE JUBILEE 5 GALLON (1753)
- HESPERALOE PARVIFLORA RED YUCCA 5 GALLON (2471)
- DASYLIRION WHEELERII DESERT SPOON 5 GALLON (1122)
- AGAVE GEMNIFLORA TWIN FLOWERED AGAVE 5 GALLON (608)
- BOUGAINVILLEA 'TORCH GLOW' BUSH BOUGAINVILLEA 5 GALLON (233)
- LANTANA MONTEVIDENSIS 'GOLD MOUND' 1 GALLON (3300)
- LANTANA MONTEVIDENSIS TRAILING PURPLE 1 GALLON (3376)
- ACACIA REDOLENS 'DESERT CARPET' tm 5 GALLON (1504)
- EREMOPHILA GLABRA MINGENEW GOLD 5 GALLON (1522)

1/2" SCREENED ROCK PROS MAHOGANY DECOMPOSED GRANITE
2" DEPTH IN ALL LANDSCAPE AREAS

6"-8" ROCK PROS MAHOGANY RIP-RAP
SEE CIVIL DRAWINGS FOR DEPTH

LANDSCAPE PLAN

0' 25' 50' 100'
SCALE: 1"=50'-00"

T.J. McQUEEN & ASSOCIATES, INC.
LANDSCAPE ARCHITECTURE
URBAN DESIGN
SITE PLANNING
10450 N. 74th Street , Suite 120
Scottsdale, Arizona 85258
P.(602)265-0320
EMAIL: timmcqueen@tjmla.net

T.J. McQUEEN & ASSOC., INC. LANDSCAPE ARCHITECTURE (TJMLA) EXPRESSLY RESERVES ITS COMMON LAW COPYRIGHT & OTHER PROPERTY RIGHTS IN THESE PLANS. THESE PLANS ARE NOT TO BE REPRODUCED, CHANGED OR COPIED IN ANY FORM OR MANNER WHATSOEVER, NOR ARE THEY TO BE ASSIGNED TO ANY THIRD PARTY WITHOUT FIRST OBTAINING THE EXPRESSED WRITTEN PERMISSION & CONSENT FROM TJMLA.

LGE | DESIGNGROUP
1200 N. 52nd Street ▪ Phoenix, AZ 85008
P: 480.966.4001

TEN | 85

SOUTHEAST CORNER OF SOUTHERN AVE & STATE ROUTE 85
BUCKEYE, AZ

LGE | DESIGNBUILD

NUMBER	REVISION	DATE

REGISTERED LANDSCAPE ARCHITECT
27166
TIMOTHY J. McQUEEN
Date Signed 06.22.22
ARIZONA USA
EXPIRES 06/30/2023

SHEET TITLE:
ISSUE DATE: 6/16/2022
DRAWN BY:
CHECKED BY: BJM
PROJECT No.:
SHEET: La.15

SITE PLAN SUBMITTAL - 06/20/2022 CASE # PLZSP-22-00015

411

A FINAL PLAT
FOR
"BUCKEYE TEN 85"

THOSE PORTIONS OF THE WEST HALF OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 4 WEST
OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA.

5R PLZS-22-00055 RECEIVED JUL 18 2024 WD

OWNER:
CH CRE TEN85 OWNER LLC
1200 N 52ND ST
PHOENIX, ARIZONA 85008
PHONE: 602-600-6363
CONTACT: David Sellers
E-MAIL: jaggere@creationequity.com

SURVEYOR:
HUNTER ENGINEERING INC.
10450 N. 74TH ST., STE. #200
SCOTTSDALE, ARIZONA 85258
PHONE: (480) 991-3985
FAX: (480) 991-3986
CONTACT: JAMES A. BRUCCI. R.LS.



VICINITY MAP:
SECTION 36
T.1N., R.4W.

DEDICATION

STATE OF ARIZONA)
)S.S.
COUNTY OF MARICOPA)

KNOW ALL PERSONS BY THESE PRESENTS:

THAT CH CRE TEN85 OWNER LLC, A DELAWARE LIMITED LIABILITY COMPANY AS OWNER HAS SUBDIVIDED UNDER THE NAME "BUCKEYE TEN 85" A FINAL PLAT OF PORTIONS OF THE WEST HALF OF SECTION SECTION 36, TOWNSHIP 1 NORTH, RANGE 4 WEST, OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOWN AND PLATTED HEREON AND DOES HEREBY PUBLISH THIS PLAT AS AND FOR THE PLAT OF "BUCKEYE TEN 85", AND DECLARES THAT THIS FINAL PLAT SETS FORTH THE LOCATION AND GIVES THE DIMENSIONS OF EACH LOT, STREET, AND EASEMENT CONSTITUTING SAME, AND THAT EACH LOT, STREET, AND EASEMENT SHALL BE KNOWN BY THE NUMBER, AND/OR NAME GIVEN TO EACH RESPECTIVELY AS SHOWN ON THIS PLAT.

OWNER HEREBY DEDICATES TO THE CITY OF BUCKEYE FEE TITLE TO ALL PUBLIC RIGHT-OF-WAYS AS SHOWN ON THE PLAT.

OWNER HEREBY GRANTS TO THE CITY OF BUCKEYE A NON-EXCLUSIVE EASEMENT OVER, UPON AND ACROSS THE AREAS DESIGNATED AS PUBLIC UTILITY EASEMENTS AS SHOWN ON THE PLAT FOR THE PURPOSE OF INSTALLING, CONSTRUCTING, MAINTAINING, REPAIRING, REPLACING AND UTILIZING PUBLIC UTILITIES.

OWNER HEREBY GRANTS TO THE CITY OF BUCKEYE TRACTS DESIGNATED AS TRACT 1, TRACT 2, TRACT 3, AND TRACT 4 FOR USE AS WELL SITES.

OWNER HEREBY GRANTS TO THE CITY OF BUCKEYE A NON-EXCLUSIVE EASEMENT OVER, UPON AND ACROSS THE AREAS DESIGNATED AS SIGHT VISIBILITY TRIANGLES FOR THE PURPOSE OF ENSURING THAT THESE AREAS REMAIN FREE OF SIGHT VISIBILITY OBSTRUCTING AS PER THE ENGINEERING DESIGN STANDARDS.

CH CRE TEN85 OWNER LLC, A DELAWARE LIMITED LIABILITY COMPANY AS OWNER DOES HEREBY; (1) RELEASE AND DISCHARGE THE CITY OF BUCKEYE, AND (2) INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF BUCKEYE, OF AND FROM ANY LIABILITY FOR ANY AND ALL CLAIMS FOR DAMAGES OF ANY KIND TO PERSONS OR PROPERTY THAT MAY ARISE AT ANY TIME IN THE FUTURE OVER, OR IN CONNECTION WITH THE AREAS LOCATED WITHIN THE NEWLY DEDICATED RIGHT-OF-WAY AS DEPICTED ON THIS PLAT UNTIL SUCH TIME THE RIGHT-OF-WAY IS IMPROVED TO CITY STANDARDS AND THOSE IMPROVEMENTS ARE APPROVED AND ACCEPTED BY THE CITY COUNCIL. THE MAINTENANCE OF THE AREA WITHIN ANY NEWLY DEDICATED RIGHT-OF-WAY AS SHOWN ON THIS PLAT SHALL BE THE RESPONSIBILITY OF THE ADJACENT OWNER/OR SUBSEQUENT ADJACENT OWNERS WITHIN THE BOUNDARY OF SAID PLAT UNTIL SUCH TIME THAT THE AREA WITHIN THE RIGHT-OF-WAY IS IMPROVED TO CITY STANDARD AND ACCEPTED BY THE CITY OF BUCKEYE.

OWNER HEREBY GRANT TO THE UNITED STATES OF AMERICA DEPARTMENT OF THE AIR FORCE ("USAF") AN AVIATION EASEMENT OVER AND ACROSS THIS PLAT AND EVERY LOT AND PARCEL THEREOF, WHICH EASEMENT SHALL INCLUDE, BUT NOT BE LIMITED TO; THE RIGHT OF FLIGHT OF AIRCRAFT OVER THIS PLAT, TOGETHER WITH ITS ATTENDANT NOISE, VIBRATIONS, FUMES, DUST, FUEL AND LUBRICANT PARTICLES, AND ALL OTHER EFFECTS THAT MAY BE CAUSED BY THE OPERATION OF AIRCRAFT LANDING AT, OR TAKING OFF FROM, OR OPERATING AT OR ON LUKE AIR FORCE BASE AND AUXILIARY FIELD.

CH CRE TEN5 OWNER LLC, A DELAWARE LIMITED LIABILITY COMPANY AS OWNER DOES HEREBY (1) RELEASE AND DISCHARGE THE USAF AND THE CITY OF BUCKEYE, AND (2) INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF BUCKEYE, OF AND FROM ANY LIABILITY FOR ANY AND ALL CLAIMS FOR DAMAGES OF ANY KIND TO PERSONS OR PROPERTY THAT MAY ARISE AT ANY TIME IN THE FUTURE OVER, OR IN CONNECTION WITH AIRCRAFT OVERFLIGHTS FROM AIRCRAFT UTILIZING LUKE AIR FORCE BASE, WHETHER SUCH DAMAGE SHALL ORIGINATE FROM NOISE, VIBRATION, FUMES, DUST, FUEL AND LUBRICANT PARTICLES, AND ALL OTHER EFFECTS THAT MAY BE CAUSED BY THE OPERATION OF AIRCRAFT LANDING AT, OR TAKING OFF FROM, OR OPERATING AT OR ON LUKE AIR FORCE BASE. THIS INSTRUMENT SHALL RUN WITH THE LAND AND BE BINDING UPON OWNER AND ITS HEIRS, ASSIGNS, AND SUCCESSORS IN INTEREST TO THIS PLAT OR ANY PARCEL OR LOT THEREOF. THIS INSTRUMENT DOES NOT RELEASE THE USAF FROM LIABILITY FOR DAMAGE OR INJURY TO PERSON OR PROPERTY CAUSED BY FALLING AIRCRAFT OR FALLING PHYSICAL OBJECTS FROM AIRCRAFT, EXCEPT AS STATED HEREIN WITH RESPECT TO NOISE, FUMES, DUST, FUEL, AND LUBRICANT PARTICLES.

THE MAINTENANCE OF LANDSCAPING WITHIN THE OPEN SPACES, LANDSCAPED TRACTS, RETENTION BASINS AND PARKS SHALL BE THE RESPONSIBILITY OF THE OWNERS OR THE ASSOCIATION FORMED BY THE OWNERS.

THE MAINTENANCE OF LANDSCAPING WITHIN THE ADJACENT PUBLIC RIGHT-OF-WAYS, INCLUDING; LANDSCAPED MEDIANS WITHIN COLLECTORS AND LOCAL STREETS AND LANDSCAPED AREAS BETWEEN THE CURB AND THE DETACHED SIDEWALK, SHALL BE THE RESPONSIBILITY OF THE ADJACENT PROPERTY OWNER OR THE PROPERTY ASSOCIATION FORMED BY THE ADJACENT PROPERTY.

ALL IMPROVEMENTS FOR STREETS AND PUBLIC UTILITIES OWNED AND OPERATED BY THE CITY, INSTALLED OR CONSTRUCTED BY OWNER WITHIN THE PUBLIC RIGHT-OF-WAYS, THE EASEMENTS, OR ANY TRACTS OR PARCELS HEREBY DEDICATED TO THE CITY OF BUCKEYE SHALL BE DEEMED TO HAVE BEEN DEDICATED BY OWNER TO THE CITY UPON THEIR COMPLETION; HOWEVER, SUCH TRANSFER SHALL NOT OCCUR UNTIL THE CITY OF BUCKEYE MANIFESTS ITS ACCEPTANCE BY SEPARATE FORMAL ACTION.

TRACTS 1, 2, 3, AND 4 SHALL HAVE THE ABILITY TO UTILIZE THE RETENTION AREAS WITHIN ALL PARCELS SHOWN HEREON FOR WELL MAINTENANCE, RETENTION BASINS WILL BE REQUIRED FOR THIS USE.

IN WITNESS WHEREOF, CH CRE TEN85 OWNER LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS OWNER HAS HEREUNTO CAUSED THEIR CORPORATE NAMES TO BE SIGNED AND THEIR CORPORATE SEALS TO BE AFFIXED BY THE UNDERSIGNED, DULY AUTHORIZED OFFICER THIS _____ DAY OF _____, 2024.

CH CRE TEN85 OWNER LLC

BY: _____

ITS: _____

ACKNOWLEDGMENT:

STATE OF ARIZONA)
)S.S.
COUNTY OF MARICOPA)

ON THIS _____DAY OF _____ ,2024, BEFORE ME, THE UNDERSIGNED,

PERSONALLY APPEARED _____ WHO ACKNOWLEDGED SELF TO BE THE PERSON

WHOSE NAME IS SUBSCRIBED TO THE INSTRUMENT WITHIN, AND WHO EXECUTED THE FOREGOING

INSTRUMENT FOR THE PURPOSES CONTAINED HEREIN.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND OFFICIAL SEAL.

_____
NOTARY PUBLIC DATE

MY COMMISSION EXPIRES: _____

GENERAL NOTES:

1. THE LOTS DEPICTED ON THIS PLAT ARE LOCATED WITHIN THE VICINITY OF LUKE AIR FORCE BASE AND MAY BE SUBJECT TO OVER FLIGHTS BY JET AIRCRAFT. ALL STRUCTURES WITHIN THIS PLAT SHALL BE CONSTRUCTED IN COMPLIANCE WITH THE STATUTORILY REQUIRED SOUND ATTENUATION STANDARDS.

2. THE PROPERTY OWNERS, OR ANY SUBSEQUENT OWNERS SHALL NOT PROCEED WITH ANY ON SITE GRADING OR EXCAVATION WITHOUT FIRST OBTAINING A PERMIT FROM THE CITY OF BUCKEYE.

3. PURSUANT TO A.R.S. § 42-11102, THE CITY OF BUCKEYE, A POLITICAL SUBDIVISION OF THE STATE OF ARIZONA, IS EXEMPT FROM ALL TAXES AND ASSESSMENTS BASED ON ASSESSED VALUE EXCEPT FOR SPECIAL DISTRICTS #14751 AND 14710, WHEN APPLICABLE.

4. THE MAINTENANCE OF LANDSCAPING WITHIN THE OPEN SPACES, LANDSCAPED TRACTS, RETENTION BASINS, AND PARKS SHALL BE THE RESPONSIBILITY OF THE OWNER OR THE ASSOCIATION FORMED BY THE OWNER.

5. IN ACCORDANCE WITH ARS § 9-461.07, THE CITY OF BUCKEYE HAS DETERMINED THAT ALL DEDICATIONS OCCURRING WITH THIS PLAT ARE IN CONFORMANCE WITH THE GENERAL PLAN.

6. THE MAINTENANCE OF LANDSCAPING WITHIN THE ADJACENT PUBLIC RIGHT-OF-WAYS, INCLUDING: LANDSCAPED MEDIANS WITHIN COLLECTORS AND LOCAL STREETS AND LANDSCAPED AREAS BETWEEN THE CURB AND THE DETACHED SIDEWALK, SHALL BE THE RESPONSIBILITY OF THE ADJACENT PROPERTY OWNER OR THE PROPERTY ASSOCIATION FORMED BY THE ADJACENT PROPERTY.

7. ALL NEW OR RELOCATED UTILITIES WILL BE PLACED UNDERGROUND EXCEPT POWER LINES 69kV AND LARGER.

8. IT IS ACKNOWLEDGED THAT THIS PROPERTY WILL BE PART OF A STREET LIGHT IMPROVEMENT DISTRICT (SLID) AT THE TIME THAT IT IS DEVELOPED IN ACCORDANCE WITH BUCKEYE ORDINANCES 43-05 AND 42-06.

9. THIS SITE CONSISTS OF A TOTAL OF 4 PARCELS & 4 TRACTS, IN THE LIGHT INDUSTRIAL ZONING DISTRICT.

10. THIS FINAL PLAT IS IN SUBSTANTIAL CONFORMANCE WITH THE PRELIMINARY PLAT APPROVED ON JANUARY 10, 2023 UNDER CASE# PLZS-22-00029.

11. FINAL PLAT APPROVAL BY THE CITY IS CONDITIONAL AND SUBJECT TO FINANCIAL ASSURANCES BEING IN PLACE FOR ALL IMPROVEMENTS AS SHOWN ON THE APPROVED PLANS. THE CITY WILL NOT RECORD ANY PLATS UNTIL SUCH TIME FINANCIAL ASSURANCES ARE IN PLACE. IF AFTER 180 DAYS FROM CITY COUNCIL APPROVAL THE FINAL PLAT HAS NOT BEEN RECORDED, THEN IT SHALL BE NULL AND VOID. A VALID PRELIMINARY PLAT NEEDS TO BE IN PLACE PRIOR TO APPROVAL OF ANY FINAL PLAT ASSOCIATED WITHIN THE PROJECT IN ACCORDANCE WITH THE DEVELOPMENT CODE. THE SIGNED PLAT WILL NOT BE SUBMITTED TO THE CITY FOR SIGNATURE AND RECORDING UNTIL FINANCIAL ASSURANCES ARE IN PLACE.

12. A BLANKET CROSS LOT ACCESS AND PARKING EASEMENT IS HEREBY GRANTED TO AND BETWEEN LOTS WITHIN THE SUBDIVISION FOR THE PURPOSE OF PARKING AND INGRESS AND EGRESS OF VEHICLES, INCLUDING EMERGENCY VEHICLES, PEDESTRIANS, AND BICYCLES. THE UNDERLYING PROPERTY OWNER OR ASSIGNS IS RESPONSIBLE FOR THE MAINTENANCE OF THE EASEMENT AREA.

13. AN INGRESS / EGRESS EASEMENT IS DEDICATED TO THE CITY FOR WELL ACCESS TO TRACTS 1-4 AS SHOWN ON THIS PLAT.

14. OWNER AFFIRMS THAT IT HAS REVIEWED THE REQUIREMENTS OF A.R.S. 9-463.01(J) AND 45-576 AND RELATED REQUIREMENTS REGARDING SUBDIVIDED LANDS AND THE ASSURED WATER SUPPLY PROGRAM, AND AFFIRMS THAT A CERTIFICATE OF ASSURED WATER SUPPLY IS NOT REQUIRED.

LEGAL DESCRIPTION:

SEE SHEET 2 OF 7.

LOT AREAS:

TOTAL GROSS	11,703,683 ± S.F.	268.6795 ± AC
TRACT 1 (WELL SITE) AREA	22,500 ± S.F.	0.5165 ± AC
TRACT 2 (WELL SITE) AREA	23,514 ± S.F.	0.5398 ± AC
TRACT 3 (WELL SITE) AREA	22,500 ± S.F.	0.5165 ± AC
TRACT 4 (WELL SITE) AREA	22,588 ± S.F.	0.5185 ± AC
STREET RIGHT-OF-WAY DEDICATION	545,413 ± S.F.	12.5209 ± AC
TOTAL NET	636,515 ± S.F	14.6122 ± AC
PARCEL 1 AREA	2,827,077 ± S.F.	64.9008 ± AC
PARCEL 2 AREA	2,971,361 ± S.F.	68.2131 ± AC
PARCEL 3 AREA	3,554,021 ± S.F.	81.5891 ± AC
PARCEL 4 AREA	1,714,706 ± S.F.	39.3643 ± AC
TOTAL NET	11,067,168 ± S.F.	254.0673 ± AC

APPROVALS:

APPROVED BY THE COUNCIL OF THE CITY OF BUCKEYE ON THIS _____ DAY OF _____ 2024.

BY: _____
MAYOR

ATTEST: _____
CITY CLERK

APPROVED

BY: _____
BUCKEYE CITY ENGINEER DATE

BY: _____
DEVELOPMENT SERVICES DIRECTOR DATE

CERTIFICATION:

I, JAMES A. BRUCCI, HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR IN THE STATE OF ARIZONA; THAT THIS PLAT CONSISTING OF 7 SHEETS CORRECTLY REPRESENTS A BOUNDARY SURVEY MADE BY ME DURING THE MONTH OF APRIL 2022. THAT THE SURVEY IS TRUE AND CORRECT AS SHOWN, THAT ALL MONUMENTS EXIST OR WILL BE SET AND, THAT THEIR POSITIONS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

_____
JAMES A. BRUCCI
REGISTERED LAND SURVEYOR #29865

REGISTERED CERTIFICATE NO. 29865 JAMES A. BRUCCI DATE SIGNED 07/01/24 ARIZONA U.S.A. Expires 3/31/2026

NO.	DATE	REVISION	BY

PURPOSE: FINAL PLAT

DRAWN BY: AA
CHECKED BY: jab

HUNTER ENGINEERING
CIVIL AND SURVEY
10446 N. 74TH ST. SUITE 140
SCOTTSDALE, AZ 85258
T 480 991 3985
F 480 991 3986

FINAL PLAT FOR "BUCKEYE TEN 85"
THOSE PORTIONS OF THE WEST HALF OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 4 WEST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA.

SECTION: 36
TWNSHP: 1N.
RANGE: 4W.

JOB NO.: LGEC298-FP01

SCALE: N.T.S.

SHEET 1 OF 7

PLZS-22-00055

PARENT PARCEL DESCRIPTIONS PER FIRST AMERICAN TITLE INSURANCE COMPANY FILE NO. 06195603-027-MV1, DATED JUNE 15, 2022

PARCEL NO. 1:

THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 4 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA:

EXCEPT THAT PORTION CONDEMNED IN FINAL ORDER OF CONDEMNATION RECORDED IN DOCKET 14039, PAGE 1537, RECORDS OF MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 36;
THENCE SOUTH 88 DEGREES 44 MINUTES 14 SECONDS EAST ALONG THE NORTH LINE OF SAID SECTION 36, A DISTANCE OF 600.00 FEET;
THENCE SOUTH 01 DEGREES 15 MINUTES 46 SECONDS WEST, A DISTANCE OF 50.00 FEET;
THENCE NORTH 88 DEGREES 44 MINUTES 14 SECONDS WEST, A DISTANCE OF 275.00 FEET;
THENCE SOUTH 14 DEGREES 09 MINUTES 42 SECONDS WEST, A DISTANCE OF 848.47 FEET;
THENCE SOUTH 10 DEGREES 01 MINUTES 37 SECONDS WEST, A DISTANCE OF 467.26 FEET;
THENCE SOUTH 89 DEGREES 55 MINUTES 11 SECONDS WEST, A DISTANCE OF 33.00 FEET TO THE WEST LINE OF SAID SECTION 36;
THENCE NORTH 00 DEGREES 04 MINUTES 49 SECONDS WEST ALONG SAID WEST LINE, A DISTANCE OF 1339.99 FEET TO THE TRUE POINT OF BEGINNING; AND

EXCEPT THAT PORTION CONDEMNED IN FINAL ORDER OF CONDEMNATION RECORDED IN DOCKET 14039, PAGE 1537, RECORDS OF MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:
A STRIP OF LAND 25.00 FEET IN WIDTH, THE EASTERNMOST BOUNDARY OF WHICH IS DESCRIBED AS FOLLOWS:
BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 36;
THENCE SOUTH 88 DEGREES 44 MINUTES 14 SECONDS EAST ALONG THE NORTH LINE OF SAID SECTION 36, A DISTANCE OF 350.65 FEET;
THENCE SOUTH 01 DEGREES 15 MINUTES 46 SECONDS WEST, A DISTANCE OF 50.00 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 14 DEGREES 09 MINUTES 42 SECONDS WEST, A DISTANCE OF 853.29 FEET; THENCE SOUTH 10 DEGREES 01 MINUTES 37 SECONDS WEST, A DISTANCE OF 464.20 FEET;
THENCE SOUTH 00 DEGREES 04 MINUTES 49 SECONDS EAST, A DISTANCE OF 1340.00 FEET, MORE OR LESS, TO THE EAST–WEST MIDSECTION LINE OF SAID SECTION 36 AND THE TRUE POINT OF BEGINNING; AND

EXCEPT THAT PORTION CONDEMNED IN FINAL ORDER OF CONDEMNATION RECORDED IN DOCKET 14039, PAGE 1537, RECORDS OF MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 36;

THENCE SOUTH 88 DEGREES 44 MINUTES 14 SECONDS EAST ALONG THE NORTH LINE OF SAID SECTION 36, A DISTANCE OF 350.65 FEET;
THENCE SOUTH 01 DEGREES 15 MINUTES 46 SECONDS WEST, A DISTANCE OF 50.00 FEET;
THENCE SOUTH 14 DEGREES 09 MINUTES 42 SECONDS WEST, A DISTANCE OF 853.29 FEET;
THENCE SOUTH 10 DEGREES 01 MINUTES 37 SECONDS WEST, A DISTANCE OF 362.62 FEET TO THE TRUE POINT OF BEGINNING;

THENCE CONTINUING SOUTH 10 DEGREES 01 MINUTES 37 SECONDS EAST, A DISTANCE OF 101.58 FEET;
THENCE NORTH 89 DEGREES 55 MINUTES 11 SECONDS EAST, A DISTANCE OF 117.82 FEET;
THENCE NORTH 00 DEGREES 04 MINUTES 49 SECONDS WEST, A DISTANCE OF 100.00 FEET;
THENCE SOUTH 89 DEGREES 55 MINUTES 11 SECONDS WEST, A DISTANCE OF 100.00 FEET TO THE TRUE POINT OF BEGINNING; AND

EXCEPT THAT PORTION CONDEMNED IN AMENDED FINAL ORDER OF CONDEMNATION RECORDED IN DOCUMENT NO. 20100636580, RECORDS OF MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

THAT PORTION OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 4 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT AN ARIZONA DEPARTMENT OF TRANSPORTATION (ADOT) BRASS CAP IN A HANDHOLE MARKING THE NORTHWEST CORNER OF SAID SECTION 36, BEING NORTH 00 DEGREES 17 MINUTES 48 SECONDS EAST 2657.16 FEET FROM A 2 INCH CAP ON A 1/2 INCH REBAR MARKING THE WEST QUARTER CORNER OF SAID SECTION 36;

THENCE ALONG THE NORTH LINE OF SAID SECTION 36, NORTH 89 DEGREES 29 MINUTES 03 SECONDS WEST, A DISTANCE OF 125.01 FEET TO THE EXISTING NORTHBOUND RIGHT–OF–WAY CENTERLINE OF STATE ROUTE 85 (GILA BEND–BUCKEYE HIGHWAY);
THENCE ALONG SAID NORTHBOUND RIGHT–OF–WAY CENTERLINE SOUTH 00 DEGREES 12 MINUTES 51 SECONDS EAST, A DISTANCE OF 1.04 FEET;
THENCE CONTINUING ALONG SAID NORTHBOUND RIGHT–OF–WAY CENTERLINE SOUTH 00 DEGREES 17 MINUTES 48 SECONDS WEST, A DISTANCE OF 150.14 FEET;
THENCE SOUTH 89 DEGREES 42 MINUTES 12 SECONDS EAST, A DISTANCE OF 450.93 FEET TO THE POINT OF BEGINNING ON THE EXISTING EAST RIGHT–OF–WAY LINE OF SAID STATE ROUTE 85;
THENCE SOUTH 88 DEGREES 21 MINUTES 28 SECONDS EAST, A DISTANCE OF 157.00 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A";

THENCE CONTINUING SOUTH 88 DEGREES 21 MINUTES 28 SECONDS EAST, A DISTANCE OF 613.11 FEET;
THENCE NORTH 01 DEGREES 38 MINUTES 32 SECONDS EAST, A DISTANCE OF 143.00 FEET TO THE NORTH LINE OF SAID SECTION 36;
THENCE ALONG SAID NORTH LINE OF SECTION 36, NORTH 88 DEGREES 21 MINUTES 28 SECONDS WEST, A DISTANCE OF 499.49 FEET;
THENCE SOUTH 01 DEGREES 38 MINUTES 32 SECONDS WEST, A DISTANCE OF 50.00 FEET TO THE SOUTH RIGHT–OF–WAY LINE OF SOUTHERN AVENUE;
THENCE ALONG SAID SOUTH RIGHT–OF–WAY LINE OF SOUTHERN AVENUE, NORTH 88 DEGREES 21 MINUTES 28 SECONDS WEST, A DISTANCE OF 249.35 FEET TO SAID EXISTING EAST RIGHT–OF–WAY LINE OF STATE ROUTE 85;
THENCE ALONG SAID EXISTING EAST RIGHT–OF–WAY LINE OF STATE ROUTE 85, SOUTH 14 DEGREES 31 MINUTES 24 SECONDS WEST, A DISTANCE OF 95.40 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID EXISTING EAST RIGHT–OF–WAY LINE OF STATE ROUTE 85, SOUTH 14 DEGREES 31 MINUTES 24 SECONDS WEST, A DISTANCE OF 758.77 FEET;
THENCE CONTINUING ALONG SAID EXISTING EAST RIGHT–OF–WAY LINE OF STATE ROUTE 85, SOUTH 10 DEGREES 24 MINUTES 12 SECONDS WEST, A DISTANCE OF 202.00 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "B".

PARCEL NO. 2:

THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 4 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

EXCEPT THAT PORTION CONDEMNED IN AMENDED FINAL ORDER OF CONDEMNATION RECORDED IN DOCUMENT NO. 20100636580, RECORDS OF MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

THAT PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 4 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, LYING SOUTH AND WEST OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT AN ADOT BRASS CAP IN A HANDHOLE MARKING THE SOUTHWEST CORNER OF SAID SECTION 36, BEING NORTH 89 DEGREES 31 MINUTES 57 SECONDS WEST 147.99 FEET FROM A 2 INCH CAP ON A 1/2 INCH REBAR MARKING THE NORTHWEST CORNER OF SECTION 1, TOWNSHIP 1 SOUTH, RANGE 4 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

THENCE ALONG THE SOUTH LINE OF SAID SECTION 36, SOUTH 89 DEGREES 31 MINUTES 57 SECONDS EAST, A DISTANCE OF 1434.46 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 00 DEGREES 28 MINUTES 03 SECONDS EAST, A DISTANCE OF 120.00 FEET;
THENCE NORTH 89 DEGREES 31 MINUTES 57 SECONDS WEST, A DISTANCE OF 113.58 FEET TO THE POINT OF ENDING ON THE WEST LINE OF THE SAID SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36.

PARCEL NO. 3:

THE WEST HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 4 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA; EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT THE WEST QUARTER CORNER OF SAID SECTION 36;
THENCE SOUTH ALONG THE WEST LINE OF SAID SECTION 36, A DISTANCE OF 60.00 FEET;
THENCE EAST PARALLEL TO THE EAST AND WEST MID–SECTION LINE OF SAID SECTION 36, A DISTANCE OF 93.00 FEET;
THENCE NORTH PARALLEL WITH THE WEST LINE OF SAID SECTION 36, TO A POINT ON THE EAST–WEST MID–SECTION LINE OF SAID SECTION 36;

THENCE WEST ALONG THE EAST AND WEST MID–SECTION LINE OF SAID SECTION 36, A DISTANCE OF 93.00 FEET TO THE TRUE POINT OF BEGINNING; AND

EXCEPT THAT PORTION OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SAID SECTION 36, WHICH LIES WITHIN THE FOLLOWING DESCRIBED TRACT OF LAND:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SECTION 36;
THENCE SOUTH 89 DEGREES 43 MINUTES 54 SECONDS EAST ALONG THE SOUTH LINE OF SAID SECTION 36, A DISTANCE OF 147.91 FEET TO THE MOST NORTHERLY CORNER COMMON TO SECTIONS 1 AND 2, TOWNSHIP 1 SOUTH, RANGE 4 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

THENCE SOUTH 89 DEGREES 54 MINUTES 48 SECONDS EAST CONTINUING ALONG THE SOUTH LINE OF SAID SECTION 36, COINCIDENT WITH THE NORTH LINE OF SAID SECTION 1, A DISTANCE OF 230.00 FEET;
THENCE NORTH 00 DEGREES 05 MINUTES 06 SECONDS EAST, A DISTANCE OF 66.64 FEET;
THENCE NORTH 89 DEGREES 54 MINUTES 48 SECONDS WEST, A DISTANCE OF 230.00 FEET;
THENCE NORTH 33 DEGREES 11 MINUTES 54 SECONDS WEST, A DISTANCE OF 31.68 FEET;
THENCE NORTH 04 DEGREES 58 MINUTES 43 SECONDS WEST, A DISTANCE OF 1145.31 FEET TO A POINT ON THE EXISTING EASTERLY RIGHT–OF–WAY LINE OF A COUNTY ROAD; THENCE NORTH 00 DEGREES 04 MINUTES 49 SECONDS WEST ALONG SAID EASTERLY RIGHT–OF–WAY LINE, A DISTANCE OF 1355.00 FEET, MORE OR LESS, TO THE SOUTH LINE OF THE NORTH 60.00 FEET OF SAID WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 36;
THENCE WEST ALONG SAID SOUTH LINE, A DISTANCE OF 33.00 FEET TO THE WEST LINE OF SAID SECTION 36;
THENCE SOUTH 00 DEGREES 04 MINUTES 49 SECONDS EAST, ALONG THE WEST LINE OF SAID SECTION 36, A DISTANCE OF 2600.00 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING;

EXCEPTING THE SOUTH 66.64 FEET THEREOF; AND

EXCEPT THAT PORTION CONDEMNED IN AMENDED FINAL ORDER OF CONDEMNATION RECORDED IN DOCUMENT NO. 20100636580, RECORDS OF MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT A 2 INCH CAP ON A 1/2 INCH REBAR MARKING THE WEST QUARTER CORNER OF SAID SECTION 36, BEING SOUTH 00 DEGREES 17 MINUTES 48 SECONDS WEST 2657.16 FEET FROM AN ARIZONA DEPARTMENT OF TRANSPORTATION (ADOT) BRASS CAP IN A HAND HOLE 0.3 FEET BELOW PAVEMENT MARKING THE NORTHWEST CORNER OF SAID SECTION 36;

THENCE ALONG SAID EAST–WEST MID–SECTION LINE OF SAID SECTION 36, SOUTH 88 DEGREES 56 MINUTES 55 SECONDS EAST, A DISTANCE OF 33.00 FEET TO THE TRUE POINT OF BEGINNING ON THE EXISTING EAST RIGHT–OF–WAY LINE OF STATE ROUTE 85 (GILA BEND BUCKEYE HIGHWAY);

THENCE CONTINUING ALONG SAID EAST–WEST MID–SECTION LINE, SOUTH 88 DEGREES 56 MINUTES 55 SECONDS EAST, A DISTANCE OF 24.67 FEET;
THENCE SOUTH 00 DEGREES 17 MINUTES 48 SECONDS WEST, A DISTANCE OF 1706.26 FEET TO SAID EXISTING EAST RIGHT–OF–WAY LINE OF STATE ROUTE 85;
THENCE ALONG SAID EXISTING EAST RIGHT–OF–WAY LINE OF STATE ROUTE 85, NORTH 04 DEGREES 33 MINUTES 31 SECONDS WEST, A DISTANCE OF 293.71 FEET;
THENCE CONTINUING ALONG SAID EXISTING EAST RIGHT–OF–WAY LINE OF STATE ROUTE 85, NORTH 00 DEGREES 17 MINUTES 48 SECONDS EAST, A DISTANCE OF 1413.92 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL NO. 4:

THE EAST HALF OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 4 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

EXCEPT THE EAST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 36.

PARCEL NO. 5:

THE EAST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 4 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA.

FLOOD ZONE DESIGNATION:

THIS PROPERTY IS LOCATED WITHIN AN AREA DESIGNATED AS HAVING FLOOD ZONE X BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, ON FLOOD INSURANCE RATE MAP NO. 04013C 2115L, WITH A REVISION DATE OF OCTOBER 16, 2013 FOR COMMUNITY NO. 040037 IN THE CITY OF BUCKEYE, COUNTY OF MARICOPA, STATE OF ARIZONA, WHICH IS THE CURRENT FLOOD INSURANCE RATE MAP FOR THE COMMUNITY IN WHICH SAID PROPERTY IS SITUATED.

BASIS OF BEARING:

THE BASIS OF BEARINGS FOR THIS SURVEY IS THE SOUTH LINE OF SECTION 36 ALONG BASELINE ROAD WHICH BEARS NORTH 89°52'15" WEST PER THE RESULTS OF SURVEY PER BOOK 629 OF MAPS, PAGE 17 OF THE RECORDS OF MARICOPA COUNTY, ARIZONA

NO.	DATE	REVISION	BY

PURPOSE: **FINAL PLAT**

DRAWN BY: AA
CHECKED BY: jab

HUNTER ENGINEERING
CIVIL AND SURVEY
10446 N. 74TH ST. SUITE 140
SCOTTSDALE, AZ 85258
T 480 991 3985
F 480 991 3986

CERTIFICATE NO. 29865
JAMES A. BRUCCI
DATE SIGNED 07/12/24
ARIZONA U.S.A.
Expires 3/31/2026

FINAL PLAT FOR "BUCKEYE TEN 85"

THOSE PORTIONS OF THE WEST HALF OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 4 WEST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA.

SECTION: 36
TWNSHP: 1N.
RANGE: 4W.

JOB NO.: LGEC298–FP01

SCALE N.T.S.

SHEET 2 OF 7

PLZS–22–00055

N.W. COR. SEC. 36, T.1N., R.4W.
FOUND BRASS CAP IN HANDHOLE
W/ SECTION LABELS
(ACCEPTED)

33' R/W

1099.56'(M)

RIGHT TO PROHIBIT, CONTROL OR
RESTRICT ACCESS TO HIGHWAY
DOC. # 2010-0636580

FND. BRASS
CAP FLUSH

N. LINE, N.W. 1/4, SEC. 36, T.1N., R.4W.
S88°41'56"E 2652.61'(M) 2652.45'(R1,R2) 2652.50'(R3)

33' R/W

SOUTHERN AVENUE

33' R/W

66' R/W

1553.05'

N. 1/4 SEC. 36, T.1N., R.4W.
FOUND COTTON PICKER
SPINDLE W/NO TAG (ACCEPTED)

2652.48'(R1,R2) 2652.50'(R3)
S88°42'12"E 2652.58'(M)

N.E. COR. SEC. 36, T.1N., R.4W.
FOUND BRASS CAP FLUSH
STAMPED "TOWN OF BUCKEYE"
(ACCEPTED)

75' R/W DEDICATED HEREON

33.01'

FND. ADOT ALUM.
CAP FLUSH

S88°43'03"E
157.10'(M)

FND. ADOT ALUM.
CAP FLUSH

24' PROP. IRRIGATION EASEMENT
DEDICATED HEREON SEE SHEET 7

S88°41'23"E 612.95'(M)

N1°17'24"E 143.20'(M)

L2

L61

N1°17'24"E 68.20'

SIDEWALK EASEMENT
DEDICATED HEREON

S88°41'56"E
47.14'

8' PUE
DEDICATED HEREON

S88°41'56"E 951.27'

L68 L69 L66 L67

417.96'

ROADWAY EASEMENT
(TYP.)
DEDICATED HEREON
SEE DETAIL THIS
SHEET

33'x33' SIGHT
VISIBILITY
EASEMENT

L17

TRACT 1
22,500 SQ. FT. ±
0.5165 ACRES ±

FND. ADOT ALUM.
CAP FLUSH

SIDEWALK EASEMENT
DEDICATED HEREON

RIGHT TO PROHIBIT, CONTROL OR
RESTRICT ACCESS TO HIGHWAY
DOC. # 2010-0636580

25' PROP. WATER EASEMENT
DEDICATED HEREON
SEE SHEET 7

60' ACCESS EASEMENT
DEDICATION HEREON
SEE SHEET 6

25' PROP. WATER
EASEMENT
DEDICATED HEREON
SEE SHEET 7

25' PROP. WATER
EASEMENT
DEDICATED HEREON
SEE SHEET 7

60' PROP. WELL ACCESS
EASEMENT DEDICATION HEREON
SEE SHEET 6

DETAIL 'A'
SEE THIS SHEET

40' R/W DEDICATED
HEREON

ROOKS ROAD

24' PROP. IRRIGATION EASEMENT
DEDICATED HEREON SEE SHEET 7

HIGHWAY 85

N14°11'03"E 758.56'(M)

25' PROP. WATER EASEMENT
DEDICATED HEREON SEE SHEET 7

60' WELL ACCESS EASEMENT
DEDICATION HEREON
SEE SHEET 6

PARCEL 1
2,827,077 SQ. FT.±
64.9008 ACRES±
(EXCLUDES AREA OF TRACT 1)

DETAIL 'A'
1"=100'

33' R/W
66' R/W
33' R/W
S88°41'56"E
330.03'
L3 L4 L5 L6 L7 L9 L10 L11
L8
L62 L65 L64 L63 L16 L12 L13 L15 L14
SIDEWALK
EASEMENT
DEDICATED
HEREON
TRACT 1
22,500 SQ. FT. ±
0.5165 ACRES ±

8' PUE
DEDICATED HEREON

S 263RD AVENUE

S0°03'35"W 767.43'

REPLAT OF
FARALLON UNIT 3
BK. 1753, PG. 30 M.C.R.

40' R/W
BK. 1753, PG. 30 M.C.R.

L18

N0°03'35"E 2630.56'

T. RYAN LANE

S0°03'35"W 472.92'

50' R/W DEDICATED
HEREON

S0°03'35"W 380.00'

16' WATER LINE
EASEMENT
DOC. #2009-0463187

REPLAT OF
FARALLON UNIT 3
BK. 1753, PG. 30 M.C.R.

DETAIL 'B'
SEE THIS SHEET

92.92'

L24

SIDEWALK EASEMENT
DEDICATED HEREON

8' PUE
DEDICATED HEREON

S0°03'35"W 876.05'

FARALLON UNIT 2
BK. 906, PG. 15 M.C.R.

40' R/W DEDICATED
HEREON

40' R/W
BK. 906, PG. 15 M.C.R.

S 263RD AVENUE

DETAIL 'B'
1"=40'
SIDEWALK
EASEMENT
DEDICATED
HEREON
L73 L19 L70 L72 L22 L71 L23

**ROADWAY EASEMENTS ALONG SOUTHERN AVENUE
BEING DEDICATED HEREON**

S88°41'56"E 8.51' — S88°41'56"E 159.71' — S88°41'56"E 72.40' — S88°41'56"E 121.81' — S88°41'56"E 18.13' — S78°10'41"E 1.90'
N1°17'24"E 68.20'
5'X20' 5'X20' 5'X20'
N88°41'23"W

S88°41'56"E 248.71' — S88°41'56"E 120.11' — S88°41'56"E 212.61' — S88°41'56"E 207.14' — S88°41'56"E 82.71'
5'X20' 5'X20' 5'X20' 5'X20'
L17
NE COR. PARCEL 1

N0°02'53"W 2657.34'(M) 2656.88'(R1,R2) 2657.11'(R3)

FND. IRON BAR
W/ NO I.D.

N10°03'56"E 362.78'(M)

RIGHT TO PROHIBIT, CONTROL OR
RESTRICT ACCESS TO HIGHWAY
DOC. # 2010-0636580

24' PROP. IRRIGATION EASEMENT
DEDICATED HEREON SEE SHEET 7

FND. ADOT BRASS CAP FLUSH

25' PROP. WATER EASEMENT
DEDICATED HEREON
SEE SHEET 7

L21
68.60'
L29 L20
31.26'
L28

FND. ADOT BRASS CAP FLUSH

N90°00'00"W 2423.62'

FND. ADOT
BRASS CAP
FLUSH

DETAIL 'C'
SEE THIS SHEET

TRACT 2
23,514 SQ. FT. ±
0.5398 ACRES ±

25' PROP. WATER
EASEMENT
DEDICATED HEREON
SEE SHEET 6

4' APS ESMT.
DKT. 12208, PG. 334

N0°02'15"W 1154.17'

RIGHT TO PROHIBIT, CONTROL OR
RESTRICT ACCESS TO HIGHWAY
DOC. # 2010-0636580

60' ACCESS EASEMENT DEDICATION HEREON
SEE SHEET 6

60'

25' PROP. WATER EASEMENT
DEDICATED HEREON SEE SHEET 7

24' PROP. IRRIGATION EASEMENT
DEDICATED HEREON SEE SHEET 7

L21
N90°00'00"E
2423.62'
L20
L28
L27
L26
L30
L31
N0°02'53"W 2657.34'
L34
N0°02'15"W 1154.17'
L32
L33
TRACT 2
23,514 SQ. FT. ±
0.5398 ACRES ±

DETAIL 'C'
1"=100'

PARCEL 2
2,971,361 SQ. FT. ±
68.2131 ACRES ±
(EXCLUDES AREA OF TRACT 2 & 3)

N

0 50 100 200
SCALE: 1" = 100'

NOTE:
SEE SHEET 5 OF 7 FOR LEGEND.

NOTES:
SEE SHEET 5 OF 7 FOR LINE TABLES

MATCHLINE SEE SHEET 4 OF 7

NO.	DATE	REVISION	BY

PURPOSE: **FINAL PLAT**

DRAWN BY: AA
CHECKED BY: jab

HUNTER ENGINEERING
CIVIL AND SURVEY
10446 N. 74TH ST., SUITE 140
SCOTTSDALE, AZ 85258
T 480 991 3985
F 480 991 3986

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
29865
JAMES A.
BRUCCI
DATE SIGNED 07/01/24
ARIZONA U.S.A.
Expires 3/31/2026

FINAL PLAT FOR "BUCKEYE TEN 85"

THOSE PORTIONS OF THE WEST HALF OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 4 WEST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA.

SECTION: 36
TWNSHP: 1N.
RANGE: 4W.

JOB NO.: LGEC298-FP01

SCALE 1"=100'

SHEET 3 OF 7

PLZS-22-00055

NOTES:

SEE SHEET 5 OF 7 FOR LINE TABLES

MATCHLINE SEE SHEET 3 OF 7

PARCEL 2
2,971,361 SQ. FT. ±
68.2131 ACRES ±
(EXCLUDES AREA OF TRACT 2 & 3)

4' APS ESMT.
DKT. 12208, PG. 334

RIGHT TO PROHIBIT, CONTROL OR RESTRICT ACCESS TO HIGHWAY
DOC. # 2010-0636580

N0°02'15"W 1154.17'

N0°02'53"W 2657.34' (M) 2656.88'(R1,R2) 2657.11'(R3)

TRACT 3
22,500 SQ. FT. ±
0.5165 ACRES ±

L38 | L39 | L37 | L36 | 150.00' | N90°00'00"W | 150.00'

N90°00'00"W 2539.60'

L35 | L48 | L47 | L46 | L45

FND. ADOT BRASS CAP FLUSH

60' ACCESS EASEMENT DEDICATION HEREON SEE SHEET 6

W. 1/4 COR. SEC. 36, T.1N., R.4W. FND. 5/8" IRON BAR (ACCEPTED)

FND. IRON BAR W/ NO I.D. 0.34' S.

A.P.N. 504-39-031
OWNER: ARIZONA DEPT. OF TRANSPORTATION
DEED NO. 20051512109, M.C.R.
"NOT A PART"

24' PROP. IRRIGATION EASEMENT DEDICATED HEREON SEE SHEET 6

25' PROP. WATER EASEMENT DEDICATED HEREON SEE SHEET 7

HIGHWAY 85

N0°02'38"W 2657.08'(M) 2657.32'(R1,R2) 2657.11'(R3)

RIGHT TO PROHIBIT, CONTROL OR RESTRICT ACCESS TO HIGHWAY
DOC. # 2010-0636580

60' PROP. WELL ACCESS EASEMENT DEDICATION HEREON SEE SHEET 6

N0°02'56"W 1268.23'

25' PROP. WATER EASEMENT DEDICATED HEREON SEE SHEET 7

24' PROP. IRRIGATION EASEMENT DEDICATED HEREON SEE SHEET 7

ACCESS ESMT FOR IRRIGATION FACILITIES
DKT. 11151, PG. 626

N0°02'56"W 1706.21'(M)

PARCEL 3
3,554,024 SQ. FT.
81.5891 ACRES
(EXCLUDES AREA OF TRACT 4)

DETAIL 'D'
1"=50'

8' PUE DEDICATED HEREON

L79 | 62.97' | L80 | L78 | 54.93' | L77 | 26.33' | L56

SIDEWALK EASEMENT DEDICATED HEREON

60' ACCESS EASEMENT DEDICATION HEREON SEE SHEET 6

TRACT 4
22,588 SQ. FT. ±
0.5185 ACRES ±

L52 | L53 | L51 | L54 | L49 | L55 | L50

S0°00'28"W 172.35'

N89°34'23"W 1264.54'

S0°02'56"E 377.97'(C)

(UNSUBDIVIDED)
A.P.N. 504-39-028H
OWNER: BUCKEYE SR85, LLC
DEED NO. 20040132714, M.C.R.
"NOT A PART"

N0°00'28"E 1151.66'

PARCEL 4
1,714,706 SQ. FT. ±
39.3643 ACRES ±

N90°00'00"W 1251.08'

40' R/W DEDICATED HEREON

S0°03'35"W 876.05' L25

50' R/W DEDICATED HEREON

16' WATER LINE EASEMENT
DOC. #2009-0463187

S0°03'35"W 216.69'

40' R/W
BK. 906,
PG. 14 M.C.R.

FARALLON UNIT 2
BK. 906,
PG. 15 M.C.R.

S0°03'35"W 2630.56'

L76 | L75 | L40 | S0°03'35"W 250.32' | 137.56'

SIDEWALK EASEMENT DEDICATED HEREON

L74 | L41 | L42

W MARICOPA ROAD

40' R/W DEDICATED HEREON
8' PUE
DEDICATED HEREON

40' R/W
BK. 906,
PG. 14 M.C.R.

S0°03'35"W 553.34'

S0°03'35"W 2629.58'

FARALLON UNIT 1
BK. 906,
PG. 14 M.C.R.

S 263RD AVENUE

L44 | L43

R/W WIDTH VARIES DEDICATED HEREON

424.57' | S2°24'04"W 505.82'

W FREEMONT ROAD

16' WATER LINE EASEMENT
DOC. #2009-0463187

FARALLON UNIT 1
BK. 906,
PG. 14 M.C.R.

DETAIL 'D'
SEE THIS SHEET

SIDEWALK EASEMENT DEDICATED HEREON SEE DETAIL 'C'

81.26' | L56

NARRAMORE TODD I/MELODY K / APN 540-39-030D / DOC #20081090217

6' ELECTRIC LINE AND APPURTENANCE EASEMENT
DKT. 9911, PG. 307

(UNSUBDIVIDED)

64' R/W DEDICATED HEREON

L57

16' WATER LINE EASEMENT
DOC. #2009-0463187

20' WATER LINE EASEMENT
DOC. # 2007-0929665

30' INGRESS/EGRESS EASEMENT
DKT. 10031, PG.628

MATCHLINE SEE SHEET 5 OF 7

0 50 100 200
SCALE: 1" = 100'

NO.	DATE	REVISION	BY

PURPOSE: **FINAL PLAT**

DRAWN BY: AA
CHECKED BY: JDH

HUNTER ENGINEERING
CIVIL AND SURVEY
10446 N. 74TH ST., SUITE 140
SCOTTSDALE, AZ 85258
T 480 991 3985
F 480 991 3986

29865
JAMES A. BRUCCI
DATE SIGNED 07/31/24
ARIZONA U.S.A.
CERTIFICATE NO.
REGISTERED LAND SURVEYOR
Expires 3/31/2026

FINAL PLAT FOR "BUCKEYE TEN 85"

THOSE PORTIONS OF THE WEST HALF OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 4 WEST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA.

SECTION: 36
TWNSHP: 1N.
RANGE: 4W.

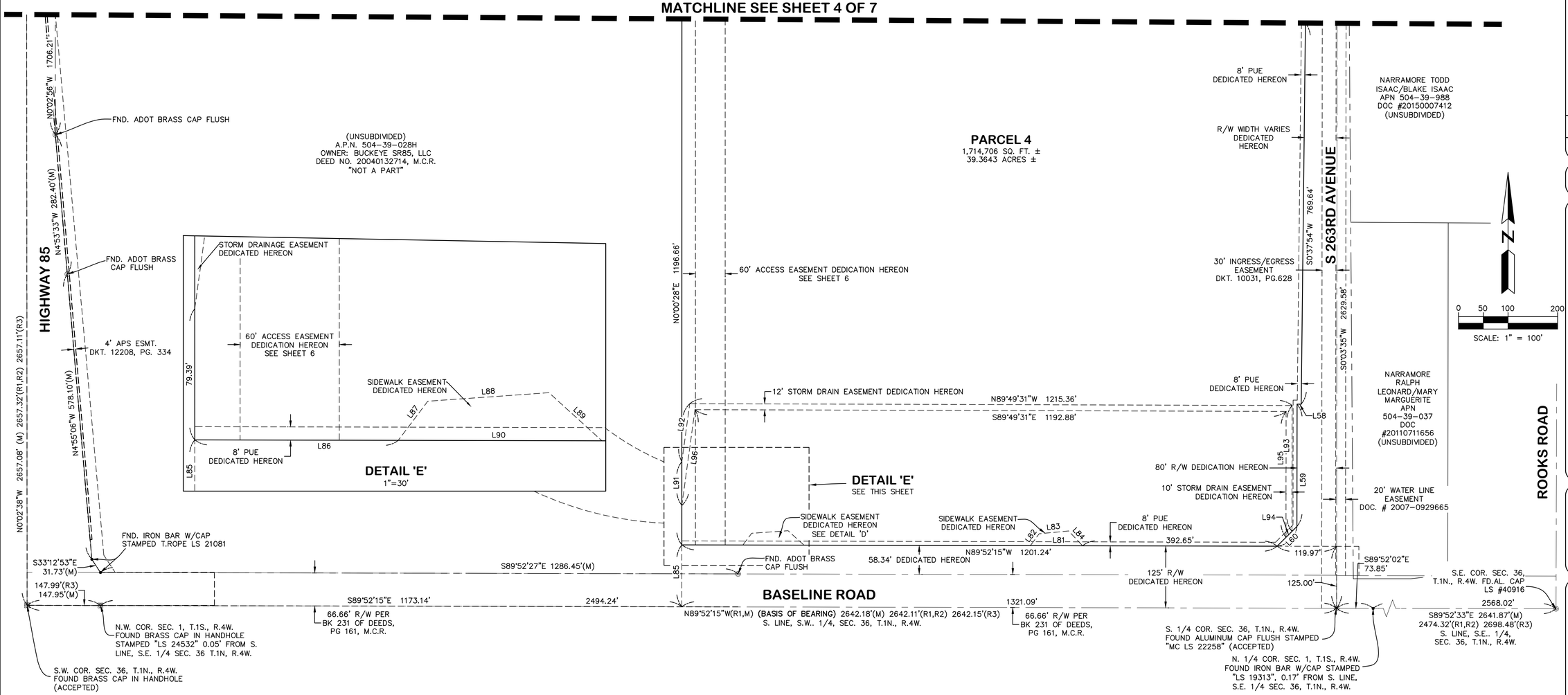
JOB NO.: LGEC298-FP01

SCALE 1"=100'

SHEET 4 OF 7

PLZS-22-0055

MATCHLINE SEE SHEET 4 OF 7



LEGEND:

- BRASS CAP IN HANDHOLE
- FOUND AS NOTED
- BRASS CAP FLUSH
- ALUMINUM CAP FLUSH
- EASEMENT LINE
- EXISTING RIGHT-OF-WAY LINE
- GROSS BOUNDARY LINE
- MONUMENT LINE
- PROPERTY LINE

(R1) RECORDED DATA PER THE RESULTS OF SURVEY AS RECORDED IN BK. 629, PG. 17, M.C.R.

(R2) RECORDED DATA PER THE AMENDED RESULTS OF SURVEY AS RECORDED IN BK. 645, PG. 19, M.C.R.

(R3) RECORDED DATA PER THE ALTA/ACSM LAND TITLE SURVEY AS RECORDED IN BK. 639, PG. 43, M.C.R.

(M) MEASURED INFORMATION FROM FIELD DATA COLLECTION.

(C) CALCULATED INFORMATION FROM RECORDED DOCUMENTS AS NOTED.

BOUNDARY LINE TABLE

LINE TABLE		
LINE	BEARING	DISTANCE
L1	S01°17'24"W	75.00'
L2	S88°41'56"E	330.03'
L3	N01°18'04"E	5.00'
L4	S88°41'56"E	90.53'
L5	S78°10'41"E	21.47'
L6	S88°41'56"E	30.73'
L7	S01°18'04"W	5.58'
L8	S88°41'56"E	4.08'
L9	S88°41'56"E	43.06'
L10	N73°17'49"E	14.56'
L11	S88°41'56"E	951.27'
L12	S01°18'04"W	8.00'
L13	S00°00'00"W	150.00'
L14	N90°00'00"W	150.00'
L15	N00°00'00"E	150.00'
L16	S90°00'00"E	150.00'
L17	S44°19'11"E	42.88'
L18	N89°56'25"W	10.00'
L19	S00°03'35"W	56.46'
L20	N00°04'24"W	99.86'

LINE TABLE		
LINE	BEARING	DISTANCE
L21	S89°57'28"W	99.99'
L22	S00°03'35"W	46.51'
L23	S00°03'35"W	46.42'
L24	S89°56'25"E	10.00'
L25	N89°56'25"W	10.00'
L26	N89°53'11"E	17.79'
L27	S00°00'00"E	18.35'
L28	N89°53'11"E	118.01'
L29	S10°08'21"W	101.61'
L30	N90°00'00"E	125.00'
L31	S00°00'00"E	129.76'
L32	S22°45'13"W	71.10'
L33	N90°00'00"W	97.50'
L34	N00°00'00"E	195.33'
L35	N90°00'00"E	168.18'
L36	N00°00'00"E	59.06'
L37	N00°00'00"E	150.00'
L38	S90°00'00"E	150.00'
L39	S00°00'00"W	150.00'
L40	S00°03'35"W	101.33'

LINE TABLE		
LINE	BEARING	DISTANCE
L41	S00°03'35"W	11.43'
L42	S89°56'25"E	10.00'
L43	S02°24'04"W	98.61'
L44	N87°35'56"W	10.00'
L45	S89°16'34"E	35.33'
L46	N00°02'51"W	60.01'
L47	N89°16'34"W	35.33'
L48	N00°02'15"W	160.65'
L49	S89°34'23"E	58.47'
L50	N00°25'37"E	19.50'
L51	N00°10'21"E	150.00'
L52	S89°49'39"E	111.85'
L53	S63°33'23"E	46.38'
L54	S00°10'21"W	129.47'
L55	N89°49'39"W	153.44'
L56	S87°35'56"E	10.69'
L57	S00°03'35"W	233.71'
L58	N89°22'06"W	8.32'
L59	S00°03'35"W	247.01'
L60	S45°05'37"W	56.49'

SIDEWALK LINE TABLE

LINE TABLE		
LINE	BEARING	DISTANCE
L61	S88°41'56"E	201.53'
L62	S88°41'56"E	125.60'
L63	S37°37'20"W	32.33'
L64	S89°29'58"W	75.53'
L65	N46°08'09"W	42.03'
L66	S43°14'20"W	40.38'
L67	N87°24'16"W	61.45'
L68	N40°38'12"W	38.51'
L69	S88°41'56"E	114.16'
L70	S00°03'35"W	102.97'
L71	N54°00'12"W	28.43'
L72	N03°18'42"W	58.97'
L73	N44°04'20"E	38.12'
L74	N54°27'28"W	28.43'
L75	N03°16'18"W	59.50'
L76	N46°21'08"E	36.81'
L77	N38°25'29"W	22.09'
L78	N05°49'44"W	75.61'
L79	N46°11'55"E	36.50'
L80	S02°24'04"W	117.89'

LINE TABLE		
LINE	BEARING	DISTANCE
L81	N89°52'15"W	105.19'
L82	N36°16'17"E	29.78'
L83	N84°33'52"E	59.84'
L84	S43°06'45"E	40.98'
L85	N00°00'28"E	125.00'
L86	S89°52'15"E	123.20'
L87	N36°58'08"E	29.65'
L88	N85°58'40"E	73.55'
L89	S47°45'23"E	43.33'
L90	N89°52'15"W	123.27'

DRAINAGE LINE TABLE

LINE TABLE		
LINE	BEARING	DISTANCE
L91	N00°00'28"E	88.67'
L92	N07°47'07"E	118.12'
L93	S00°03'35"W	254.31'
L94	S45°05'37"W	16.96'
L95	N00°03'35"E	254.32'
L96	S07°47'07"W	195.48'

NO.	DATE	REVISION	BY
			DJS

PURPOSE: FINAL PLAT

DRAWN BY: AA
CHECKED BY: JDH

HUNTER ENGINEERING
CIVIL AND SURVEY
10446 N. 74TH ST., SUITE 140
SCOTTSDALE, AZ 85258
T 480 991 3985
F 480 991 3986

JAMES A. BRUCCI
CERTIFICATE NO. 29865
DATE SIGNED 07/07/25
ARIZONA U.S.A.
Expires 3/31/2026

FINAL PLAT FOR "BUCKEYE TEN 85"

THOSE PORTIONS OF THE WEST HALF OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 4 WEST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA.

SECTION: 36
TWNSHP: 1N.
RANGE: 4W.

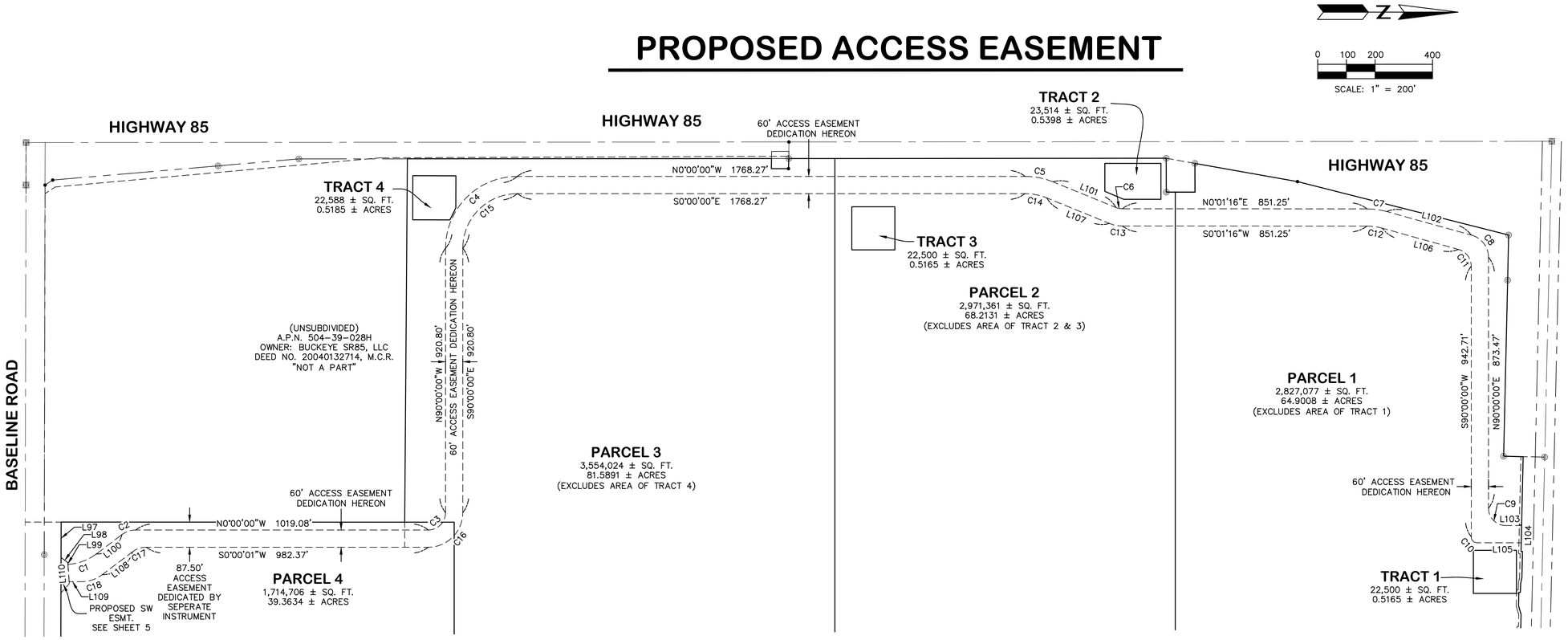
JOB NO.: LGEC298-FP01

SCALE 1"=100'

SHEET 5 OF 7

PLZS-22-00055

PROPOSED ACCESS EASEMENT



0 100 200 400

SCALE: 1" = 200'

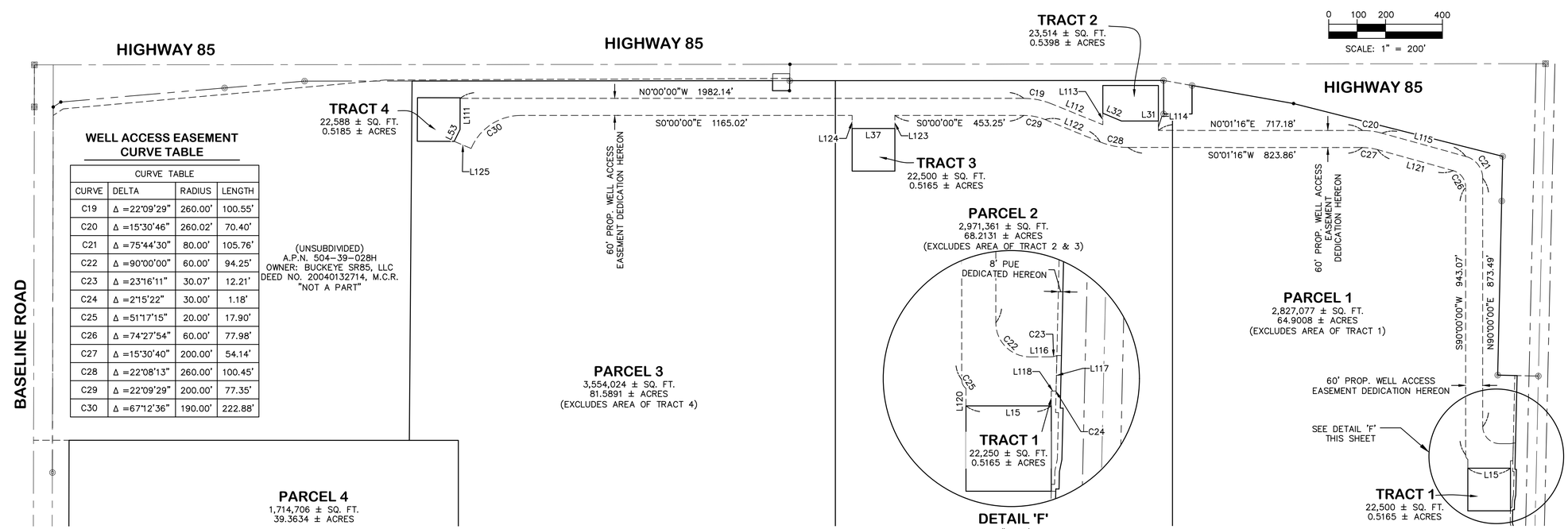
ACCESS EASEMENT LINE TABLE

LINE TABLE		
LINE	BEARING	DISTANCE
L97	N89°52'15"W	123.20'
L98	N36°58'08"E	29.65'
L99	N85°58'40"E	6.18'
L100	S37°04'28"E	111.75'
L101	N22°09'29"E	236.26'
L102	N15°32'04"E	304.94'
L103	N00°02'49"W	55.36'
L104	S88°41'56"E	60.07'
L105	N00°00'00"E	154.76'
L106	N15°31'54"E	275.94'
L107	N22°09'29"E	236.26'
L108	S37°04'28"E	132.05'
L109	N00°06'38"E	42.40'
L110	N85°58'40"E	60.44'

ACCESS EASEMENT CURVE TABLE

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	Δ =33°57'06"	180.00'	106.66'
C2	Δ =37°04'28"	80.00'	51.77'
C3	Δ =90°00'00"	60.00'	94.25'
C4	Δ =90°00'00"	250.00'	392.70'
C5	Δ =22°09'29"	260.00'	100.55'
C6	Δ =22°08'13"	60.00'	23.18'
C7	Δ =15°30'50"	260.00'	70.40'
C8	Δ =75°44'30"	80.00'	105.76'
C9	Δ =90°00'00"	60.00'	94.25'
C10	Δ =87°47'59"	20.00'	30.65'
C11	Δ =74°28'06"	60.50'	78.63'
C12	Δ =15°30'50"	200.00'	54.15'
C13	Δ =22°08'12"	120.00'	46.36'
C14	Δ =22°09'29"	200.00'	77.35'
C15	Δ =90°00'00"	190.00'	298.45'
C16	Δ =90°00'01"	120.00'	188.50'
C17	Δ =37°04'28"	80.00'	51.77'
C18	Δ =37°11'06"	120.00'	77.88'

PROPOSED WELL ACCESS EASEMENT



0 100 200 400

SCALE: 1" = 200'

WELL ACCESS EASEMENT CURVE TABLE

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C19	Δ =22°09'29"	260.00'	100.55'
C20	Δ =15°30'46"	260.02'	70.40'
C21	Δ =75°44'30"	80.00'	105.76'
C22	Δ =90°00'00"	60.00'	94.25'
C23	Δ =23°16'11"	30.07'	12.21'
C24	Δ =2°15'22"	30.00'	1.18'
C25	Δ =51°17'15"	20.00'	17.90'
C26	Δ =74°27'54"	60.00'	77.98'
C27	Δ =15°30'40"	200.00'	54.14'
C28	Δ =22°08'13"	260.00'	100.45'
C29	Δ =22°09'29"	200.00'	77.35'
C30	Δ =67°12'36"	190.00'	222.88'

WELL ACCESS EASEMENT LINE TABLE

LINE TABLE		
LINE	BEARING	DISTANCE
L15	S00°00'00"W	150.00'
L31	N00°00'00"E	129.76'
L32	N22°45'13"E	71.10'
L37	S00°00'00"W	150.00'
L53	S63°33'23"E	46.38'
L111	S89°49'39"E	109.84'
L112	S22°09'29"W	194.52'
L113	N90°00'00"E	40.35'
L114	S90°00'00"W	33.08'
L115	S15°32'04"W	304.94'
L116	N00°02'49"W	35.54'
L117	S88°41'56"E	62.51'
L118	S00°00'00"W	7.32'
L119	S90°00'00"E	26.32'
L120	N90°00'00"W	30.71'
L121	N15°32'06"E	276.33'
L122	N22°09'29"E	208.87'
L123	N90°00'00"W	45.86'
L124	S90°00'00"E	45.86'
L125	N22°47'24"E	64.74'
L126	N01°18'04"E	8.00'
L127	S88°41'56"E	237.53'

NO.	DATE	REVISION	BY

PURPOSE: FINAL PLAT

DRAWN BY: AA
CHECKED BY: jab

HUNTER ENGINEERING
CIVIL AND SURVEY
10446 N. 74TH ST. SUITE 140
SCOTTSDALE, AZ 85258
T 480 991 3985
F 480 991 3986

REGISTERED LAND SURVEYOR
29865
JAMES A. BRUCCA
DATE SIGNED 07/01/24
ARIZONA U.S.A.
Expires 3/31/2026

FINAL PLAT FOR "BUCKEYE TEN 85"

THOSE PORTIONS OF THE WEST HALF OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 4 WEST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA.

SECTION: 36
TWNSHP: 1N.
RANGE: 4W.

JOB NO.: LGEC298-FP01

SCALE 1"=200'

SHEET 6 OF 7

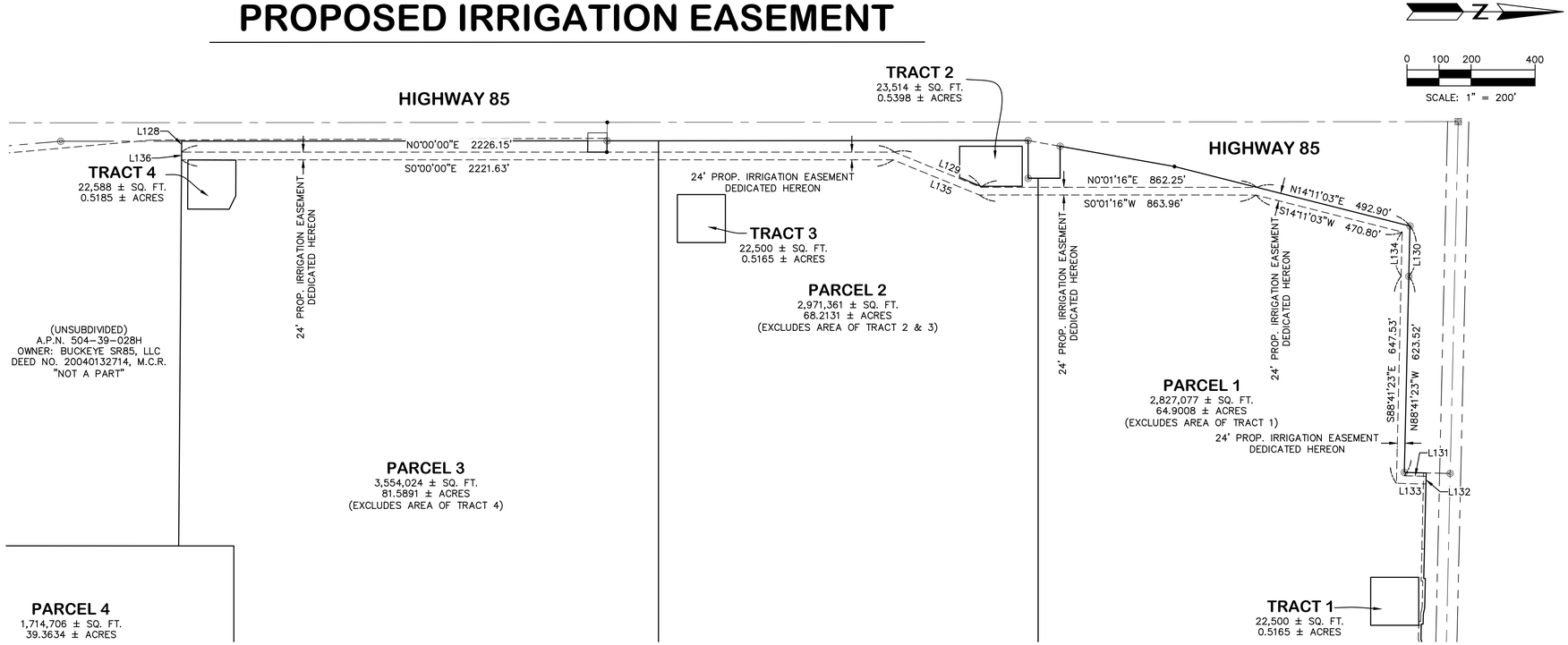
PLZS-22-00055

S:\LGEC298-BUCKEYE\PROS\LGEC298-FP01-SHEET 6-7.dwg, 7/1/2024 11:55:31 AM, jbruce

PROPOSED IRRIGATION EASEMENT

IRRIGATION EASEMENT LINE TABLE

LINE TABLE		
LINE	BEARING	DISTANCE
L128	S89°34'23"E	34.25'
L129	N22°09'29"E	291.19'
L130	S88°43'03"E	157.10'
L131	N01°17'24"E	68.20'
L132	S88°41'56"E	24.00'
L133	S01°17'24"W	92.21'
L134	N88°43'03"W	137.96'
L135	S22°09'29"W	291.19'
L136	S89°34'23"E	24.00'



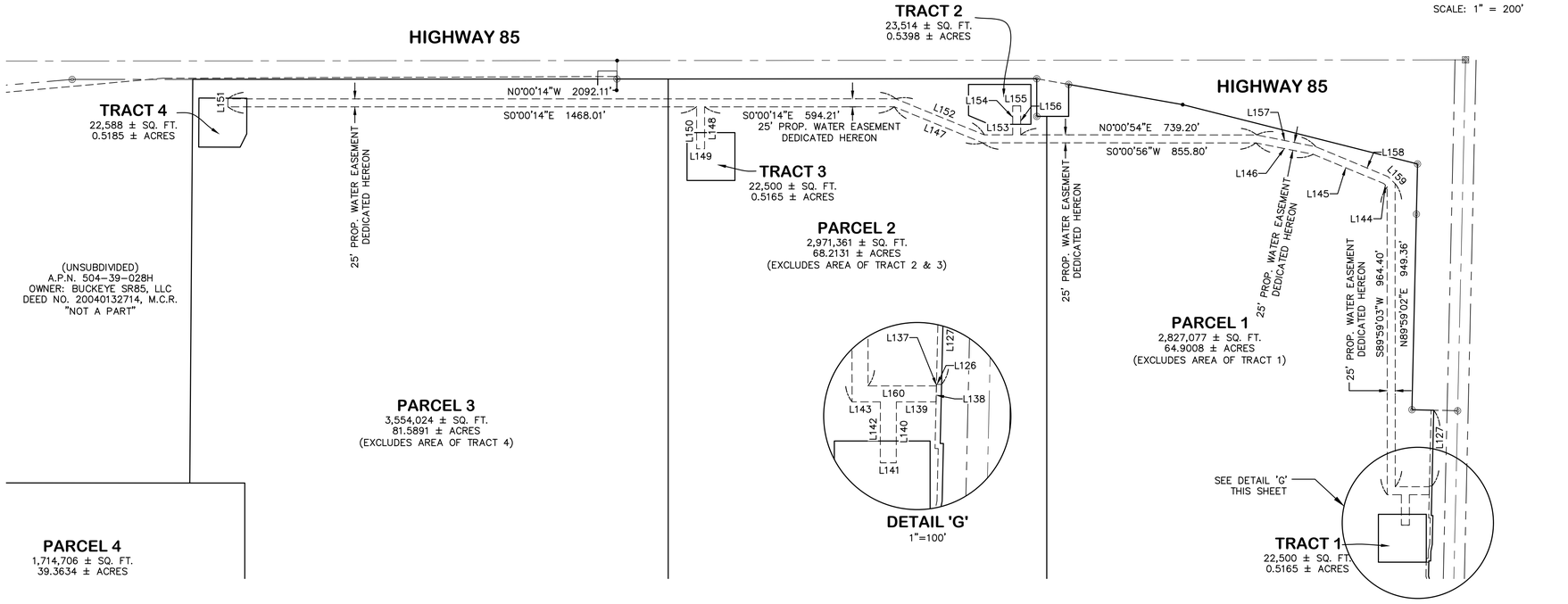
0 100 200 400
SCALE: 1" = 200'

PROPOSED WATER EASEMENT

WATER EASEMENT LINE TABLE

LINE TABLE		
LINE	BEARING	DISTANCE
L126	N01°18'04"E	8.00'
L127	S88°41'56"E	237.53'
L137	S88°41'56"E	2.44'
L138	S88°41'56"E	25.01'
L139	S00°01'10"E	62.20'
L140	S89°56'30"E	95.46'
L141	S00°03'30"W	25.00'
L142	N89°56'30"W	95.43'
L143	S00°01'10"E	44.33'
L144	S45°00'00"W	14.82'
L145	S22°31'01"W	239.01'
L146	S11°16'01"W	183.18'
L147	S22°10'39"W	299.02'

LINE TABLE		
LINE	BEARING	DISTANCE
L148	S90°00'00"E	131.42'
L149	S00°00'00"W	25.00'
L150	N90°00'00"W	131.42'
L151	S89°59'46"W	25.00'
L152	N22°10'39"E	299.02'
L153	N00°02'13"W	89.13'
L154	S89°58'47"E	90.77'
L155	N00°00'30"E	25.00'
L156	N89°59'02"W	90.86'
L157	S11°16'01"W	188.13'
L158	S22°31'01"W	245.74'
L159	S45°00'00"W	31.06'
L160	S00°01'10"E	107.09'



0 100 200 400
SCALE: 1" = 200'

NO.	DATE	REVISION	BY
			DJS

PURPOSE: **FINAL PLAT**

DRAWN BY: AA
CHECKED BY: JDH

HUNTER ENGINEERING
CIVIL AND SURVEY
10446 N. 74TH ST., SUITE 140
SCOTTSDALE, AZ 85258
T 480 991 3985
F 480 991 3986

REGISTERED LAND SURVEYOR
29865
JAMES A. BRUCCA
DATE SIGNED 07/01/24
ARIZONA U.S.A.
Expires 3/31/2026

FINAL PLAT FOR "BUCKEYE TEN 85"

THOSE PORTIONS OF THE WEST HALF OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 4 WEST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA.

SECTION: 36
TWNSHP: 1N.
RANGE: 4W.

JOB NO.: LGEC298-FP01

SCALE 1"=200'

SHEET 7 OF 7

PLZS-22-00055

CITY OF BUCKEYE
Regular Council Meeting
COUNCIL ACTION REPORT

MEETING DATE: 09/03/24	**AGENDA ITEM:** 4.L. DS - Mission Park III Perryville Streetlight In-Lieu Payment Agreement
DATE PREPARED: 08/29/24	**DISTRICT NO.:** Council District 5
STAFF LIAISON: Ron Moll, City Engineer, rmoll@buckeyeaz.gov, (623) 986-8442	
DEPARTMENT: Development Services	**AGENDA ITEM TYPE:** Consent Agenda Items / New Business

ACTION/MOTION: (This language identifies the formal motion to be made by the Council)
Council to take action on the Public Improvements In-Lieu Payment Agreement between the City of Buckeye, an Arizona municipal corporation, and CRP/Martens Mission Park Owner, L.L.C., a Delaware limited liability company; and authorize the City Manager to execute and deliver said Agreement on behalf of the City of Buckeye.

SUMMARY

PROJECT DESCRIPTION:
As part of its development of land generally located at the North Perryville Road and West Roosevelt Street, Martens Mission Park Venture, L.L.C. is required to construct certain off-site streetlight improvements ("Off-Site Improvements"). The Off-Site Improvements are listed in the itemized estimate incorporated into the Agreement, and include, but are not limited to six streetlights. The estimated costs of the Off-Site Improvements total $79,200.00. The City has reviewed and approved the itemized estimate. The City does not have an anticipated time for completion of the future Perryville Road improvements, which will install the streetlights once a median is constructed. The Parties have agreed that rather than Developer immediately completing the Off-Site Improvements, Developer may make an In-Lieu Payment to the City, to be held by the City until such time as the funds are utilized to complete the Off-Site Improvements.

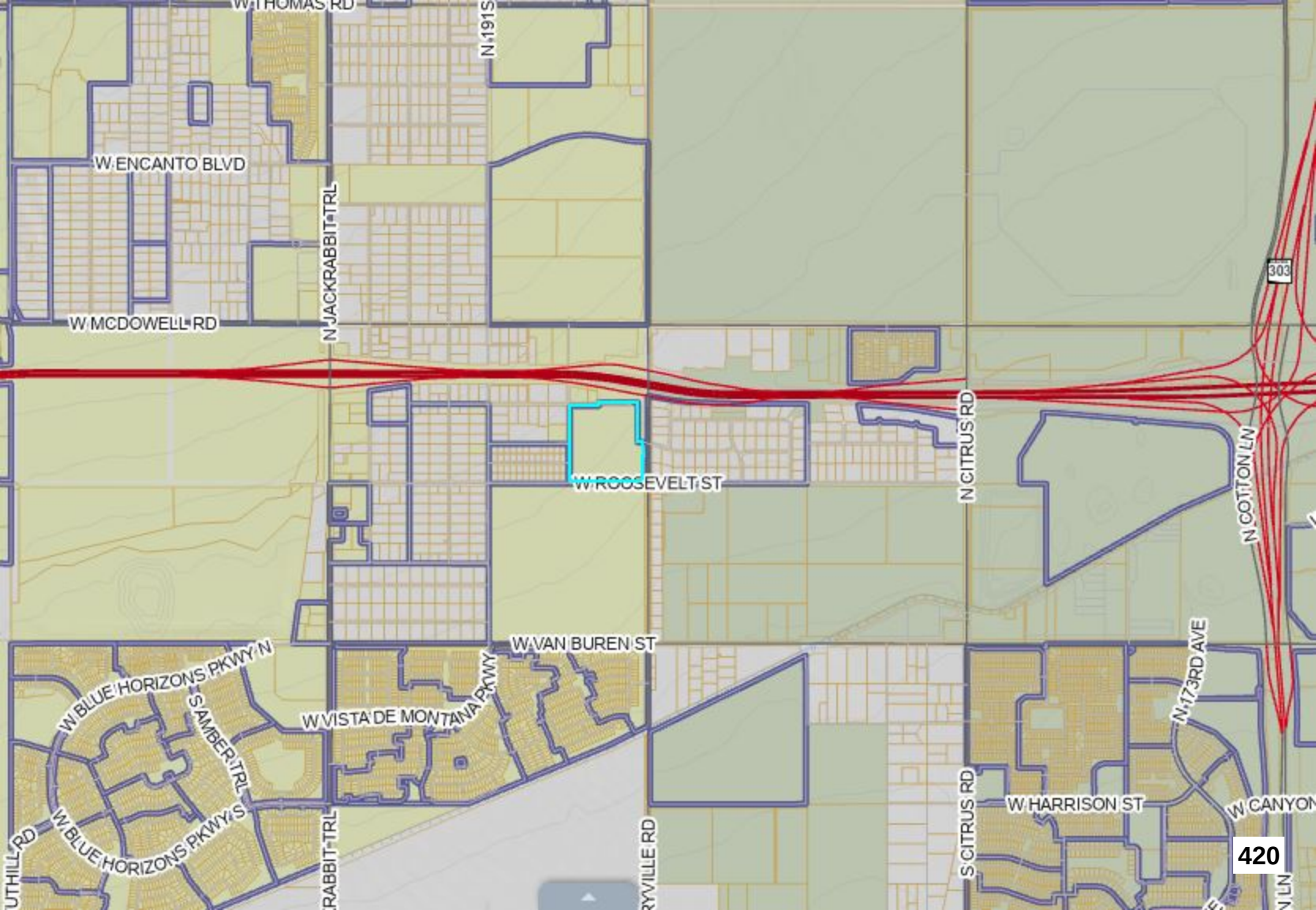
BENEFITS:
Implementing the payment in-lieu Agreement protects against waste and spoilage of city resources.

FUTURE ACTION:
None

FINANCIAL IMPACT STATEMENT:
N/A

CURRENT FISCAL YEAR TOTAL COST:
N/A

Items related to a project or facility location must include an attached vicinity map for Council Review.
ATTACHMENTS:
Vicinity Map.pdf
COB - Fee In Lieu Agreement - Mission Park.executed.pdf


W THOMAS RD
N 191S
W ENCANTO BLVD
N JACKRABBIT TRL
W MCDOWELL RD
303
W ROOSEVELT ST
N CITRUS RD
N COTTON LN
W VAN BUREN ST
W BLUE HORIZONS PKWY N
S AMBER TRL
W VISTA DE MONTANA PKWY
N 173RD AVE
W BLUE HORIZONS PKWY S
W HARRISON ST
S CITRUS RD
420

When Recorded Return To:

CITY OF BUCKEYE
Lucinda J. Aja, City Clerk
530 East Monroe Avenue
Buckeye, Arizona 85326

PUBLIC IMPROVEMENTS
IN-LIEU PAYMENT AGREEMENT

This Public Improvements In-Lieu Payment Agreement (this "**Agreement**"), effective as of this _____ day of _____, 2024 (the "**Effective Date**"), is entered into by and between the City of Buckeye, an Arizona municipal corporation (the "**City**"), and CRP/Martens Mission Park Owner, L.L.C., a Delaware limited liability company ("**Owner**"). The City or the Owner may each be referred to herein as a "**Party**" or collectively as the "**Parties**."

1. **Background.** The following is the background to this Agreement:

A. Owner owns and is developing approximately 36.6 acres of real property within the jurisdictional boundaries of the City, generally located at the northwest corner of Perryville Road and Roosevelt Street, and which is legally described on the attached **Exhibit A** (the "**Property**"), incorporated by this express reference.

B. Owner is developing the Property as a proposed industrial building development and is required by the City to provide and install streetlights that meet applicable lighting standards along the Property's Perryville Road frontage from Roosevelt Street to the ADOT right of way described on the attached **Exhibit B** (the "**Improvements**"), incorporated by this express reference.

C. Due to challenges with design of the streetlights conflicting with APS 69kV powerlines running along the Perryville Road right of way, and no median within the roadway due to the east side not being constructed, Owner has requested, and the City has agreed, that rather than Owner constructing the Improvements necessitated by Owner's development of the Property, Owner may make the In-Lieu Payment (as defined below) to the City of the estimated costs of the Improvements.

2. **Agreement.** For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Owner agree as is more specifically set forth in this Agreement.

3. **Estimated Costs of the Improvements.** The estimated costs of the Improvements total Seventy-Nine Thousand Two Hundred Dollars and 00/100 ($79,200.00) (the "**In-Lieu**

Payment"), which sum is acceptable to both Parties. The In-Lieu Payment has been approved by the City Engineer or Designee, and is based upon the itemized estimate attached as **Exhibit C**, and incorporated by this express reference. The In-Lieu Payment shall be paid to the City by Owner or its assign(s) prior to receiving a certificate of occupancy. In the event that the In-Lieu Payment is not timely received by the City, a certificate of occupancy will not be issued for the Property.

4. Necessary Property; Easements. Owner represents and warrants that Owner is the owner in fee of the Property. To the extent applicable, and at no cost to the City, Owner has dedicated and/or shall dedicate fee title to all necessary real and/or personal property needed for construction and maintenance of the Improvements.

5. Owner's Obligation to Construct. Execution of this Agreement by both Parties and payment in full of the In-Lieu Payment pursuant to this Agreement shall constitute full satisfaction of the Owner's obligation to construct the Improvements listed on **Exhibits B and C**.

6. Owner Representation. Owner on behalf of itself and all other parties having an interest in the Property intends to encumber the Property with the following agreements and waivers. Owner agrees and consents to all the conditions imposed by this Agreement, and by signing this Agreement waives any and all claims, suits, damages, compensation and causes of action for diminution in value of the Property the Owner of the Property may have now or in the future under the provisions of A.R.S. §§ 12-1134 through and including 12-1136 resulting from this Agreement or from any "land use law" (as such term is defined in the aforementioned statute sections) expressly permitted or contemplated by this Agreement to be enacted, adopted or applied by the City now or hereafter. The terms of this waiver shall run with the Property and shall be binding upon all subsequent landowners and shall survive the expiration or other termination of this Agreement.

7. Conflicts of Interest. The Parties acknowledge that this Agreement is subject to cancellation pursuant to A.R.S. § 38-511, as amended.

8. Covenants Running with the Property. The provisions of this Agreement shall be for the benefit of, and shall be a burden upon, the Property, and the provisions of this Agreement shall be covenants running with the Property, without the necessity of an assignment of this Agreement with the conveyance of any part of the Land.

9. Severability. If any provision of this Agreement is declared void or unenforceable by a court of competent jurisdiction, such provision shall be severed from this Agreement, which shall otherwise remain in full force and effect if the remaining provisions permit the parties to achieve the practical and proportional benefits and obligations of the arrangements contemplated by this Agreement. Otherwise, either Party may terminate this Agreement.

10. No Agency or Partnership. Neither the City nor Owner is acting as the agent of the other with respect to this Agreement, and this Agreement shall not be deemed to create a partnership, joint venture or other business relationship between the City and Owner.

11. No Third-Party Beneficiary. This Agreement shall not create any third-party beneficiary rights to any person or entity who is not a party to this Agreement, including any lender to the Owner.

12. Construction. The provisions and exhibits of this Agreement shall be construed as a whole consistent with their plain meaning and intent, and they shall not be construed against one party or the other based upon which party prepared or influenced the drafting of any provision or exhibit of this Agreement.

13. Recording. The City shall record this Agreement with the County Recorder no later than ten (10) days after the last Party to execute this Agreement.

14. Time of Essence and Merger. Time is of the essence of this Agreement. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matters of this Agreement and the In-Lieu Payment. All prior contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein, and this Agreement constitutes full satisfaction of all claims and liabilities that exist, whether known or unknown, on or before the effective date of this Agreement, between the Parties.

15. Benefit and Binding Effect. This Agreement shall be for the benefit of and binding upon the Parties hereto and their successor and assigns.

16. Counterparts; Entire Agreement. This Agreement, which may be executed in counterpart, shall constitute the entire agreement between the Parties regarding the subject of this Agreement. This Agreement will constitute the entire agreement between the Parties, and supersedes all previous written or oral agreements or understandings regarding the subject matter of this Agreement. Owner knowingly and voluntarily forever releases and discharges the City and all of its past and present elected officials, officers, directors, agents, employees, successors, assigns, attorneys, and representatives from all legal and equitable claims, causes of action, debts, accounts, and damages, known or unknown, asserted or unasserted, and of every nature and extent whatsoever, that the Owner has against the City, and arising from actions, omissions, delays or other events that occurred prior to the date of this Agreement.

17. Section Titles. The section titles in this Agreement are not part of this Agreement and are for convenience only.

18. Notices. All notices, requests, waivers, approvals, acceptances or other communications under this Agreement shall be in writing and shall be deemed given when personally delivered or two days after mailing by certified mail, return receipt requested and postage prepaid, to the addresses set forth below:

(a) City

Dan Cotterman, City Manager
City of Buckeye

530 East Monroe Avenue
Buckeye, Arizona 85326

With a copy to:

K. Scott McCoy, City Attorney
City of Buckeye
530 East Monroe Avenue
Buckeye, Arizona 85326

(b) Owner

CRP/Martens Mission Park Owner, L.L.C.
c/o Peter W. Martens
6710 N. Scottsdale Rd., #140
Scottsdale, AZ 85253

No notice to a Party shall be effective unless and until a copy of such notice is given to, or as appropriate, received by, all persons indicated above as entitled to receive required copies of notices to that party. The above-described recipients of notices may change their address for notice purposes by giving the other parties notice of such change, provided, however, that no such change in notice shall be effective for a period of ten (10) days following such notice of such change.

19. Governing Law. This Agreement shall be governed by and construed under the laws of the state of Arizona, and any litigation shall take place only in Maricopa County, Arizona.

20. Amendment. Any amendment to this Agreement shall be in writing and signed by both Parties.

21. Attorneys' Fees. The prevailing party in any litigation in connection with this Agreement shall be entitled to its attorneys' fees and costs.

22. Representations and Warranties. As of the date of the execution of this Agreement, Owner represents and warrants that (i) it is a corporation or limited liability company, duly formed and in good standing in its State of incorporation or formation and duly qualified to do business in Arizona; (ii) Owner has the authority, including the person signing for Owner, and the right to enter into this Agreement as authorized by the board of directors or members of the Owner at duly noticed meetings at which quorums were present; (iii) Owner is not prohibited from executing this Agreement by any law, rule, regulation, instrument, agreement, order or judgment; and, (iv) Owner has not relied on any representations or warranties of the City other than those expressly set forth in this Agreement.

23. Signatures. The Parties have executed this Agreement on the date set forth below.

[SIGNATURES ON FOLLOWING PAGES]

CITY OF BUCKEYE, ARIZONA

an Arizona municipal corporation

By _____
Dan Cotterman, City Manager

ATTEST:

_____
Lucinda J. Aja, City Clerk

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

STATE OF ARIZONA
COUNTY OF MARICOPA

On this _____ day of _____, 2024, before me personally appeared Dan Cotterman, City Manager of the City of Buckeye, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed this Development Agreement on behalf of the City.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

(Seal and Expiration Date)

_____
Notary Public in and for the State of Arizona

CRP/MARTENS MISSION PARK OWNER, L.L.C., a Delaware limited liability company and its assigns

By: **CRP/Martens Mission Park Venture, L.L.C.**, a Delaware limited liability company
Its: Manager

By: _____

Name: Peter W. Martens

Title: authorized signatory

STATE OF Arizona .
COUNTY OF Maricopa

On this 12th day of August, 2024 before me personally appeared Peter W. Martens, in his/her capacity as authorized signatory of CRP/Martens Mission Park Venture, L.L.C., a Delaware limited liability company, the managing member of CRP/Martens Mission Park Owner, L.L.C., a Delaware limited liability company, whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be, and acknowledged that he/she signed this Agreement on behalf of CRP/Martens Mission Park Owner, L.L.C.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

(Seal and Expiration Date)

LISA LARSON
Notary Public
Commission Number 638193
Expires: December 5, 2026
Maricopa County

_____
Notary Public in and for the State of Arizona

EXHIBIT A

[Legal Description of the Property]

A PORTION OF LAND SITUATED WITHIN THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 1 NORTH, RANGE 2 WEST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST QUARTER CORNER OF SAID SECTION 4, FROM WHICH THE NORTHEAST CORNER OF SAID SECTION 4 BEARS NORTH 00°13'03" EAST, A DISTANCE OF 2624.40 FEET;

THENCE ALONG THE EAST-WEST MID-SECTION LINE OF SAID SECTION 4, NORTH 89°38'45" WEST, A DISTANCE OF 1289.22 FEET;

THENCE LEAVING SAID MID-SECTION LINE, NORTH 00°14'41" EAST, A DISTANCE OF 1283.25' FEET;

THENCE SOUTH 89°35'57" EAST, A DISTANCE OF 479.02' FEET;

THENCE NORTH 00°13'56" EAST, A DISTANCE OF 60.00 FEET;

THENCE SOUTH 89°35'56" EAST, A DISTANCE OF 649.58 FEET;

THENCE SOUTH 00°13'03" WEST, A DISTANCE OF 661.13 FEET;

THENCE SOUTH 89°36'44" EAST, A DISTANCE OF 160.00 FEET TO THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 4;

THENCE ALONG SAID EAST LINE, SOUTH 00°13'03" WEST, A DISTANCE OF 681.10 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

[Description of Improvements]

(See following page)

Project Name: Mission Park 3

Location: NWC Roosevelt Street & Perryville Road

Date: 6/17/2024

Subject: Streetlight Improvements Scope of Work for Fee In-Lieu of Construction

Streetlight Improvements along Perryville Road from Roosevelt Street to the ADOT ROW consisting of approximately 690 feet of property frontage. While there is no streetlight design for Perryville Road, the scope of work was based on an assumed spacing of approximately 150 feet between lights, which would require 6 lights to properly cover the property's frontage.



EXHIBIT C

[In-Lieu Payment Cost Estimate]

(See following page)

Project Name: Mission Park 3

Location: NWC Roosevelt Street & Perryville Road

Date: 6/17/2024

Mission Park 3 Perryville Road Streetlight Improvements					
ITEM NO	ITEM	UNIT COST	UNIT	QUANT.	AMOUNT
1	Streetlights	$12,000.00	EA	6	$72,000.00
				Sub-Total	$72,000.00
	Contingency	10%	Lump Sum	1	$7,200.00
				Grand Total	$79,200.00

Cost based on six streetlights installed at a 200' spacing in the median of Perryville Road along the frontage of Mission Park 3 from Roosevelt Street to the ADOT ROW.

CITY OF BUCKEYE
Regular Council Meeting
COUNCIL ACTION REPORT

MEETING DATE: 09/03/24	**AGENDA ITEM:** 4.M. MID - Resolution No. 57-24, Montana Vista -- Intent to form Maintenance Improvement District No. MID-2024-002
DATE PREPARED: 08/29/24	**DISTRICT NO.:** 3
STAFF LIAISON: Brian Craig, Development Services Director, bcraig@buckeyeaz.gov, (623) 349-6209	
DEPARTMENT: Development Services	**AGENDA ITEM TYPE:** Consent Agenda Items / New Business

ACTION/MOTION: (This language identifies the formal motion to be made by the Council)
Council to take action on Resolution No. 57-24 accepting a Petition, Waiver and Consent to Formation of a Maintenance Improvement District by the City of Buckeye; declaring the intention to form a Maintenance Improvement District; designating such District as “City of Buckeye Maintenance Improvement District No. MID-2024-002”; and providing for the annual levy of taxes or an annual assessment against the lots within the District in proportion to the benefits received; and ordering the recording and filing of this Resolution.

SUMMARY

PROJECT DESCRIPTION:

Maintenance Improvement Districts (MIDS) are formed in the City of Buckeye in accordance with Ordinance #42-06 and assess the owners within a development for the cost of maintenance of the landscaping along the rights-of-ways within a development MID.

MIDS are responsible for maintaining parkways and roadway landscaping on streets within the District. This puts a methodology in place for the future in the event that the parkway or parking areas are not maintained by the development's owners or Homeowners Association (HOA).

MIDs are not activated unless the development’s owners should fail or otherwise go out of business, since the owner is charged with that maintenance responsibility; however, the MID is standing by as a protection for the City to ensure that there is adequate revenue to take on the maintenance.

BENEFITS:

Maintenance Improvement Districts ensure that only the owners that benefit from the improvements to their community pay for that service. Having the costs of maintenance, repair, and improvement of right of ways and parks within a District borne by the owners in a development ensure that the revenue needed to fund these costs are always in place. Both Street Lighting Improvement Districts (SLIDs) and Maintenance Improvement District (MIDs) provide for the benefit of ensuring that there is a balance of revenue and expenditures to provider for the quality of life for the residents/owners of a particular development without an undue burden upon the existing community.

FUTURE ACTION:
This Resolution will be recorded within ten (10) business days of Council action, to give notice of intention to form the District. Resolution No. 58-24, ordering the work and the formation of the District, if approved, will be recorded and also filed with the Arizona Department of Revenue and the Office of the Maricopa County Recorder.

BUDGETED:
No

FISCAL YEAR:
FY 25/26

FUND/DEPARTMENT:
SLIDs

Items related to a project or facility location must include an attached vicinity map for Council Review.
ATTACHMENTS:
08.21.2024 VS MID 2024-002 Resolution 57-24 Intent to Form.pdf
Montana Vista - MID-2024-02 Petition - FULLY EXECUTED.pdf

When Recorded, Return to:
Lucinda J. Aja, City Clerk
City of Buckeye
530 East Monroe Avenue
Buckeye, Arizona 85326

RESOLUTION NO. 57-24

RESOLUTION OF THE COUNCIL OF THE CITY OF BUCKEYE, ARIZONA, ACCEPTING A PETITION, WAIVER AND CONSENT TO FORMATION OF A MAINTENANCE IMPROVEMENT DISTRICT BY THE CITY OF BUCKEYE; DECLARING THE INTENTION TO FORM A MAINTENANCE IMPROVEMENT DISTRICT; DESIGNATING SUCH DISTRICT AS "CITY OF BUCKEYE MAINTENANCE IMPROVEMENT DISTRICT NO. MID-2024-002"; PROVIDING FOR THE ANNUAL LEVY OF TAXES OR AN ANNUAL ASSESSMENT AGAINST THE LOTS WITHIN THE DISTRICT IN PROPORTION TO THE BENEFITS RECEIVED AND ORDERING THE RECORDING AND FILING OF THIS RESOLUTION.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF BUCKEYE, ARIZONA, as follows:

Section 1. Acceptance and Findings. A Petition for the formation of the City of Buckeye Maintenance Improvement District No. MID-2024-002 to operate, maintain, repair and improve Parkings, Parkways, Retention Basins and Detention Basins within, adjacent to, or that serve the District, as it now exists or is hereafter dedicated, constructed, modified or enlarged, and public landscaping, street lights, all headwalls, pumps, piping, canals, washes, ditches, storm drain inlets, scuppers, dry wells, and other adjuncts and appliances related to such Parkings, Parkways, Retention Basins and Detention Basins has been filed with the Clerk and presented to the Mayor and Council at the meeting at which this Resolution was adopted. The Petition is accepted. The Petition purports to be signed by all of the non-public real property owners in the proposed District, exclusive of mortgagees and other lienholders. After verification of such ownership, the Mayor and Council find that the Petition was signed by all of the non-public real property owners in the proposed District, exclusive of mortgagees and other lienholders.

Section 2. Definitions. In this Resolution, the following terms shall have the following meanings:

"*City*" shall mean the City of Buckeye, Arizona.

"*Clerk*" shall mean the Clerk of the City of Buckeye, Arizona located at 530 East Monroe Avenue, Buckeye, Arizona 85326.

"*Detention Basin*" shall mean a flood control structure that captures and diverts stormwater runoff and typically does not retain a permanent pool of water.

"*District*" shall mean the City of Buckeye Maintenance Improvement District No. MID-2024-002, encompassing the property described in *Exhibits A*, *B*, *C,* and *C-1* attached hereto.

"*Mayor and Council*" shall mean the Mayor and Council of the City.

"*Landscaping*" shall mean trees, plants, grass, ornamental structures, lighting structures and facilities for watering or otherwise maintaining such landscaping that are now in place or hereafter constructed or acquired for beautification of streets within or adjacent to the District.

"*Parking*" shall mean the landscaped public area lying between a sidewalk and the adjacent street.

"*Parkway*" shall mean a street with landscaped sides and/or a landscaped center median and shall also include ornamentation that enhances the beauty of a street.

"*Petition*" shall mean the petition, waiver and consent to formation of a municipal parkway maintenance improvement district by the City on file in the Clerk's office.

"*Public Property*" shall mean any lot or parcel belonging to the United States, the state of Arizona (the "*State*"), any county, city, town, school district or any political subdivision or institution of the State or county that is physically located within the District, including, without limitation any public street, avenue, alley or public easement located within the District hereinafter dedicated to public use.

"*Retention Basin*" shall mean a stormwater control structure that captures and retains stormwater runoff and typically retains a permanent pool of water.

"*Work*" shall mean the operation, maintenance, repair and improvement of Parkings, Parkways, Retention Basins and Detention Basins within, adjacent to, or that serve the District, as it now exists or is hereafter dedicated, constructed, modified or enlarged, and public Landscaping, street lights, all headwalls, pumps, piping, canals, washes, ditches, storm drain inlets, scuppers, dry wells, and other adjuncts and appliances related to such Parkings, Parkways, Retention Basins and Detention Basins.

Section 3. Declaration of Intention to Order Formation of the District. The public interest and convenience require and it is the intention of the Mayor and Council to order the Work through formation of the District pursuant to Title 48, Chapter 4, Article 2, Arizona Revised Statutes. The District's sole purpose shall be for the operation, maintenance, repair and improvement of Parkings, Parkways, Retention Basins and Detention Basins within, adjacent to, or that serve the District, as it now exists or is hereafter dedicated, constructed, modified or enlarged, and public landscaping, street lights, all headwalls, pumps, piping, canals, washes, ditches, storm drain inlets, scuppers, dry wells, and other adjuncts and appliances related to such Parkings, Parkways, Retention Basins and Detention Basins. For purposes of this Resolution and of all resolutions, ordinances and notices pertaining hereto, the District shall be known as, and is hereby designated, "City of Buckeye Maintenance Improvement District No. MID-2024-002".

Section 4. Omission of Public Property from District. Any Public Property or property owned by a homeowners' association that is included within the District shall be omitted from all assessments or taxes hereafter to be made with respect to the District. Additionally, any public streets, avenues, alleys, or public easements hereafter dedicated to public use shall become exempt after such dedication.

Section 5. Statutory Authority. All proceedings pertaining to the District shall be done under and as authorized by Title 48, Chapter 4, Article 2, Arizona Revised Statutes, and all amendments thereto including, without limitation, Section 48-574.

Section 6. Protests and Objections to Extent of District. In the Petition, the signer has made written consents and waivers pertaining to the ordering of the Work and to the formation of the District and has specifically waived all protests against formation of, and objections to, the extent of the District. City staff has verified that all non-public real property owners within the District exclusive of mortgagees and other lienholders have signed the Petition, and the Mayor and Council find as a fact that all such property owners within the District have signed such Petition. Therefore, no publication or posting of any notice pertaining to formation of the District will be made.

Section 7. Engineer's Estimate. The District's sole purpose will be for the operation, maintenance, repair and improvement of Parkings, Parkways, Retention Basins and Detention Basins within, adjacent to, or that serve the District, and public Landscaping, street lights, all headwalls, pumps, piping, canals, washes, ditches, storm drain inlets, scuppers, dry wells, and other adjuncts and appliances related to such Parkings, Parkways, Retention Basins and Detention Basins. No engineer's estimate, plans, or specifications have been filed with the Clerk. In the Petition, the signer specifically waived the filing of an engineer's estimate, plans, or specifications.

Section 8. Recordation. A certified copy of this Resolution shall be recorded in the office of the Maricopa County Recorder within ten (10) days of its adoption to give notice of formation of the District, as required by A.R.S. § 48-574(M).

Section 9. Extension for Filing. If either the formation of the District occurs after November 1 of the year preceding the year in which initial assessments are to be levied, or the resolution ordering the Work is not filed with both the Arizona Department of Revenue and the Maricopa County Assessor prior to such November 1, the Mayor and Council hereby request, subject to the November 30 deadline for such request as provided in A.R.S. § 42-17257(B), that the Director of the Arizona Department of Revenue extend the deadline prescribed by A.R.S. § 42-17257(A) to December 20, 2024.

PASSED AND ADOPTED by the Mayor and City Council of the City of Buckeye, Arizona, this 3rd day of September, 2024.

_____
Eric W. Orsborn, Mayor

ATTEST:

_____
Lucinda J. Aja, City Clerk

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

Attachments
Exhibit A: Legal Description
Exhibit B: Assessor's Parcel Number(s) and Owner's Name(s)
Exhibit C: Boundary Map
Exhibit C-1: Boundary Map of Annexed Area (Parcel Detail)

CERTIFICATION

I, Lucinda J. Aja, the duly appointed and acting Clerk of the City of Buckeye, Arizona, do hereby certify that the above and foregoing Resolution No. 57-24 was duly passed by the Mayor and Council of the City of Buckeye, Arizona, at a regular meeting held on September 3, 2024, and the vote was ____ aye's, ____ nay's, ____ abstained and ____ were absent and that the Mayor and Council Members were present thereat.

DATED: September 3, 2024.

_____
Lucinda J. Aja, City Clerk

Exhibit A
Legal Description

Exhibit "A"
CITY OF BUCKEYE MAINTENANCE IMPROVEMENT DISTRICT
NO. MID-2024-002 – MONTANA VISTA

Job No. 20-1512 May 30, 2024

A portion of the Northwest Quarter of Section 28 Township 1 North, Range 3 West, Gila and Salt River Base and Meridian, City of Buckeye, Maricopa County, Arizona, being more particularly described as follows:

BEGINNING at the West Quarter corner of said Section 28, said point also being the centerline intersection of Apache Road and Roeser Roads, from which the center of said Section 28, being a City of Buckeye Brass Cap Bears North 00 degrees 51 minutes 27seconds West;

Thence North 00 degrees 13 minutes 54 seconds West, along the section line, 1,345.03 feet;

Thence South 89 degrees 51 minutes 27 seconds East, 2,318.02 feet;

Thence South 00 degrees 13 minutes 21 seconds East, 547.57 feet;

Thence South 89 degrees 40 minutes 59 seconds West, 103.10 feet;

Thence South 18 degrees 18 minutes 54 seconds West, 113.44 feet, to the beginning of a non-tangent curve concave Southwesterly, with a radius of 55.00 feet and a radial bearing of South 51 degrees 49 minutes 54 seconds East;

Thence Southerly along said curve through a central angle of 34 degrees 03 minutes 31 seconds, with a curve length of 32.69 feet;

Thence North 55 degrees 09 minutes 58 seconds East, 138.41 feet;

Thence South 00 degrees 13 minutes 21 seconds East, 748.35 feet;

Thence North 89 degrees 51 minutes 27 seconds West, 2,317.80 feet, to the POINT OF BEGINNING

Said overall portion of land contains 3,106,554 square feet or 71.3167 acres, more or less, and being subject to any easements, restrictions, and/or rights-of-ways of record or otherwise.

This description shown hereon is not to be used to violate subdivision regulations of the State, County and/or Municipality, or any other land division restrictions.



Exhibit B
Assessor's Parcel Number and Owner's Name

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Assessor Parcel Number	Owner
504-45-614	KL LHB AZ AIV LLC
504-45-615	KL LHB AZ AIV LLC
504-45-616	KL LHB AZ AIV LLC
504-45-617	KL LHB AZ AIV LLC
504-45-618	KL LHB AZ AIV LLC
504-45-619	KL LHB AZ AIV LLC
504-45-620	KL LHB AZ AIV LLC
504-45-621	KL LHB AZ AIV LLC
504-45-622	KL LHB AZ AIV LLC
504-45-623	KL LHB AZ AIV LLC
504-45-624	KL LHB AZ AIV LLC
504-45-625	KL LHB AZ AIV LLC
504-45-626	KL LHB AZ AIV LLC
504-45-627	KL LHB AZ AIV LLC
504-45-628	KL LHB AZ AIV LLC
504-45-629	KL LHB AZ AIV LLC
504-45-630	KL LHB AZ AIV LLC
504-45-631	KL LHB AZ AIV LLC
504-45-632	KL LHB AZ AIV LLC
504-45-633	KL LHB AZ AIV LLC
504-45-634	KL LHB AZ AIV LLC
504-45-635	KL LHB AZ AIV LLC
504-45-636	KL LHB AZ AIV LLC
504-45-637	KL LHB AZ AIV LLC
504-45-638	KL LHB AZ AIV LLC
504-45-639	KL LHB AZ AIV LLC
504-45-640	KL LHB AZ AIV LLC
504-45-641	KL LHB AZ AIV LLC
504-45-642	KL LHB AZ AIV LLC
504-45-643	KL LHB AZ AIV LLC
504-45-644	KL LHB AZ AIV LLC
504-45-645	BEAZER HOMES HOLDINGS LLC
504-45-646	BEAZER HOMES HOLDINGS LLC
504-45-647	BEAZER HOMES HOLDINGS LLC
504-45-648	BEAZER HOMES HOLDINGS LLC
504-45-649	BEAZER HOMES HOLDINGS LLC
504-45-650	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Assessor Parcel Number	Owner
504-45-651	KL LHB AZ AIV LLC
504-45-652	KL LHB AZ AIV LLC
504-45-653	KL LHB AZ AIV LLC
504-45-654	KL LHB AZ AIV LLC
504-45-655	KL LHB AZ AIV LLC
504-45-656	KL LHB AZ AIV LLC
504-45-657	KL LHB AZ AIV LLC
504-45-658	KL LHB AZ AIV LLC
504-45-659	KL LHB AZ AIV LLC
504-45-660	KL LHB AZ AIV LLC
504-45-661	KL LHB AZ AIV LLC
504-45-662	KL LHB AZ AIV LLC
504-45-663	KL LHB AZ AIV LLC
504-45-664	KL LHB AZ AIV LLC
504-45-665	KL LHB AZ AIV LLC
504-45-666	KL LHB AZ AIV LLC
504-45-667	KL LHB AZ AIV LLC
504-45-668	KL LHB AZ AIV LLC
504-45-669	KL LHB AZ AIV LLC
504-45-670	KL LHB AZ AIV LLC
504-45-671	KL LHB AZ AIV LLC
504-45-672	KL LHB AZ AIV LLC
504-45-673	KL LHB AZ AIV LLC
504-45-674	KL LHB AZ AIV LLC
504-45-675	KL LHB AZ AIV LLC
504-45-676	KL LHB AZ AIV LLC
504-45-677	KL LHB AZ AIV LLC
504-45-678	KL LHB AZ AIV LLC
504-45-679	KL LHB AZ AIV LLC
504-45-680	KL LHB AZ AIV LLC
504-45-681	KL LHB AZ AIV LLC
504-45-682	KL LHB AZ AIV LLC
504-45-683	KL LHB AZ AIV LLC
504-45-684	KL LHB AZ AIV LLC
504-45-685	KL LHB AZ AIV LLC
504-45-686	KL LHB AZ AIV LLC
504-45-687	KL LHB AZ AIV LLC
504-45-688	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Assessor Parcel Number	Owner
504-45-689	KL LHB AZ AIV LLC
504-45-690	KL LHB AZ AIV LLC
504-45-691	KL LHB AZ AIV LLC
504-45-692	KL LHB AZ AIV LLC
504-45-693	KL LHB AZ AIV LLC
504-45-694	KL LHB AZ AIV LLC
504-45-695	KL LHB AZ AIV LLC
504-45-696	KL LHB AZ AIV LLC
504-45-697	KL LHB AZ AIV LLC
504-45-698	KL LHB AZ AIV LLC
504-45-699	KL LHB AZ AIV LLC
504-45-700	KL LHB AZ AIV LLC
504-45-701	KL LHB AZ AIV LLC
504-45-702	KL LHB AZ AIV LLC
504-45-703	KL LHB AZ AIV LLC
504-45-704	KL LHB AZ AIV LLC
504-45-705	KL LHB AZ AIV LLC
504-45-706	KL LHB AZ AIV LLC
504-45-707	KL LHB AZ AIV LLC
504-45-708	KL LHB AZ AIV LLC
504-45-709	KL LHB AZ AIV LLC
504-45-710	KL LHB AZ AIV LLC
504-45-711	KL LHB AZ AIV LLC
504-45-712	KL LHB AZ AIV LLC
504-45-713	KL LHB AZ AIV LLC
504-45-714	KL LHB AZ AIV LLC
504-45-715	BEAZER HOMES HOLDINGS LLC
504-45-716	BEAZER HOMES HOLDINGS LLC
504-45-717	BEAZER HOMES HOLDINGS LLC
504-45-718	BEAZER HOMES HOLDINGS LLC
504-45-719	BEAZER HOMES HOLDINGS LLC
504-45-720	KL LHB AZ AIV LLC
504-45-721	KL LHB AZ AIV LLC
504-45-722	KL LHB AZ AIV LLC
504-45-723	KL LHB AZ AIV LLC
504-45-724	KL LHB AZ AIV LLC
504-45-725	KL LHB AZ AIV LLC
504-45-726	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Assessor Parcel Number	Owner
504-45-727	KL LHB AZ AIV LLC
504-45-728	KL LHB AZ AIV LLC
504-45-729	KL LHB AZ AIV LLC
504-45-730	KL LHB AZ AIV LLC
504-45-731	KL LHB AZ AIV LLC
504-45-732	KL LHB AZ AIV LLC
504-45-733	BEAZER HOMES HOLDINGS LLC
504-45-734	BEAZER HOMES HOLDINGS LLC
504-45-735	KL LHB AZ AIV LLC
504-45-736	KL LHB AZ AIV LLC
504-45-737	KL LHB AZ AIV LLC
504-45-738	KL LHB AZ AIV LLC
504-45-739	KL LHB AZ AIV LLC
504-45-740	KL LHB AZ AIV LLC
504-45-741	KL LHB AZ AIV LLC
504-45-742	KL LHB AZ AIV LLC
504-45-743	KL LHB AZ AIV LLC
504-45-744	KL LHB AZ AIV LLC
504-45-745	KL LHB AZ AIV LLC
504-45-746	KL LHB AZ AIV LLC
504-45-747	KL LHB AZ AIV LLC
504-45-748	KL LHB AZ AIV LLC
504-45-749	KL LHB AZ AIV LLC
504-45-750	KL LHB AZ AIV LLC
504-45-751	KL LHB AZ AIV LLC
504-45-752	KL LHB AZ AIV LLC
504-45-753	BEAZER HOMES HOLDINGS LLC
504-45-754	BEAZER HOMES HOLDINGS LLC
504-45-755	BEAZER HOMES HOLDINGS LLC
504-45-756	BEAZER HOMES HOLDINGS LLC
504-45-757	BEAZER HOMES HOLDINGS LLC
504-45-758	BEAZER HOMES HOLDINGS LLC
504-45-759	BEAZER HOMES HOLDINGS LLC
504-45-760	BEAZER HOMES HOLDINGS LLC
504-45-761	BEAZER HOMES HOLDINGS LLC
504-45-762	BEAZER HOMES HOLDINGS LLC
504-45-763	BEAZER HOMES HOLDINGS LLC
504-45-764	BEAZER HOMES HOLDINGS LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Assessor Parcel Number	Owner
504-45-765	BEAZER HOMES HOLDINGS LLC
504-45-766	BEAZER HOMES HOLDINGS LLC
504-45-767	BEAZER HOMES HOLDINGS LLC
504-45-768	BEAZER HOMES HOLDINGS LLC
504-45-769	BEAZER HOMES HOLDINGS LLC
504-45-770	BEAZER HOMES HOLDINGS LLC
504-45-771	KL LHB AZ AIV LLC
504-45-772	KL LHB AZ AIV LLC
504-45-773	KL LHB AZ AIV LLC
504-45-774	KL LHB AZ AIV LLC
504-45-775	KL LHB AZ AIV LLC
504-45-776	KL LHB AZ AIV LLC
504-45-777	KL LHB AZ AIV LLC
504-45-778	KL LHB AZ AIV LLC
504-45-779	KL LHB AZ AIV LLC
504-45-780	KL LHB AZ AIV LLC
504-45-781	KL LHB AZ AIV LLC
504-45-782	KL LHB AZ AIV LLC
504-45-783	KL LHB AZ AIV LLC
504-45-784	KL LHB AZ AIV LLC
504-45-785	KL LHB AZ AIV LLC
504-45-786	KL LHB AZ AIV LLC
504-45-787	KL LHB AZ AIV LLC
504-45-788	KL LHB AZ AIV LLC
504-45-789	KL LHB AZ AIV LLC
504-45-790	KL LHB AZ AIV LLC
504-45-791	KL LHB AZ AIV LLC
504-45-792	KL LHB AZ AIV LLC
504-45-793	KL LHB AZ AIV LLC
504-45-794	KL LHB AZ AIV LLC
504-45-795	KL LHB AZ AIV LLC
504-45-796	KL LHB AZ AIV LLC
504-45-797	KL LHB AZ AIV LLC
504-45-798	KL LHB AZ AIV LLC
504-45-799	KL LHB AZ AIV LLC
504-45-800	BEAZER HOMES HOLDINGS LLC
504-45-801	BEAZER HOMES HOLDINGS LLC
504-45-802	BEAZER HOMES HOLDINGS LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Assessor Parcel Number	Owner
504-45-803	BEAZER HOMES HOLDINGS LLC
504-45-804	BEAZER HOMES HOLDINGS LLC
504-45-805	BEAZER HOMES HOLDINGS LLC
504-45-806	BEAZER HOMES HOLDINGS LLC
504-45-807	BEAZER HOMES HOLDINGS LLC
504-45-808	BEAZER HOMES HOLDINGS LLC
504-45-809	BEAZER HOMES HOLDINGS LLC
504-45-810	BEAZER HOMES HOLDINGS LLC
504-45-811	BEAZER HOMES HOLDINGS LLC
504-45-812	BEAZER HOMES HOLDINGS LLC
504-45-813	BEAZER HOMES HOLDINGS LLC
504-45-814	BEAZER HOMES HOLDINGS LLC
504-45-815	BEAZER HOMES HOLDINGS LLC
504-45-816	BEAZER HOMES HOLDINGS LLC
504-45-817	BEAZER HOMES HOLDINGS LLC
504-45-818	BEAZER HOMES HOLDINGS LLC
504-45-819	BEAZER HOMES HOLDINGS LLC
504-45-820	BEAZER HOMES HOLDINGS LLC
504-45-821	BEAZER HOMES HOLDINGS LLC
504-45-822	KL LHB AZ AIV LLC
504-45-823	KL LHB AZ AIV LLC
504-45-824	KL LHB AZ AIV LLC
504-45-825	KL LHB AZ AIV LLC
504-45-826	KL LHB AZ AIV LLC
504-45-827	KL LHB AZ AIV LLC
504-45-828	KL LHB AZ AIV LLC
504-45-829	KL LHB AZ AIV LLC
504-45-830	KL LHB AZ AIV LLC
504-45-831	KL LHB AZ AIV LLC
504-45-832	KL LHB AZ AIV LLC
504-45-833	KL LHB AZ AIV LLC
504-45-834	KL LHB AZ AIV LLC
504-45-835	KL LHB AZ AIV LLC
504-45-836	KL LHB AZ AIV LLC
504-45-837	KL LHB AZ AIV LLC
504-45-838	KL LHB AZ AIV LLC
504-45-839	KL LHB AZ AIV LLC
504-45-840	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

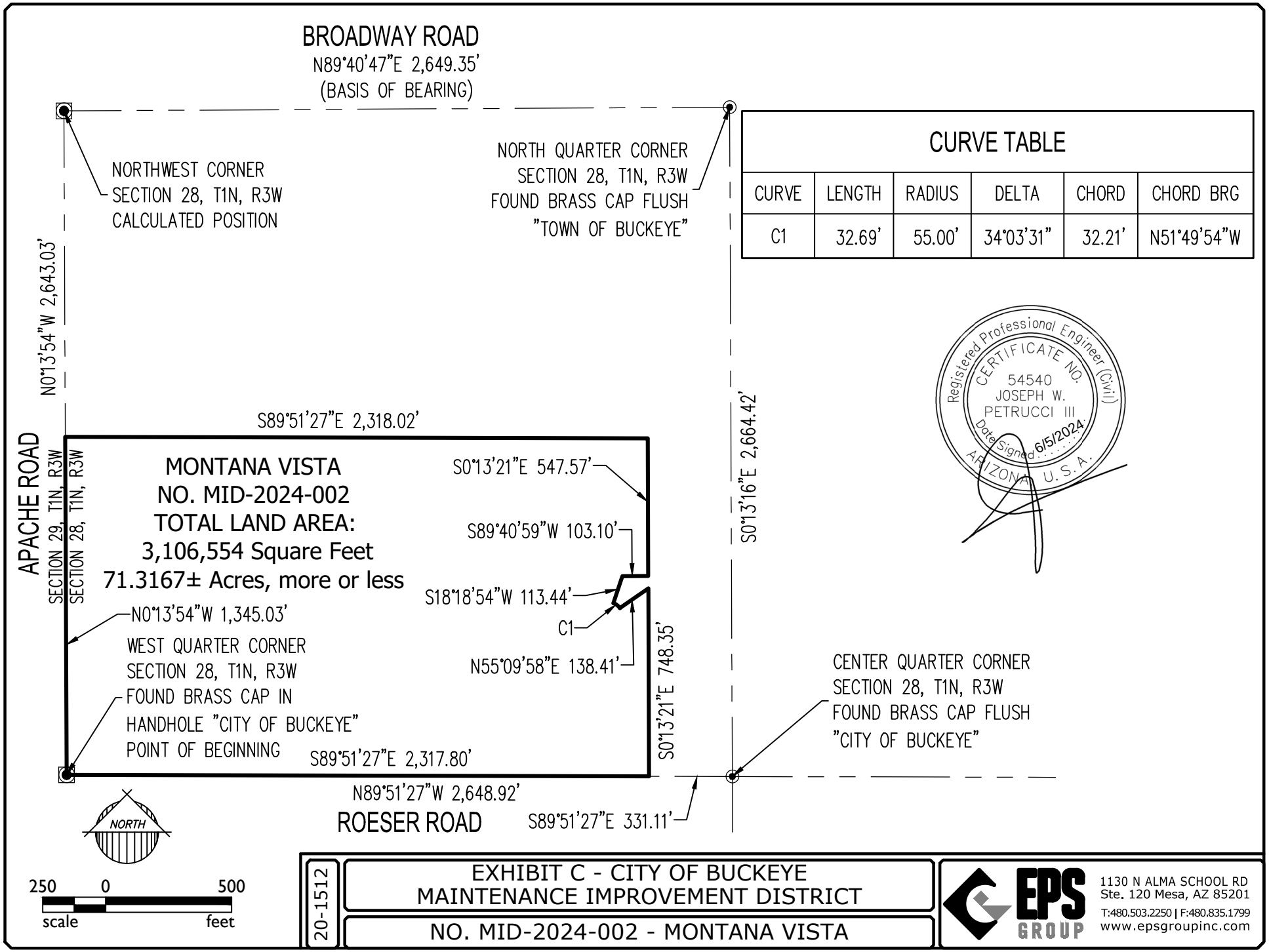
Assessor Parcel Number	Owner
504-45-841	KL LHB AZ AIV LLC
504-45-842	KL LHB AZ AIV LLC
504-45-843	KL LHB AZ AIV LLC
504-45-844	KL LHB AZ AIV LLC
504-45-845	KL LHB AZ AIV LLC
504-45-846	KL LHB AZ AIV LLC
504-45-847	KL LHB AZ AIV LLC
504-45-848	KL LHB AZ AIV LLC
504-45-849	KL LHB AZ AIV LLC
504-45-850	KL LHB AZ AIV LLC
504-45-851	KL LHB AZ AIV LLC
504-45-852	KL LHB AZ AIV LLC
504-45-853	KL LHB AZ AIV LLC
504-45-854	KL LHB AZ AIV LLC
504-45-855	KL LHB AZ AIV LLC
504-45-856	KL LHB AZ AIV LLC
504-45-857	KL LHB AZ AIV LLC
504-45-858	KL LHB AZ AIV LLC
504-45-859	KL LHB AZ AIV LLC
504-45-860	KL LHB AZ AIV LLC
504-45-861	KL LHB AZ AIV LLC
504-45-862	BEAZER HOMES HOLDINGS LLC
504-45-863	BEAZER HOMES HOLDINGS LLC
504-45-864	KL LHB AZ AIV LLC
504-45-865	KL LHB AZ AIV LLC
504-45-866	KL LHB AZ AIV LLC
504-45-867	KL LHB AZ AIV LLC
504-45-868	KL LHB AZ AIV LLC
504-45-869	KL LHB AZ AIV LLC
504-45-870	KL LHB AZ AIV LLC
504-45-871	KL LHB AZ AIV LLC
504-45-872	KL LHB AZ AIV LLC
504-45-873	KL LHB AZ AIV LLC
504-45-874	KL LHB AZ AIV LLC
504-45-875	KL LHB AZ AIV LLC
504-45-876	KL LHB AZ AIV LLC
504-45-877	KL LHB AZ AIV LLC
504-45-878	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Assessor Parcel Number	Owner
504-45-879	KL LHB AZ AIV LLC
504-45-880	KL LHB AZ AIV LLC
504-45-881	KL LHB AZ AIV LLC
504-45-882	KL LHB AZ AIV LLC
504-45-883	KL LHB AZ AIV LLC
504-45-884	KL LHB AZ AIV LLC
504-45-885	KL LHB AZ AIV LLC
504-45-886	KL LHB AZ AIV LLC
504-45-887	KL LHB AZ AIV LLC
504-45-888	KL LHB AZ AIV LLC
504-45-889	KL LHB AZ AIV LLC
504-45-890	KL LHB AZ AIV LLC
504-45-891	KL LHB AZ AIV LLC
504-45-892	KL LHB AZ AIV LLC
504-45-893	KL LHB AZ AIV LLC
504-45-894	KL LHB AZ AIV LLC
504-45-895	KL LHB AZ AIV LLC
504-45-896	KL LHB AZ AIV LLC
504-45-897	KL LHB AZ AIV LLC
504-45-898	KL LHB AZ AIV LLC
504-45-899	KL LHB AZ AIV LLC
504-45-900	KL LHB AZ AIV LLC
504-45-901	KL LHB AZ AIV LLC
504-45-902	KL LHB AZ AIV LLC
504-45-903	KL LHB AZ AIV LLC
504-45-904	KL LHB AZ AIV LLC
504-45-905	KL LHB AZ AIV LLC
504-45-906	KL LHB AZ AIV LLC
504-45-907	KL LHB AZ AIV LLC

Exhibit C
Boundary Map



CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BRG
C1	32.69'	55.00'	34°03'31"	32.21'	N51°49'54"W

Registered Professional Engineer (Civil)
CERTIFICATE NO.
54540
JOSEPH W.
PETRUCCI III
Date Signed 6/5/2024
ARIZONA U.S.A.

20-1512

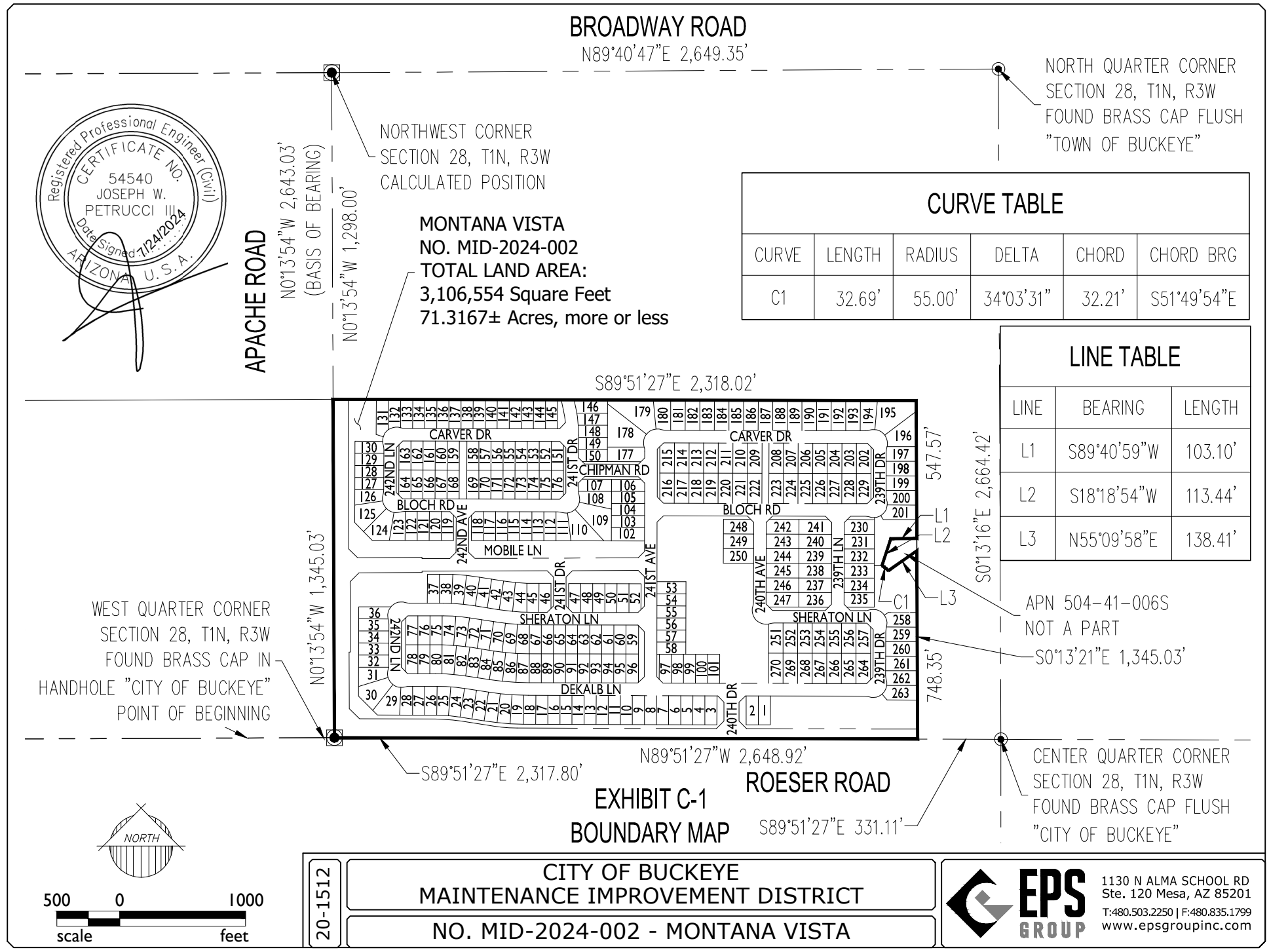
EXHIBIT C - CITY OF BUCKEYE MAINTENANCE IMPROVEMENT DISTRICT

NO. MID-2024-002 - MONTANA VISTA

EPS GROUP
1130 N ALMA SCHOOL RD
Ste. 120 Mesa, AZ 85201
T:480.503.2250 | F:480.835.1799
www.epsgroupinc.com

Jun 04, 2024 10:57am S:\Projects\2020\20-1512\Civil_Construction Documents\Legals\20-1512 MID.dwg

Exhibit C-1
Boundary Map of Annexed Area (Parcel Detail)



Registered Professional Engineer (Civil)
CERTIFICATE NO.
54540
JOSEPH W.
PETRUCCI III
Date Signed 7/24/2024
ARIZONA U.S.A.

CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BRG
C1	32.69'	55.00'	34°03'31"	32.21'	S51°49'54"E

LINE TABLE

LINE	BEARING	LENGTH
L1	S89°40'59"W	103.10'
L2	S18°18'54"W	113.44'
L3	N55°09'58"E	138.41'

EXHIBIT C-1
BOUNDARY MAP

20-1512

CITY OF BUCKEYE
MAINTENANCE IMPROVEMENT DISTRICT
NO. MID-2024-002 - MONTANA VISTA

EPS GROUP
1130 N ALMA SCHOOL RD
Ste. 120 Mesa, AZ 85201
T:480.503.2250 | F:480.835.1799
www.epsgroupinc.com

Jul 24, 2024 11:11am S:\Projects\2020\20-1512\Civil_Construction Documents\Legals\20-1512 MID C-1.dwg

When Recorded, Return to:

Lucinda J. Aja, City Clerk
City of Buckeye
530 East Monroe Avenue
Buckeye, Arizona 85326

PETITION, WAIVER AND CONSENT TO FORMATION OF A MAINTENANCE IMPROVEMENT DISTRICT BY THE CITY OF BUCKEYE

MONTANA VISTA
MID-2024-002

To: Honorable Mayor and Councilmembers, City of Buckeye, Arizona

Pursuant to Arizona Revised Statutes ("*A.R.S.*") Title 48, Chapter 4, Article 2 (the "*Improvement District Law*"), the undersigned property owner(s) (the "*Petitioner*") respectfully petitions the Mayor and City Council (the "*City Council*") of the City of Buckeye, Arizona (the "*City*") to order the formation of a residential municipal maintenance improvement district under the Improvement District Law. In support of this Petition, Waiver and Consent to Formation of a Maintenance Improvement District by the City of Buckeye (this "*Petition*"), the Petitioner agrees to waive certain rights under the Improvement District Law and hereby consents to the formation of a residential municipal maintenance improvement district encompassing the land shown on *Exhibits A*, *B*, *C*, and *C-1*, attached hereto and incorporated by reference herein.

1. Name of District. The Petitioner hereby requests the proposed district to be named the "City of Buckeye Maintenance Improvement District No. MID-2024-002" (the "*District*").

2. Area of District. The property comprising the proposed District is described by a legal description, Assessor's parcel number(s), and a map or plat of the area, all as set forth in *Exhibits A*, *B*, *C*, and *C-1*. The proposed District consists of an aggregate of 3,106,554 square feet or 71.3167 acres, more or less, which are entirely within the corporate boundaries of the City. The Petitioner respectfully requests that the land shown on *Exhibits A*, *B*, *C*, and *C-1* be included within the District. The Assessor's parcel number(s) set forth in *Exhibit B* is for convenience only. Should either the legal description set forth in *Exhibit A* or the Assessor's parcel number(s) set forth in *Exhibit B* conflict with *Exhibit C-1*, *Exhibit C-1* shall govern.

3. Ownership. The Petitioner is the sole owner of all non-public real property within the proposed District.

4. Purpose. The District is proposed to be formed for the purpose of providing for operation, maintenance, repair and improvement of parkings, parkways, retention basins and detention basins within, adjacent to, or that serve the District, and public landscaping, street lights, all headwalls, pumps, piping, canals, washes, ditches, storm drain inlets,

scuppers, dry wells, and other adjuncts and appliances related to such parkings, parkways, retention basins and detention basins. To enhance such purposes the Petitioner grants to the City the public use of all such parkings, parkways, retention basins and detention basins to carry out all District purposes.

5. Public Convenience and Necessity. Public convenience, necessity and welfare will be promoted by the formation of the District, the inclusion of the property described in *Exhibits A*, *B*, *C*, and *C-1* within the District, and the levying of an annual ad valorem tax or annual special assessment upon all of the non-public real property within the District.

6. Fees and Reimbursement. The Petitioner has paid all application fees for the formation of the District and further agrees to reimburse the City for all reasonable legal and engineering fees and costs incurred by the City with respect to the formation of the District.

7. Document Requirements. The Petitioner has previously submitted the following documents to the City's Development Services Department:

   a. Street landscaping layout plans.
   b. One 24" x 36" copy of the District diagram showing each lot or parcel.
   c. A metes and bounds legal description of the District boundary, accompanied by a list of Assessor's parcel number(s) within the proposed District and a map showing the District boundary (with back-up material showing that the boundary closes, as necessary).

The Petitioner or the Petitioner's engineer will submit the following documents to the City's Development Services Department concurrently with the submission of this fully executed Petition:

   d. Proof of payment of the District application fees.
   e. Two 8-1/2" x 11" recordable copies of a legal description of the District boundary and a map showing the District boundary.

8. Expansion of or Annexation to the District. The Petitioner waives any objection to, or protest against, any future enlargement or enlargements of the District and also waives all notices of such enlargement or enlargements, whether required to be published, posted, or mailed with respect to the later enlargement of the District's boundaries. The Petitioner further waives any objection to, or protest against, the consolidation of the District with any other similar district or districts.

9. Waiver and Consent. The Petitioner, with full knowledge of its rights being waived hereunder, hereby expressly waives:

   a. The right to challenge or object to any and all irregularities, illegalities or deficiencies which may exist in the acts or proceedings resulting in the resolution of intention and the resolution ordering the work relating to the formation of the District;
   b. The right to challenge or object to any and all irregularities, illegalities or deficiencies which may exist in the acts or proceedings that result in the adoption of any and all

future resolutions of intention, resolutions ordering work, resolutions enlarging the District, and notices pertaining thereto;

c. Any necessity for publication, posting, mailing or recording of the resolution of intention and the notice of proposed improvements pursuant to A.R.S. § 48-578;
d. All protest rights whatsoever under A.R.S. § 48-579(A) and (B), which provide for protests against the work;
e. All objections to the extent of the District under A.R.S. § 48-579(C);
f. All objections to the lack of plans and specifications, the engineer's estimate and an assessment diagram, all which are unnecessary for completion of the District's formation or purpose; and
g. Any necessity for any notice or hearing with respect to land owned by the Petitioner now within the proposed boundaries of the District.

10. Expenses. The Petitioner hereby petitions the City Council to provide for the expenses of the District by assessment of the total sum upon the several lots, each respectively in proportion to the benefits to be received by each lot within the District, pursuant to A.R.S. § 48-574(D). The Petitioner further requests that no publicly owned land or property owned by a homeowners' association shall be liable to pay any expenses of the District. The Petitioner hereby agrees that each non-public parcel within the property proposed to be included in the District receives the same benefits as each other non-public parcel proposed to be included in the District.

11. Waiver of Petition. This Petition shall be deemed to be a petition of more than one-half (1/2) of the taxable property units and more than one-half (1/2) of the assessed valuation within the District and as such shall also be deemed to be a waiver of any and all requirements to file a petition under A.R.S. § 48-576, as amended.

12. Public Benefit. The operation, maintenance, repair and improvements of parkings, parkways, retention basins and detention basins within, adjacent to, or serving the District is of more than local or ordinary public benefit and the costs and expense thereof should be charged against the property within the District, all of which will benefit thereby.

13. Successors and Assigns. To the extent permitted by law, this Petition shall be binding on all successors or assigns of the Petitioner who hereafter own or have an interest in the property described in *Exhibits A*, *B*, *C*, and *C-1* attached hereto.

14. Authority to Sign Petition. The individual(s) signing this Petition represents and warrants to the City that he/she is duly authorized to (i) sign the Petition to form or enlarge the District, as applicable; (ii) bind the Petitioner to the matters set forth in this Petition; and (iii) agree to hold the City harmless for, from and against any claims in connection with the formation or enlargement of the District.

15. Recordation. This Petition may be recorded in the office of the Maricopa County Recorder and in the office of the Superintendent of Streets of the City.

16. Name. The Owner requests that the proposed District be named "*City of Buckeye Maintenance Improvement District No. MID-2024-002*".

The Petitioner hereby requests the City Council of the City to adopt a resolution of intention to order the proposed improvements and to proceed with the improvements requested herein.

PROPERTY: See attached *Exhibits A, B, C,* and *C-1*.

IN WITNESS WHEREOF, the undersigned representative(s) of the Petitioner has executed this Petition as of the date shown below.

[Remainder of Page Intentionally Left Blank]

[Signature Page(s) Follows]

IN WITNESS WHEREOF, the undersigned authorized representative(s) has executed this Petition as of the ____ day of _____, 20_____.

PETITIONER:

KL LHB AZ AIV LLC,
A Delaware limited liability company

By: Nathan Holt
Nathan Holt

Its: Authorized Signer

Date: August 14, 2024

STATE OF ARIZONA)
) ss.
County of Maricopa)

VERIFICATION

Nathan Holt, after being first duly sworn upon oath, deposes and states:

That I am an authorized signer for KL LHB AZ AIV, LLC, and Petitioner herein; I have been duly authorized to sign this Petition and make this Verification in that capacity; that I have read the foregoing Petition, and I know the contents thereof to be true.

SUBSCRIBED AND SWORN TO by Nathan Holt before me, the undersigned notary public, this 14th day of August, 20 24.

Julie Gillett
Notary Public

(Seal and Expiration Date) 08/05/2026

JULIE GILLETT
Notary Public - State of Arizona
MARICOPA COUNTY
Commission # 635441
Expires August 05, 2026

PETITIONER:

BEAZER HOMES HOLDINGS, LLC,
a Delaware limited liability company

By: _____	By: _____
Ryan M. Johnson	Thomas P. Haggerty
Its: Manager	Its: Authorized Signatory, West Region
Date: 8.15.24	Date: 8/15/24

STATE OF Arizona)
) ss.
County of Maricopa)

VERIFICATION

Ryan Johnson, after being first duly sworn upon oath, deposes and states:

That I am an authorized signer for Beazer Homes Holdings, LLC, the Petitioner herein; I have been duly authorized to sign this Petition and make this Verification in that capacity; that I have read the foregoing Petition, and I know the contents thereof to be true.

SUBSCRIBED AND SWORN TO by Ryan M. Johnson before me, the undersigned notary public, this 15 day of August, 2024.

CARLY GUTHRIE
Notary Public - Arizona
Maricopa County
Commission # 604054
My Comm. Expires Jun 5, 2025

(Seal and Expiration Date)

Carly Guthrie
Notary Public

VERIFICATION

Thomas P. Haggerty, after being first duly sworn upon oath, deposes and states:

That I am an authorized signer for Beazer Homes Holdings, LLC, the Petitioner herein; I have been duly authorized to sign this Petition and make this Verification in that capacity; that I have read the foregoing Petition, and I know the contents thereof to be true.

SUBSCRIBED AND SWORN TO by Thomas P. Haggerty before me, the undersigned notary public, this 15 day of August, 2024

CARLY GUTHRIE
Notary Public - Arizona
Maricopa County
Commission # 604054
My Comm. Expires Jun 5, 2025

(Seal and Expiration Date)

Carly Guthrie
Notary Public

RECEIPT this _____ day of _____, 20_____ of the foregoing Petition is hereby acknowledged by the City Clerk of the City of Buckeye, Arizona, who will deliver said Petition to the City Council for action.

_____

Lucinda J. Aja, City Clerk

Exhibit "A"
CITY OF BUCKEYE MAINTENANCE IMPROVEMENT DISTRICT
NO. MID-2024-002 – MONTANA VISTA

Job No. 20-1512 May 30, 2024

A portion of the Northwest Quarter of Section 28 Township 1 North, Range 3 West, Gila and Salt River Base and Meridian, City of Buckeye, Maricopa County, Arizona, being more particularly described as follows:

BEGINNING at the West Quarter corner of said Section 28, said point also being the centerline intersection of Apache Road and Roeser Roads, from which the center of said Section 28, being a City of Buckeye Brass Cap Bears North 00 degrees 51 minutes 27seconds West;

Thence North 00 degrees 13 minutes 54 seconds West, along the section line, 1,345.03 feet;

Thence South 89 degrees 51 minutes 27 seconds East, 2,318.02 feet;

Thence South 00 degrees 13 minutes 21 seconds East, 547.57 feet;

Thence South 89 degrees 40 minutes 59 seconds West, 103.10 feet;

Thence South 18 degrees 18 minutes 54 seconds West, 113.44 feet, to the beginning of a non-tangent curve concave Southwesterly, with a radius of 55.00 feet and a radial bearing of South 51 degrees 49 minutes 54 seconds East;

Thence Southerly along said curve through a central angle of 34 degrees 03 minutes 31 seconds, with a curve length of 32.69 feet;

Thence North 55 degrees 09 minutes 58 seconds East, 138.41 feet;

Thence South 00 degrees 13 minutes 21 seconds East, 748.35 feet;

Thence North 89 degrees 51 minutes 27 seconds West, 2,317.80 feet, to the POINT OF BEGINNING

Said overall portion of land contains 3,106,554 square feet or 71.3167 acres, more or less, and being subject to any easements, restrictions, and/or rights-of-ways of record or otherwise.

This description shown hereon is not to be used to violate subdivision regulations of the State, County and/or Municipality, or any other land division restrictions.



EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
1	504-45-614	KL LHB AZ AIV LLC
2	504-45-615	KL LHB AZ AIV LLC
3	504-45-616	KL LHB AZ AIV LLC
4	504-45-617	KL LHB AZ AIV LLC
5	504-45-618	KL LHB AZ AIV LLC
6	504-45-619	KL LHB AZ AIV LLC
7	504-45-620	KL LHB AZ AIV LLC
8	504-45-621	KL LHB AZ AIV LLC
9	504-45-622	KL LHB AZ AIV LLC
10	504-45-623	KL LHB AZ AIV LLC
11	504-45-624	KL LHB AZ AIV LLC
12	504-45-625	KL LHB AZ AIV LLC
13	504-45-626	KL LHB AZ AIV LLC
14	504-45-627	KL LHB AZ AIV LLC
15	504-45-628	KL LHB AZ AIV LLC
16	504-45-629	KL LHB AZ AIV LLC
17	504-45-630	KL LHB AZ AIV LLC
18	504-45-631	KL LHB AZ AIV LLC
19	504-45-632	KL LHB AZ AIV LLC
20	504-45-633	KL LHB AZ AIV LLC
21	504-45-634	KL LHB AZ AIV LLC
22	504-45-635	KL LHB AZ AIV LLC
23	504-45-636	KL LHB AZ AIV LLC
24	504-45-637	KL LHB AZ AIV LLC
25	504-45-638	KL LHB AZ AIV LLC
26	504-45-639	KL LHB AZ AIV LLC
27	504-45-640	KL LHB AZ AIV LLC
28	504-45-641	KL LHB AZ AIV LLC
29	504-45-642	KL LHB AZ AIV LLC
30	504-45-643	KL LHB AZ AIV LLC
31	504-45-644	KL LHB AZ AIV LLC
32	504-45-645	BEAZER HOMES HOLDINGS LLC
33	504-45-646	BEAZER HOMES HOLDINGS LLC
34	504-45-647	BEAZER HOMES HOLDINGS LLC
35	504-45-648	BEAZER HOMES HOLDINGS LLC
36	504-45-649	BEAZER HOMES HOLDINGS LLC
37	504-45-650	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
38	504-45-651	KL LHB AZ AIV LLC
39	504-45-652	KL LHB AZ AIV LLC
40	504-45-653	KL LHB AZ AIV LLC
41	504-45-654	KL LHB AZ AIV LLC
42	504-45-655	KL LHB AZ AIV LLC
43	504-45-656	KL LHB AZ AIV LLC
44	504-45-657	KL LHB AZ AIV LLC
45	504-45-658	KL LHB AZ AIV LLC
46	504-45-659	KL LHB AZ AIV LLC
47	504-45-660	KL LHB AZ AIV LLC
48	504-45-661	KL LHB AZ AIV LLC
49	504-45-662	KL LHB AZ AIV LLC
50	504-45-663	KL LHB AZ AIV LLC
51	504-45-664	KL LHB AZ AIV LLC
52	504-45-665	KL LHB AZ AIV LLC
53	504-45-666	KL LHB AZ AIV LLC
54	504-45-667	KL LHB AZ AIV LLC
55	504-45-668	KL LHB AZ AIV LLC
56	504-45-669	KL LHB AZ AIV LLC
57	504-45-670	KL LHB AZ AIV LLC
58	504-45-671	KL LHB AZ AIV LLC
59	504-45-672	KL LHB AZ AIV LLC
60	504-45-673	KL LHB AZ AIV LLC
61	504-45-674	KL LHB AZ AIV LLC
62	504-45-675	KL LHB AZ AIV LLC
63	504-45-676	KL LHB AZ AIV LLC
64	504-45-677	KL LHB AZ AIV LLC
65	504-45-678	KL LHB AZ AIV LLC
66	504-45-679	KL LHB AZ AIV LLC
67	504-45-680	KL LHB AZ AIV LLC
68	504-45-681	KL LHB AZ AIV LLC
69	504-45-682	KL LHB AZ AIV LLC
70	504-45-683	KL LHB AZ AIV LLC
71	504-45-684	KL LHB AZ AIV LLC
72	504-45-685	KL LHB AZ AIV LLC
73	504-45-686	KL LHB AZ AIV LLC
74	504-45-687	KL LHB AZ AIV LLC
75	504-45-688	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
76	504-45-689	KL LHB AZ AIV LLC
77	504-45-690	KL LHB AZ AIV LLC
78	504-45-691	KL LHB AZ AIV LLC
79	504-45-692	KL LHB AZ AIV LLC
80	504-45-693	KL LHB AZ AIV LLC
81	504-45-694	KL LHB AZ AIV LLC
82	504-45-695	KL LHB AZ AIV LLC
83	504-45-696	KL LHB AZ AIV LLC
84	504-45-697	KL LHB AZ AIV LLC
85	504-45-698	KL LHB AZ AIV LLC
86	504-45-699	KL LHB AZ AIV LLC
87	504-45-700	KL LHB AZ AIV LLC
88	504-45-701	KL LHB AZ AIV LLC
89	504-45-702	KL LHB AZ AIV LLC
90	504-45-703	KL LHB AZ AIV LLC
91	504-45-704	KL LHB AZ AIV LLC
92	504-45-705	KL LHB AZ AIV LLC
93	504-45-706	KL LHB AZ AIV LLC
94	504-45-707	KL LHB AZ AIV LLC
95	504-45-708	KL LHB AZ AIV LLC
96	504-45-709	KL LHB AZ AIV LLC
97	504-45-710	KL LHB AZ AIV LLC
98	504-45-711	KL LHB AZ AIV LLC
99	504-45-712	KL LHB AZ AIV LLC
100	504-45-713	KL LHB AZ AIV LLC
101	504-45-714	KL LHB AZ AIV LLC
102	504-45-715	BEAZER HOMES HOLDINGS LLC
103	504-45-716	BEAZER HOMES HOLDINGS LLC
104	504-45-717	BEAZER HOMES HOLDINGS LLC
105	504-45-718	BEAZER HOMES HOLDINGS LLC
106	504-45-719	BEAZER HOMES HOLDINGS LLC
107	504-45-720	KL LHB AZ AIV LLC
108	504-45-721	KL LHB AZ AIV LLC
109	504-45-722	KL LHB AZ AIV LLC
110	504-45-723	KL LHB AZ AIV LLC
111	504-45-724	KL LHB AZ AIV LLC
112	504-45-725	KL LHB AZ AIV LLC
113	504-45-726	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
114	504-45-727	KL LHB AZ AIV LLC
115	504-45-728	KL LHB AZ AIV LLC
116	504-45-729	KL LHB AZ AIV LLC
117	504-45-730	KL LHB AZ AIV LLC
118	504-45-731	KL LHB AZ AIV LLC
119	504-45-732	KL LHB AZ AIV LLC
120	504-45-733	BEAZER HOMES HOLDINGS LLC
121	504-45-734	BEAZER HOMES HOLDINGS LLC
122	504-45-735	KL LHB AZ AIV LLC
123	504-45-736	KL LHB AZ AIV LLC
124	504-45-737	KL LHB AZ AIV LLC
125	504-45-738	KL LHB AZ AIV LLC
126	504-45-739	KL LHB AZ AIV LLC
127	504-45-740	KL LHB AZ AIV LLC
128	504-45-741	KL LHB AZ AIV LLC
129	504-45-742	KL LHB AZ AIV LLC
130	504-45-743	KL LHB AZ AIV LLC
131	504-45-744	KL LHB AZ AIV LLC
132	504-45-745	KL LHB AZ AIV LLC
133	504-45-746	KL LHB AZ AIV LLC
134	504-45-747	KL LHB AZ AIV LLC
135	504-45-748	KL LHB AZ AIV LLC
136	504-45-749	KL LHB AZ AIV LLC
137	504-45-750	KL LHB AZ AIV LLC
138	504-45-751	KL LHB AZ AIV LLC
139	504-45-752	KL LHB AZ AIV LLC
140	504-45-753	BEAZER HOMES HOLDINGS LLC
141	504-45-754	BEAZER HOMES HOLDINGS LLC
142	504-45-755	BEAZER HOMES HOLDINGS LLC
143	504-45-756	BEAZER HOMES HOLDINGS LLC
144	504-45-757	BEAZER HOMES HOLDINGS LLC
145	504-45-758	BEAZER HOMES HOLDINGS LLC
146	504-45-759	BEAZER HOMES HOLDINGS LLC
147	504-45-760	BEAZER HOMES HOLDINGS LLC
148	504-45-761	BEAZER HOMES HOLDINGS LLC
149	504-45-762	BEAZER HOMES HOLDINGS LLC
150	504-45-763	BEAZER HOMES HOLDINGS LLC
151	504-45-764	BEAZER HOMES HOLDINGS LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
152	504-45-765	BEAZER HOMES HOLDINGS LLC
153	504-45-766	BEAZER HOMES HOLDINGS LLC
154	504-45-767	BEAZER HOMES HOLDINGS LLC
155	504-45-768	BEAZER HOMES HOLDINGS LLC
156	504-45-769	BEAZER HOMES HOLDINGS LLC
157	504-45-770	BEAZER HOMES HOLDINGS LLC
158	504-45-771	KL LHB AZ AIV LLC
159	504-45-772	KL LHB AZ AIV LLC
160	504-45-773	KL LHB AZ AIV LLC
161	504-45-774	KL LHB AZ AIV LLC
162	504-45-775	KL LHB AZ AIV LLC
163	504-45-776	KL LHB AZ AIV LLC
164	504-45-777	KL LHB AZ AIV LLC
165	504-45-778	KL LHB AZ AIV LLC
166	504-45-779	KL LHB AZ AIV LLC
167	504-45-780	KL LHB AZ AIV LLC
168	504-45-781	KL LHB AZ AIV LLC
169	504-45-782	KL LHB AZ AIV LLC
170	504-45-783	KL LHB AZ AIV LLC
171	504-45-784	KL LHB AZ AIV LLC
172	504-45-785	KL LHB AZ AIV LLC
173	504-45-786	KL LHB AZ AIV LLC
174	504-45-787	KL LHB AZ AIV LLC
175	504-45-788	KL LHB AZ AIV LLC
176	504-45-789	KL LHB AZ AIV LLC
177	504-45-790	KL LHB AZ AIV LLC
178	504-45-791	KL LHB AZ AIV LLC
179	504-45-792	KL LHB AZ AIV LLC
180	504-45-793	KL LHB AZ AIV LLC
181	504-45-794	KL LHB AZ AIV LLC
182	504-45-795	KL LHB AZ AIV LLC
183	504-45-796	KL LHB AZ AIV LLC
184	504-45-797	KL LHB AZ AIV LLC
185	504-45-798	KL LHB AZ AIV LLC
186	504-45-799	KL LHB AZ AIV LLC
187	504-45-800	BEAZER HOMES HOLDINGS LLC
188	504-45-801	BEAZER HOMES HOLDINGS LLC
189	504-45-802	BEAZER HOMES HOLDINGS LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
190	504-45-803	BEAZER HOMES HOLDINGS LLC
191	504-45-804	BEAZER HOMES HOLDINGS LLC
192	504-45-805	BEAZER HOMES HOLDINGS LLC
193	504-45-806	BEAZER HOMES HOLDINGS LLC
194	504-45-807	BEAZER HOMES HOLDINGS LLC
195	504-45-808	BEAZER HOMES HOLDINGS LLC
196	504-45-809	BEAZER HOMES HOLDINGS LLC
197	504-45-810	BEAZER HOMES HOLDINGS LLC
198	504-45-811	BEAZER HOMES HOLDINGS LLC
199	504-45-812	BEAZER HOMES HOLDINGS LLC
200	504-45-813	BEAZER HOMES HOLDINGS LLC
201	504-45-814	BEAZER HOMES HOLDINGS LLC
202	504-45-815	BEAZER HOMES HOLDINGS LLC
203	504-45-816	BEAZER HOMES HOLDINGS LLC
204	504-45-817	BEAZER HOMES HOLDINGS LLC
205	504-45-818	BEAZER HOMES HOLDINGS LLC
206	504-45-819	BEAZER HOMES HOLDINGS LLC
207	504-45-820	BEAZER HOMES HOLDINGS LLC
208	504-45-821	BEAZER HOMES HOLDINGS LLC
209	504-45-822	KL LHB AZ AIV LLC
210	504-45-823	KL LHB AZ AIV LLC
211	504-45-824	KL LHB AZ AIV LLC
212	504-45-825	KL LHB AZ AIV LLC
213	504-45-826	KL LHB AZ AIV LLC
214	504-45-827	KL LHB AZ AIV LLC
215	504-45-828	KL LHB AZ AIV LLC
216	504-45-829	KL LHB AZ AIV LLC
217	504-45-830	KL LHB AZ AIV LLC
218	504-45-831	KL LHB AZ AIV LLC
219	504-45-832	KL LHB AZ AIV LLC
220	504-45-833	KL LHB AZ AIV LLC
221	504-45-834	KL LHB AZ AIV LLC
222	504-45-835	KL LHB AZ AIV LLC
223	504-45-836	KL LHB AZ AIV LLC
224	504-45-837	KL LHB AZ AIV LLC
225	504-45-838	KL LHB AZ AIV LLC
226	504-45-839	KL LHB AZ AIV LLC
227	504-45-840	KL LHB AZ AIV LLC

EXHIBIT B

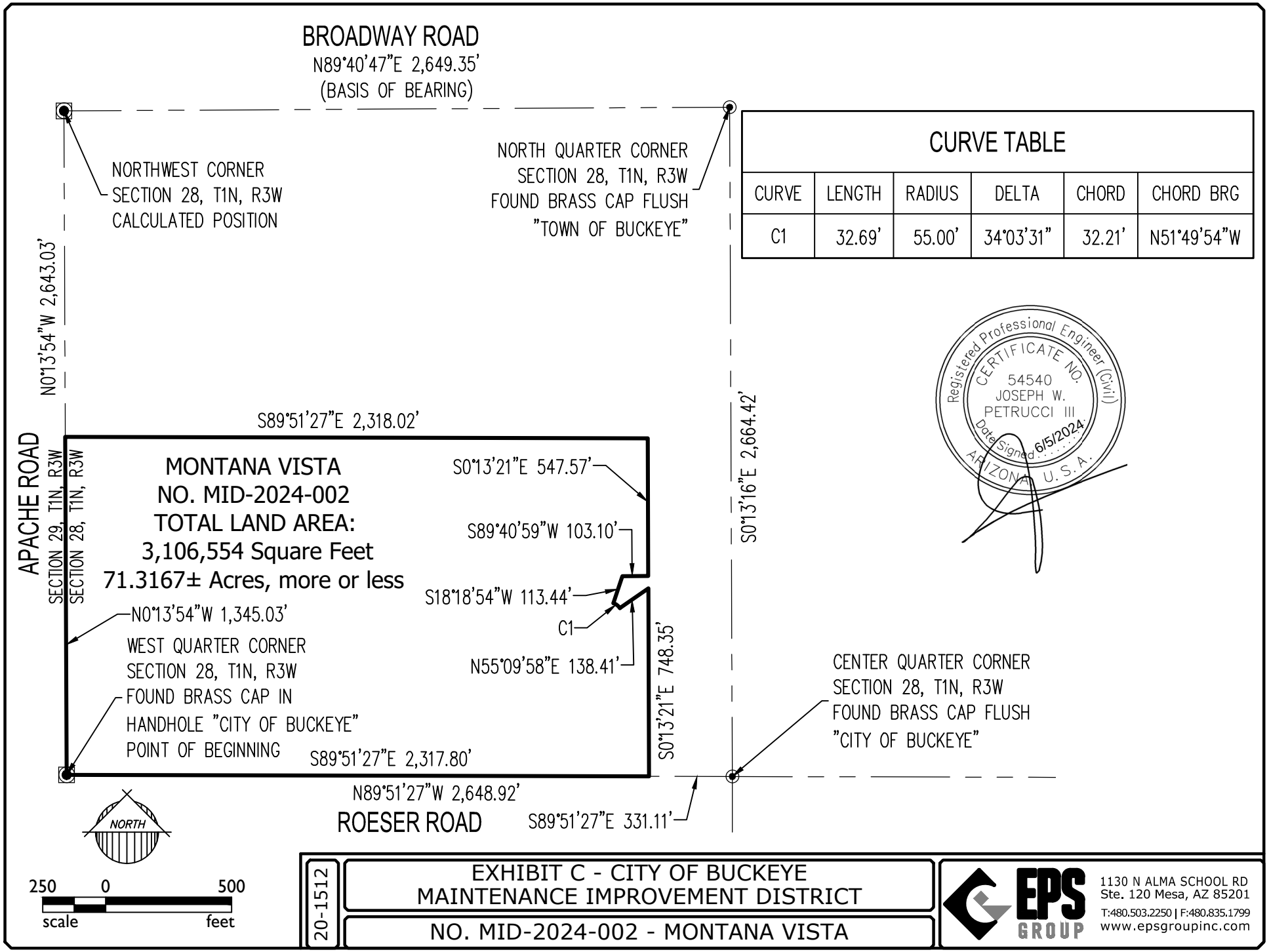
City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
228	504-45-841	KL LHB AZ AIV LLC
229	504-45-842	KL LHB AZ AIV LLC
230	504-45-843	KL LHB AZ AIV LLC
231	504-45-844	KL LHB AZ AIV LLC
232	504-45-845	KL LHB AZ AIV LLC
233	504-45-846	KL LHB AZ AIV LLC
234	504-45-847	KL LHB AZ AIV LLC
235	504-45-848	KL LHB AZ AIV LLC
236	504-45-849	KL LHB AZ AIV LLC
237	504-45-850	KL LHB AZ AIV LLC
238	504-45-851	KL LHB AZ AIV LLC
239	504-45-852	KL LHB AZ AIV LLC
240	504-45-853	KL LHB AZ AIV LLC
241	504-45-854	KL LHB AZ AIV LLC
242	504-45-855	KL LHB AZ AIV LLC
243	504-45-856	KL LHB AZ AIV LLC
244	504-45-857	KL LHB AZ AIV LLC
245	504-45-858	KL LHB AZ AIV LLC
246	504-45-859	KL LHB AZ AIV LLC
247	504-45-860	KL LHB AZ AIV LLC
248	504-45-861	KL LHB AZ AIV LLC
249	504-45-862	BEAZER HOMES HOLDINGS LLC
250	504-45-863	BEAZER HOMES HOLDINGS LLC
251	504-45-864	KL LHB AZ AIV LLC
252	504-45-865	KL LHB AZ AIV LLC
253	504-45-866	KL LHB AZ AIV LLC
254	504-45-867	KL LHB AZ AIV LLC
255	504-45-868	KL LHB AZ AIV LLC
256	504-45-869	KL LHB AZ AIV LLC
257	504-45-870	KL LHB AZ AIV LLC
258	504-45-871	KL LHB AZ AIV LLC
259	504-45-872	KL LHB AZ AIV LLC
260	504-45-873	KL LHB AZ AIV LLC
261	504-45-874	KL LHB AZ AIV LLC
262	504-45-875	KL LHB AZ AIV LLC
263	504-45-876	KL LHB AZ AIV LLC
264	504-45-877	KL LHB AZ AIV LLC
265	504-45-878	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
266	504-45-879	KL LHB AZ AIV LLC
267	504-45-880	KL LHB AZ AIV LLC
268	504-45-881	KL LHB AZ AIV LLC
269	504-45-882	KL LHB AZ AIV LLC
270	504-45-883	KL LHB AZ AIV LLC
Tract A	504-45-884	KL LHB AZ AIV LLC
Tract B	504-45-885	KL LHB AZ AIV LLC
Tract C	504-45-886	KL LHB AZ AIV LLC
Tract D	504-45-887	KL LHB AZ AIV LLC
Tract E	504-45-888	KL LHB AZ AIV LLC
Tract F	504-45-889	KL LHB AZ AIV LLC
Tract G	504-45-890	KL LHB AZ AIV LLC
Tract H	504-45-891	KL LHB AZ AIV LLC
Tract I	504-45-892	KL LHB AZ AIV LLC
Tract J	504-45-893	KL LHB AZ AIV LLC
Tract K	504-45-894	KL LHB AZ AIV LLC
Tract L	504-45-895	KL LHB AZ AIV LLC
Tract M	504-45-896	KL LHB AZ AIV LLC
Tract N	504-45-897	KL LHB AZ AIV LLC
Tract O	504-45-898	KL LHB AZ AIV LLC
Tract P	504-45-899	KL LHB AZ AIV LLC
Tract Q	504-45-900	KL LHB AZ AIV LLC
Tract R	504-45-901	KL LHB AZ AIV LLC
Tract S	504-45-902	KL LHB AZ AIV LLC
Tract T	504-45-903	KL LHB AZ AIV LLC
Tract U	504-45-904	KL LHB AZ AIV LLC
Tract V	504-45-905	KL LHB AZ AIV LLC
Tract W	504-45-906	KL LHB AZ AIV LLC
Tract X	504-45-907	KL LHB AZ AIV LLC



CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BRG
C1	32.69'	55.00'	34°03'31"	32.21'	N51°49'54"W

Registered Professional Engineer (Civil)
CERTIFICATE NO.
54540
JOSEPH W.
PETRUCCI III
Date Signed 6/5/2024
ARIZONA U.S.A.

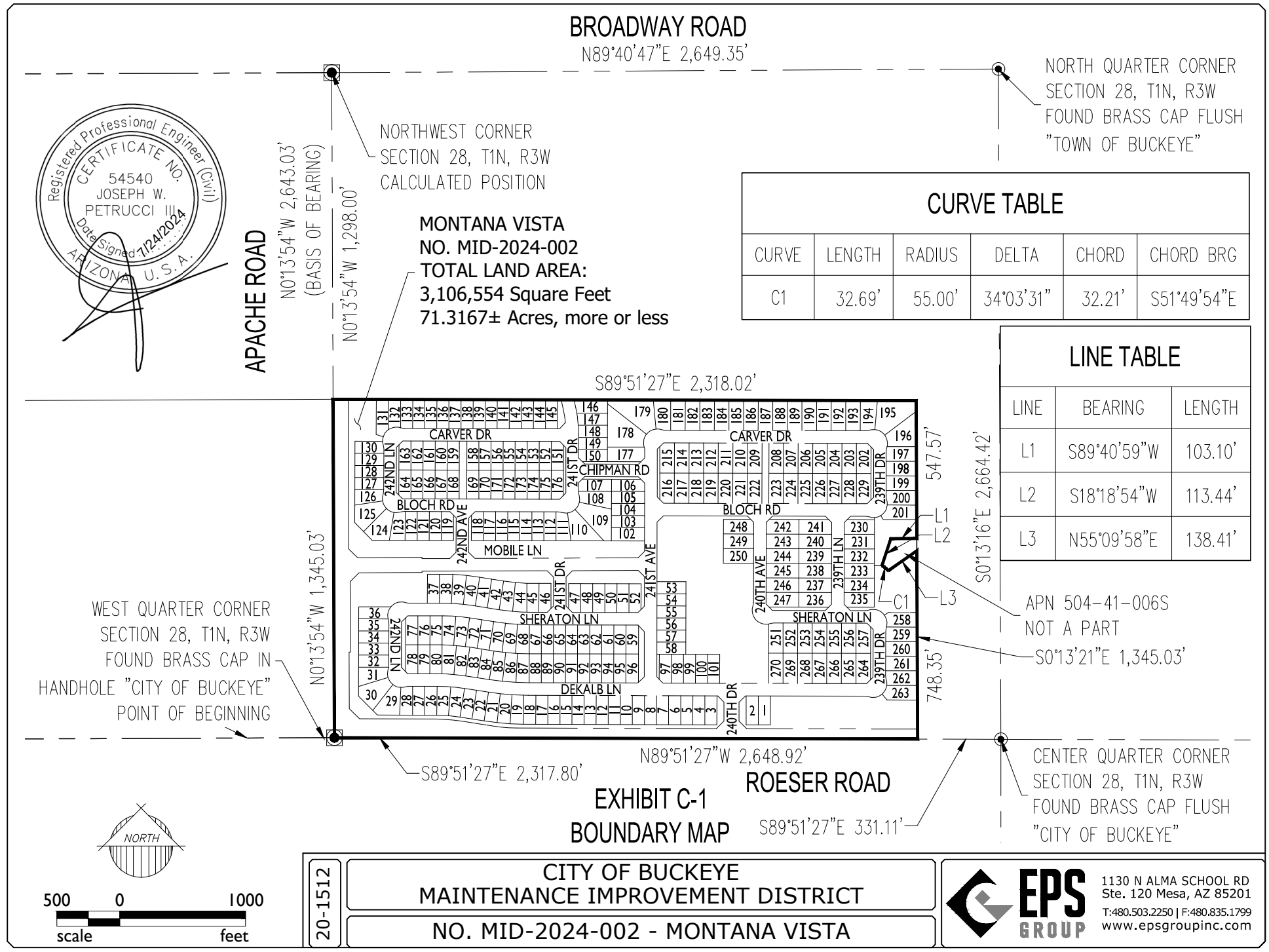
20-1512

EXHIBIT C - CITY OF BUCKEYE
MAINTENANCE IMPROVEMENT DISTRICT

NO. MID-2024-002 - MONTANA VISTA

EPS GROUP
1130 N ALMA SCHOOL RD
Ste. 120 Mesa, AZ 85201
T:480.503.2250 | F:480.835.1799
www.epsgroupinc.com

Jun 04, 2024 10:57am S:\Projects\2020\20-1512\Civil_Construction Documents\Legals\20-1512 MID.dwg



Registered Professional Engineer (Civil)
CERTIFICATE NO.
54540
JOSEPH W.
PETRUCCI III
Date Signed 7/24/2024
ARIZONA U.S.A.

CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BRG
C1	32.69'	55.00'	34°03'31"	32.21'	S51°49'54"E

LINE TABLE

LINE	BEARING	LENGTH
L1	S89°40'59"W	103.10'
L2	S18°18'54"W	113.44'
L3	N55°09'58"E	138.41'

20-1512

CITY OF BUCKEYE
MAINTENANCE IMPROVEMENT DISTRICT
NO. MID-2024-002 - MONTANA VISTA

EPS GROUP
1130 N ALMA SCHOOL RD
Ste. 120 Mesa, AZ 85201
T:480.503.2250 | F:480.835.1799
www.epsgroupinc.com

Jul 24, 2024 11:11am S:\Projects\2020\20-1512\Civil_Construction Documents\Legals\20-1512 MID C-1.dwg

CITY OF BUCKEYE
Regular Council Meeting
COUNCIL ACTION REPORT

MEETING DATE: 09/03/24	**AGENDA ITEM:** 4.N. MID - Resolution No. 58-24, Montana Vista -- Ordering the formation and work for Maintenance Improvement District No. MID-2024-002
DATE PREPARED: 08/29/24	**DISTRICT NO.:** 3
STAFF LIAISON: Brian Craig, Development Services Director, bcraig@buckeyeaz.gov, (623) 349-6209	
DEPARTMENT: Development Services	**AGENDA ITEM TYPE:** Consent Agenda Items / New Business

ACTION/MOTION: (This language identifies the formal motion to be made by the Council)
Council to take action on Resolution No. 58-24 ordering the work as described in Resolution No. 57-24; ordering the formation of City of Buckeye Maintenance Improvement District No. MID-2024-002; and ordering the recording and filing of this Resolution.

SUMMARY

PROJECT DESCRIPTION:

MIDS are formed in the City of Buckeye in accordance with Ordinance #42-06 and assess the owners within a development for the cost of maintenance of the landscaping along the rights-of-ways within a development MID. MIDs are not activated unless the development's owners should fail or otherwise go out of business, since the owner is charges with that maintenance responsibility; however, the MID is standing by as a protection for the City to ensure that there is adequate revenue to take on the maintenance.

BENEFITS:

Maintenance Improvement Districts ensure that only the owners that benefit from the improvements to their community pay for that service. Having the costs of maintenance, repair, and improvement of right of ways and parks within a District borne by the owners in a development ensure that the revenue needed to fund these costs are always in place. Both Street Lighting Improvement Districts (SLIDs) and Maintenance Improvement District (MIDs) provide for the benefit of ensuring that there is a balance of revenue and expenditures to provider for the quality of life for the residents/owners of a particular development without an undue burden upon the existing community.

FUTURE ACTION:

This Resolution will be recorded and a conformed copy delivered to the Maricopa County Assessor and the Arizona State Department of Revenue within ten (10) business days of Council action to ensure that this MID is on the tax rolls for fiscal year 2025/26.

FINANCIAL IMPACT STATEMENT:
NA

CURRENT FISCAL YEAR TOTAL COST:
NA

BUDGETED:
No

FISCAL YEAR:
FY 25/26

FUND/DEPARTMENT:
SLIDs

Items related to a project or facility location must include an attached vicinity map for Council Review.
ATTACHMENTS:
Montana Vista MID Exhibits.pdf
08.21.2024 VS MID 2024-002 Resolution 58-24 Ordering the work.pdf
Montana Vista - MID-2024-02 Petition - FULLY EXECUTED.pdf

Exhibit "A"
CITY OF BUCKEYE MAINTENANCE IMPROVEMENT DISTRICT
NO. MID-2024-002 – MONTANA VISTA

Job No. 20-1512 May 30, 2024

A portion of the Northwest Quarter of Section 28 Township 1 North, Range 3 West, Gila and Salt River Base and Meridian, City of Buckeye, Maricopa County, Arizona, being more particularly described as follows:

BEGINNING at the West Quarter corner of said Section 28, said point also being the centerline intersection of Apache Road and Roeser Roads, from which the center of said Section 28, being a City of Buckeye Brass Cap Bears North 00 degrees 51 minutes 27seconds West;

Thence North 00 degrees 13 minutes 54 seconds West, along the section line, 1,345.03 feet;

Thence South 89 degrees 51 minutes 27 seconds East, 2,318.02 feet;

Thence South 00 degrees 13 minutes 21 seconds East, 547.57 feet;

Thence South 89 degrees 40 minutes 59 seconds West, 103.10 feet;

Thence South 18 degrees 18 minutes 54 seconds West, 113.44 feet, to the beginning of a non-tangent curve concave Southwesterly, with a radius of 55.00 feet and a radial bearing of South 51 degrees 49 minutes 54 seconds East;

Thence Southerly along said curve through a central angle of 34 degrees 03 minutes 31 seconds, with a curve length of 32.69 feet;

Thence North 55 degrees 09 minutes 58 seconds East, 138.41 feet;

Thence South 00 degrees 13 minutes 21 seconds East, 748.35 feet;

Thence North 89 degrees 51 minutes 27 seconds West, 2,317.80 feet, to the POINT OF BEGINNING

Said overall portion of land contains 3,106,554 square feet or 71.3167 acres, more or less, and being subject to any easements, restrictions, and/or rights-of-ways of record or otherwise.

This description shown hereon is not to be used to violate subdivision regulations of the State, County and/or Municipality, or any other land division restrictions.



EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
1	504-45-614	KL LHB AZ AIV LLC
2	504-45-615	KL LHB AZ AIV LLC
3	504-45-616	KL LHB AZ AIV LLC
4	504-45-617	KL LHB AZ AIV LLC
5	504-45-618	KL LHB AZ AIV LLC
6	504-45-619	KL LHB AZ AIV LLC
7	504-45-620	KL LHB AZ AIV LLC
8	504-45-621	KL LHB AZ AIV LLC
9	504-45-622	KL LHB AZ AIV LLC
10	504-45-623	KL LHB AZ AIV LLC
11	504-45-624	KL LHB AZ AIV LLC
12	504-45-625	KL LHB AZ AIV LLC
13	504-45-626	KL LHB AZ AIV LLC
14	504-45-627	KL LHB AZ AIV LLC
15	504-45-628	KL LHB AZ AIV LLC
16	504-45-629	KL LHB AZ AIV LLC
17	504-45-630	KL LHB AZ AIV LLC
18	504-45-631	KL LHB AZ AIV LLC
19	504-45-632	KL LHB AZ AIV LLC
20	504-45-633	KL LHB AZ AIV LLC
21	504-45-634	KL LHB AZ AIV LLC
22	504-45-635	KL LHB AZ AIV LLC
23	504-45-636	KL LHB AZ AIV LLC
24	504-45-637	KL LHB AZ AIV LLC
25	504-45-638	KL LHB AZ AIV LLC
26	504-45-639	KL LHB AZ AIV LLC
27	504-45-640	KL LHB AZ AIV LLC
28	504-45-641	KL LHB AZ AIV LLC
29	504-45-642	KL LHB AZ AIV LLC
30	504-45-643	KL LHB AZ AIV LLC
31	504-45-644	KL LHB AZ AIV LLC
32	504-45-645	BEAZER HOMES HOLDINGS LLC
33	504-45-646	BEAZER HOMES HOLDINGS LLC
34	504-45-647	BEAZER HOMES HOLDINGS LLC
35	504-45-648	BEAZER HOMES HOLDINGS LLC
36	504-45-649	BEAZER HOMES HOLDINGS LLC
37	504-45-650	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
38	504-45-651	KL LHB AZ AIV LLC
39	504-45-652	KL LHB AZ AIV LLC
40	504-45-653	KL LHB AZ AIV LLC
41	504-45-654	KL LHB AZ AIV LLC
42	504-45-655	KL LHB AZ AIV LLC
43	504-45-656	KL LHB AZ AIV LLC
44	504-45-657	KL LHB AZ AIV LLC
45	504-45-658	KL LHB AZ AIV LLC
46	504-45-659	KL LHB AZ AIV LLC
47	504-45-660	KL LHB AZ AIV LLC
48	504-45-661	KL LHB AZ AIV LLC
49	504-45-662	KL LHB AZ AIV LLC
50	504-45-663	KL LHB AZ AIV LLC
51	504-45-664	KL LHB AZ AIV LLC
52	504-45-665	KL LHB AZ AIV LLC
53	504-45-666	KL LHB AZ AIV LLC
54	504-45-667	KL LHB AZ AIV LLC
55	504-45-668	KL LHB AZ AIV LLC
56	504-45-669	KL LHB AZ AIV LLC
57	504-45-670	KL LHB AZ AIV LLC
58	504-45-671	KL LHB AZ AIV LLC
59	504-45-672	KL LHB AZ AIV LLC
60	504-45-673	KL LHB AZ AIV LLC
61	504-45-674	KL LHB AZ AIV LLC
62	504-45-675	KL LHB AZ AIV LLC
63	504-45-676	KL LHB AZ AIV LLC
64	504-45-677	KL LHB AZ AIV LLC
65	504-45-678	KL LHB AZ AIV LLC
66	504-45-679	KL LHB AZ AIV LLC
67	504-45-680	KL LHB AZ AIV LLC
68	504-45-681	KL LHB AZ AIV LLC
69	504-45-682	KL LHB AZ AIV LLC
70	504-45-683	KL LHB AZ AIV LLC
71	504-45-684	KL LHB AZ AIV LLC
72	504-45-685	KL LHB AZ AIV LLC
73	504-45-686	KL LHB AZ AIV LLC
74	504-45-687	KL LHB AZ AIV LLC
75	504-45-688	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
76	504-45-689	KL LHB AZ AIV LLC
77	504-45-690	KL LHB AZ AIV LLC
78	504-45-691	KL LHB AZ AIV LLC
79	504-45-692	KL LHB AZ AIV LLC
80	504-45-693	KL LHB AZ AIV LLC
81	504-45-694	KL LHB AZ AIV LLC
82	504-45-695	KL LHB AZ AIV LLC
83	504-45-696	KL LHB AZ AIV LLC
84	504-45-697	KL LHB AZ AIV LLC
85	504-45-698	KL LHB AZ AIV LLC
86	504-45-699	KL LHB AZ AIV LLC
87	504-45-700	KL LHB AZ AIV LLC
88	504-45-701	KL LHB AZ AIV LLC
89	504-45-702	KL LHB AZ AIV LLC
90	504-45-703	KL LHB AZ AIV LLC
91	504-45-704	KL LHB AZ AIV LLC
92	504-45-705	KL LHB AZ AIV LLC
93	504-45-706	KL LHB AZ AIV LLC
94	504-45-707	KL LHB AZ AIV LLC
95	504-45-708	KL LHB AZ AIV LLC
96	504-45-709	KL LHB AZ AIV LLC
97	504-45-710	KL LHB AZ AIV LLC
98	504-45-711	KL LHB AZ AIV LLC
99	504-45-712	KL LHB AZ AIV LLC
100	504-45-713	KL LHB AZ AIV LLC
101	504-45-714	KL LHB AZ AIV LLC
102	504-45-715	BEAZER HOMES HOLDINGS LLC
103	504-45-716	BEAZER HOMES HOLDINGS LLC
104	504-45-717	BEAZER HOMES HOLDINGS LLC
105	504-45-718	BEAZER HOMES HOLDINGS LLC
106	504-45-719	BEAZER HOMES HOLDINGS LLC
107	504-45-720	KL LHB AZ AIV LLC
108	504-45-721	KL LHB AZ AIV LLC
109	504-45-722	KL LHB AZ AIV LLC
110	504-45-723	KL LHB AZ AIV LLC
111	504-45-724	KL LHB AZ AIV LLC
112	504-45-725	KL LHB AZ AIV LLC
113	504-45-726	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
114	504-45-727	KL LHB AZ AIV LLC
115	504-45-728	KL LHB AZ AIV LLC
116	504-45-729	KL LHB AZ AIV LLC
117	504-45-730	KL LHB AZ AIV LLC
118	504-45-731	KL LHB AZ AIV LLC
119	504-45-732	KL LHB AZ AIV LLC
120	504-45-733	BEAZER HOMES HOLDINGS LLC
121	504-45-734	BEAZER HOMES HOLDINGS LLC
122	504-45-735	KL LHB AZ AIV LLC
123	504-45-736	KL LHB AZ AIV LLC
124	504-45-737	KL LHB AZ AIV LLC
125	504-45-738	KL LHB AZ AIV LLC
126	504-45-739	KL LHB AZ AIV LLC
127	504-45-740	KL LHB AZ AIV LLC
128	504-45-741	KL LHB AZ AIV LLC
129	504-45-742	KL LHB AZ AIV LLC
130	504-45-743	KL LHB AZ AIV LLC
131	504-45-744	KL LHB AZ AIV LLC
132	504-45-745	KL LHB AZ AIV LLC
133	504-45-746	KL LHB AZ AIV LLC
134	504-45-747	KL LHB AZ AIV LLC
135	504-45-748	KL LHB AZ AIV LLC
136	504-45-749	KL LHB AZ AIV LLC
137	504-45-750	KL LHB AZ AIV LLC
138	504-45-751	KL LHB AZ AIV LLC
139	504-45-752	KL LHB AZ AIV LLC
140	504-45-753	BEAZER HOMES HOLDINGS LLC
141	504-45-754	BEAZER HOMES HOLDINGS LLC
142	504-45-755	BEAZER HOMES HOLDINGS LLC
143	504-45-756	BEAZER HOMES HOLDINGS LLC
144	504-45-757	BEAZER HOMES HOLDINGS LLC
145	504-45-758	BEAZER HOMES HOLDINGS LLC
146	504-45-759	BEAZER HOMES HOLDINGS LLC
147	504-45-760	BEAZER HOMES HOLDINGS LLC
148	504-45-761	BEAZER HOMES HOLDINGS LLC
149	504-45-762	BEAZER HOMES HOLDINGS LLC
150	504-45-763	BEAZER HOMES HOLDINGS LLC
151	504-45-764	BEAZER HOMES HOLDINGS LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
152	504-45-765	BEAZER HOMES HOLDINGS LLC
153	504-45-766	BEAZER HOMES HOLDINGS LLC
154	504-45-767	BEAZER HOMES HOLDINGS LLC
155	504-45-768	BEAZER HOMES HOLDINGS LLC
156	504-45-769	BEAZER HOMES HOLDINGS LLC
157	504-45-770	BEAZER HOMES HOLDINGS LLC
158	504-45-771	KL LHB AZ AIV LLC
159	504-45-772	KL LHB AZ AIV LLC
160	504-45-773	KL LHB AZ AIV LLC
161	504-45-774	KL LHB AZ AIV LLC
162	504-45-775	KL LHB AZ AIV LLC
163	504-45-776	KL LHB AZ AIV LLC
164	504-45-777	KL LHB AZ AIV LLC
165	504-45-778	KL LHB AZ AIV LLC
166	504-45-779	KL LHB AZ AIV LLC
167	504-45-780	KL LHB AZ AIV LLC
168	504-45-781	KL LHB AZ AIV LLC
169	504-45-782	KL LHB AZ AIV LLC
170	504-45-783	KL LHB AZ AIV LLC
171	504-45-784	KL LHB AZ AIV LLC
172	504-45-785	KL LHB AZ AIV LLC
173	504-45-786	KL LHB AZ AIV LLC
174	504-45-787	KL LHB AZ AIV LLC
175	504-45-788	KL LHB AZ AIV LLC
176	504-45-789	KL LHB AZ AIV LLC
177	504-45-790	KL LHB AZ AIV LLC
178	504-45-791	KL LHB AZ AIV LLC
179	504-45-792	KL LHB AZ AIV LLC
180	504-45-793	KL LHB AZ AIV LLC
181	504-45-794	KL LHB AZ AIV LLC
182	504-45-795	KL LHB AZ AIV LLC
183	504-45-796	KL LHB AZ AIV LLC
184	504-45-797	KL LHB AZ AIV LLC
185	504-45-798	KL LHB AZ AIV LLC
186	504-45-799	KL LHB AZ AIV LLC
187	504-45-800	BEAZER HOMES HOLDINGS LLC
188	504-45-801	BEAZER HOMES HOLDINGS LLC
189	504-45-802	BEAZER HOMES HOLDINGS LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
190	504-45-803	BEAZER HOMES HOLDINGS LLC
191	504-45-804	BEAZER HOMES HOLDINGS LLC
192	504-45-805	BEAZER HOMES HOLDINGS LLC
193	504-45-806	BEAZER HOMES HOLDINGS LLC
194	504-45-807	BEAZER HOMES HOLDINGS LLC
195	504-45-808	BEAZER HOMES HOLDINGS LLC
196	504-45-809	BEAZER HOMES HOLDINGS LLC
197	504-45-810	BEAZER HOMES HOLDINGS LLC
198	504-45-811	BEAZER HOMES HOLDINGS LLC
199	504-45-812	BEAZER HOMES HOLDINGS LLC
200	504-45-813	BEAZER HOMES HOLDINGS LLC
201	504-45-814	BEAZER HOMES HOLDINGS LLC
202	504-45-815	BEAZER HOMES HOLDINGS LLC
203	504-45-816	BEAZER HOMES HOLDINGS LLC
204	504-45-817	BEAZER HOMES HOLDINGS LLC
205	504-45-818	BEAZER HOMES HOLDINGS LLC
206	504-45-819	BEAZER HOMES HOLDINGS LLC
207	504-45-820	BEAZER HOMES HOLDINGS LLC
208	504-45-821	BEAZER HOMES HOLDINGS LLC
209	504-45-822	KL LHB AZ AIV LLC
210	504-45-823	KL LHB AZ AIV LLC
211	504-45-824	KL LHB AZ AIV LLC
212	504-45-825	KL LHB AZ AIV LLC
213	504-45-826	KL LHB AZ AIV LLC
214	504-45-827	KL LHB AZ AIV LLC
215	504-45-828	KL LHB AZ AIV LLC
216	504-45-829	KL LHB AZ AIV LLC
217	504-45-830	KL LHB AZ AIV LLC
218	504-45-831	KL LHB AZ AIV LLC
219	504-45-832	KL LHB AZ AIV LLC
220	504-45-833	KL LHB AZ AIV LLC
221	504-45-834	KL LHB AZ AIV LLC
222	504-45-835	KL LHB AZ AIV LLC
223	504-45-836	KL LHB AZ AIV LLC
224	504-45-837	KL LHB AZ AIV LLC
225	504-45-838	KL LHB AZ AIV LLC
226	504-45-839	KL LHB AZ AIV LLC
227	504-45-840	KL LHB AZ AIV LLC

EXHIBIT B

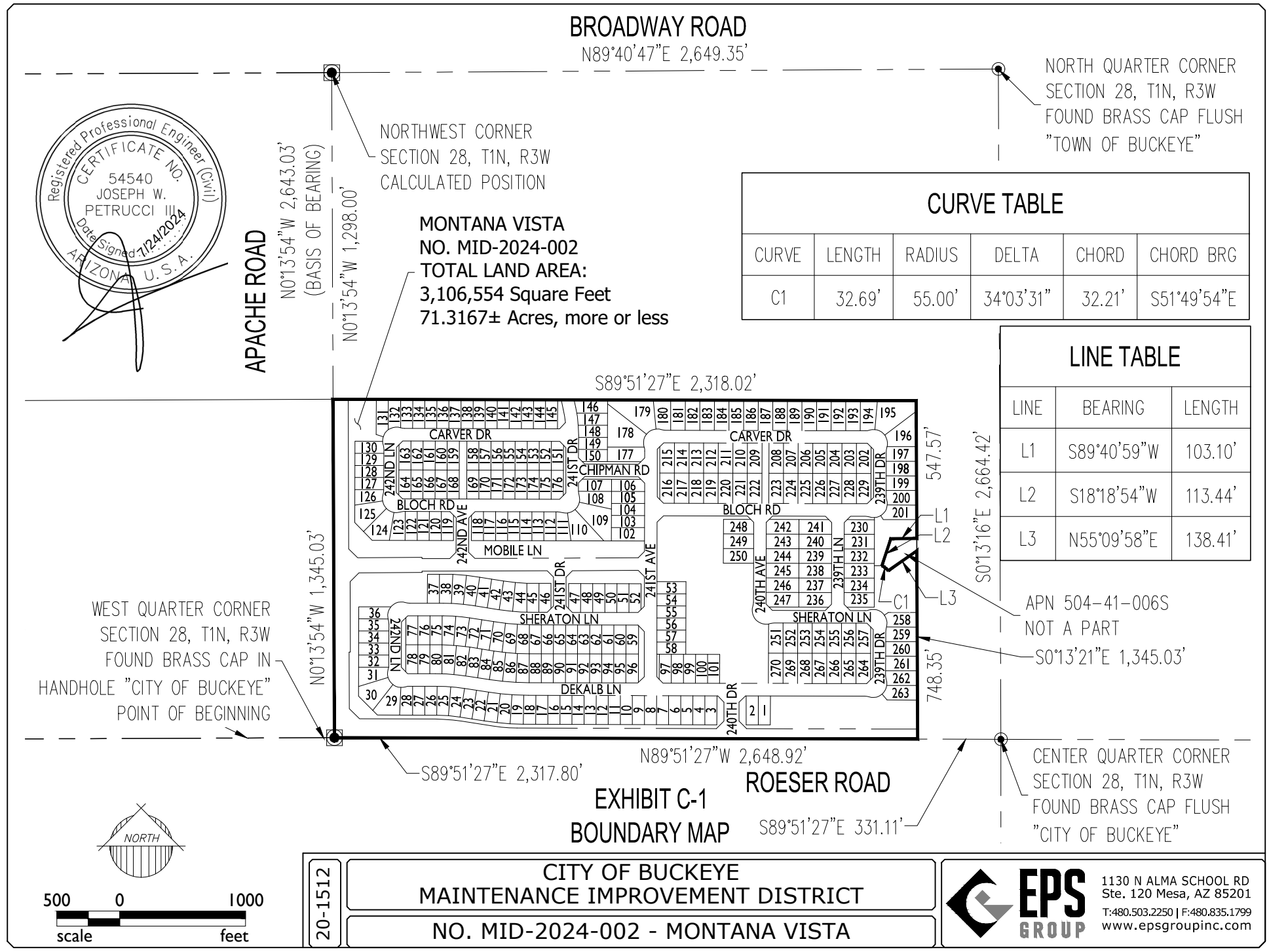
City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
228	504-45-841	KL LHB AZ AIV LLC
229	504-45-842	KL LHB AZ AIV LLC
230	504-45-843	KL LHB AZ AIV LLC
231	504-45-844	KL LHB AZ AIV LLC
232	504-45-845	KL LHB AZ AIV LLC
233	504-45-846	KL LHB AZ AIV LLC
234	504-45-847	KL LHB AZ AIV LLC
235	504-45-848	KL LHB AZ AIV LLC
236	504-45-849	KL LHB AZ AIV LLC
237	504-45-850	KL LHB AZ AIV LLC
238	504-45-851	KL LHB AZ AIV LLC
239	504-45-852	KL LHB AZ AIV LLC
240	504-45-853	KL LHB AZ AIV LLC
241	504-45-854	KL LHB AZ AIV LLC
242	504-45-855	KL LHB AZ AIV LLC
243	504-45-856	KL LHB AZ AIV LLC
244	504-45-857	KL LHB AZ AIV LLC
245	504-45-858	KL LHB AZ AIV LLC
246	504-45-859	KL LHB AZ AIV LLC
247	504-45-860	KL LHB AZ AIV LLC
248	504-45-861	KL LHB AZ AIV LLC
249	504-45-862	BEAZER HOMES HOLDINGS LLC
250	504-45-863	BEAZER HOMES HOLDINGS LLC
251	504-45-864	KL LHB AZ AIV LLC
252	504-45-865	KL LHB AZ AIV LLC
253	504-45-866	KL LHB AZ AIV LLC
254	504-45-867	KL LHB AZ AIV LLC
255	504-45-868	KL LHB AZ AIV LLC
256	504-45-869	KL LHB AZ AIV LLC
257	504-45-870	KL LHB AZ AIV LLC
258	504-45-871	KL LHB AZ AIV LLC
259	504-45-872	KL LHB AZ AIV LLC
260	504-45-873	KL LHB AZ AIV LLC
261	504-45-874	KL LHB AZ AIV LLC
262	504-45-875	KL LHB AZ AIV LLC
263	504-45-876	KL LHB AZ AIV LLC
264	504-45-877	KL LHB AZ AIV LLC
265	504-45-878	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
266	504-45-879	KL LHB AZ AIV LLC
267	504-45-880	KL LHB AZ AIV LLC
268	504-45-881	KL LHB AZ AIV LLC
269	504-45-882	KL LHB AZ AIV LLC
270	504-45-883	KL LHB AZ AIV LLC
Tract A	504-45-884	KL LHB AZ AIV LLC
Tract B	504-45-885	KL LHB AZ AIV LLC
Tract C	504-45-886	KL LHB AZ AIV LLC
Tract D	504-45-887	KL LHB AZ AIV LLC
Tract E	504-45-888	KL LHB AZ AIV LLC
Tract F	504-45-889	KL LHB AZ AIV LLC
Tract G	504-45-890	KL LHB AZ AIV LLC
Tract H	504-45-891	KL LHB AZ AIV LLC
Tract I	504-45-892	KL LHB AZ AIV LLC
Tract J	504-45-893	KL LHB AZ AIV LLC
Tract K	504-45-894	KL LHB AZ AIV LLC
Tract L	504-45-895	KL LHB AZ AIV LLC
Tract M	504-45-896	KL LHB AZ AIV LLC
Tract N	504-45-897	KL LHB AZ AIV LLC
Tract O	504-45-898	KL LHB AZ AIV LLC
Tract P	504-45-899	KL LHB AZ AIV LLC
Tract Q	504-45-900	KL LHB AZ AIV LLC
Tract R	504-45-901	KL LHB AZ AIV LLC
Tract S	504-45-902	KL LHB AZ AIV LLC
Tract T	504-45-903	KL LHB AZ AIV LLC
Tract U	504-45-904	KL LHB AZ AIV LLC
Tract V	504-45-905	KL LHB AZ AIV LLC
Tract W	504-45-906	KL LHB AZ AIV LLC
Tract X	504-45-907	KL LHB AZ AIV LLC



Registered Professional Engineer (Civil)
CERTIFICATE NO.
54540
JOSEPH W.
PETRUCCI III
Date Signed 7/24/2024
ARIZONA U.S.A.

CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BRG
C1	32.69'	55.00'	34°03'31"	32.21'	S51°49'54"E

LINE TABLE

LINE	BEARING	LENGTH
L1	S89°40'59"W	103.10'
L2	S18°18'54"W	113.44'
L3	N55°09'58"E	138.41'

EXHIBIT C-1
BOUNDARY MAP

20-1512

CITY OF BUCKEYE
MAINTENANCE IMPROVEMENT DISTRICT
NO. MID-2024-002 - MONTANA VISTA

EPS GROUP
1130 N ALMA SCHOOL RD
Ste. 120 Mesa, AZ 85201
T:480.503.2250 | F:480.835.1799
www.epsgroupinc.com

Jul 24, 2024 11:11am S:\Projects\2020\20-1512\Civil_Construction Documents\Legals\20-1512 MID C-1.dwg

When Recorded, Return to:
Lucinda J. Aja, City Clerk
City of Buckeye
530 East Monroe Avenue
Buckeye, Arizona 85326

RESOLUTION NO. 58-24

RESOLUTION OF THE COUNCIL OF THE CITY OF BUCKEYE, ARIZONA, ORDERING THE WORK AS DESCRIBED IN RESOLUTION NO. 57-24; ORDERING THE FORMATION OF CITY OF BUCKEYE MAINTENANCE IMPROVEMENT DISTRICT NO. MID-2024-002 AND ORDERING THE RECORDING AND FILING OF THIS RESOLUTION.

WHEREAS, on September 3, 2024, the Mayor and City Council of the City of Buckeye, Arizona (the "*City*") passed and adopted Resolution No. 57-24 (the "*Resolution of Intention*"), which Resolution of Intention declared the Mayor and City Council's intention to form the City of Buckeye Maintenance Improvement District No. MID-2024-002 (the "*District*"), solely for the purpose of operation, maintenance, repair and improvement of parkings, parkways, retention basins and detention basins within, adjacent to, or that serve the District, as it now exists or is hereafter dedicated, constructed, modified or enlarged, and public landscaping, street lights, all headwalls, pumps, piping, canals, washes, ditches, storm drain inlets, scuppers, dry wells, and other adjuncts and appliances related to such parkings, parkways, retention basins and detention basins (collectively, the "*Work*"); and

WHEREAS, a legal description, Assessor's parcel number(s) and a map of the proposed District boundaries are attached hereto as *Exhibits A*, *B*, *C,* and *C-1* and incorporated by reference herein; and

WHEREAS, prior to adoption of the Resolution of Intention, a petition (the "*Petition*") for the formation of the District was presented to this Mayor and City Council, which Petition purported to be signed by all of the non-public real property owners in the proposed District, exclusive of mortgagees and other lienholders; and

WHEREAS, the Mayor and City Council accepted the Petition and found that the Petition was signed by all such owners and have verified such finding of such fact; and

WHEREAS, in the Petition the signer waived all protests against the proposed Work, all objections to the extent of the District, and all publication, posting and mailing of the Resolution of Intention and this Resolution; and

WHEREAS, pursuant to A.R.S. §§ 48-574 and -579, the Mayor and City Council hereby find and determine that they have jurisdiction to order the Work of operation, maintenance, repair and improvement of parkings, parkways, retention basins and detention basins and public landscaping, street lights, all headwalls, pumps, piping, canals, washes, ditches, storm drain

inlets, scuppers, dry wells, and other adjuncts and appliances related to such parkings, parkways, retention basins and detention basins that are or hereafter will be within or adjacent to the District as it is described in the Resolution of Intention or is hereafter modified or enlarged, and by this Resolution order the formation of the District described in the Resolution of Intention;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF BUCKEYE, ARIZONA, as follows:

Section 1. Ordering the Work and District Formation. All protests against the Work or the formation of the District and all objections to the extent of the District being waived by the owners of all non-public real property within the District, exclusive of mortgagees and lienholders, the Work as described in the Resolution of Intention is hereby ordered and the formation of the City of Buckeye Maintenance Improvement District No. MID-2024-002 is hereby ordered. The legal description, Assessor's parcel number(s) and boundary map of the District are set forth in *Exhibits A*, *B*, *C,* and *C-1*.

Section 2. Excluded Property. No publicly owned land or property owned by a homeowners' association will be liable to pay any portion of the District's costs and expenses. This exclusion shall apply to all public streets, avenues, alleys, or public easements within the District that may hereafter be dedicated to public use.

Section 3. Annual Tax or Annual Assessment. Subject to the restrictions of Section 2 of this Resolution, the City shall annually, commencing in tax year 2025 and for the City's 2025-2026 fiscal year, make annual statements and estimates of the expenses of the District, if any, and shall submit the same to the Board of Supervisors of Maricopa County for the levy and collection of ad valorem taxes upon the assessed value of all taxable property, real and personal, in the District or by equal apportionment of taxes based on the number and classification of properties within the District, and shall publish notice of the statements and estimates, hold hearings on them and adopt them at the times and in the manner provided for an incorporated city's statements and estimates by applicable portions of Title 42, Chapter 17, Article 3, Arizona Revised Statutes, and shall annually set, fix and cause to be levied and assessed the amount to be raised by ad valorem taxes upon all of the taxable property of the District and shall cause to be collected, as county taxes are collected, the amounts shown by the statements and estimates so adopted by the Mayor and City Council. As provided in A.R.S. § 48-574, all statutes providing for the levy and collection of general county taxes, including collection of delinquent taxes and sale of property for nonpayment of taxes, are applicable to the District taxes as provided to be levied by this section.

Section 4. Recording and Filing. The City Clerk is ordered and directed to cause a certified copy of this Resolution to be recorded in the office of the Maricopa County Recorder within ten (10) days of the adoption of this Resolution. The City Clerk is further ordered and directed to file certified copies of this Resolution with the Arizona Department of Revenue (the "*Department*") and the Maricopa County Assessor, as required by A.R.S. § 42-17257, together with all other information prescribed by the Director of the Department relating to the boundaries of newly created taxing jurisdictions.

Section 5. Extension for Filing. If either the formation of the District occurs after November 1 of the year preceding the year in which initial assessments are to be levied, or this

Resolution is not filed with both the Department and the Maricopa County Assessor prior to such November 1, the Mayor and City Council hereby request, subject to the November 30 deadline for such request as provided in A.R.S. § 42-17257(B), that the Director of the Department extend the deadline prescribed by A.R.S. § 42-17257 to December 20, 2024.

PASSED AND ADOPTED by the Mayor and Council of the City of Buckeye, Arizona, on September 3, 2024.

_____
Eric W. Orsborn, Mayor

ATTEST:

_____
Lucinda J. Aja, City Clerk

_____
K. Scott McCoy, City Attorney

Attachments
Exhibit A: Legal Description
Exhibit B: Assessor's Parcel Number and Owner's Name
Exhibit C: Boundary Map
Exhibit C-1: Boundary Map of Annexed Area (Parcel Detail)

CERTIFICATION

I, Lucinda J. Aja, the duly appointed and acting Clerk of the City of Buckeye, Arizona, do hereby certify that the above and foregoing Resolution No. 58-24 was duly passed by the Mayor and Council of the City of Buckeye, Arizona, at a regular meeting held on September 3, 2024, and the vote was ____ aye's, ____ nay's, ____ abstained and ____ were absent and that the Mayor and ____ Council Members were present thereat.

DATED: September 3, 2024.

_____
Lucinda J. Aja, City Clerk

Exhibit A
Legal Description

Exhibit "A"
CITY OF BUCKEYE MAINTENANCE IMPROVEMENT DISTRICT
NO. MID-2024-002 – MONTANA VISTA

Job No. 20-1512 May 30, 2024

A portion of the Northwest Quarter of Section 28 Township 1 North, Range 3 West, Gila and Salt River Base and Meridian, City of Buckeye, Maricopa County, Arizona, being more particularly described as follows:

BEGINNING at the West Quarter corner of said Section 28, said point also being the centerline intersection of Apache Road and Roeser Roads, from which the center of said Section 28, being a City of Buckeye Brass Cap Bears North 00 degrees 51 minutes 27seconds West;

Thence North 00 degrees 13 minutes 54 seconds West, along the section line, 1,345.03 feet;

Thence South 89 degrees 51 minutes 27 seconds East, 2,318.02 feet;

Thence South 00 degrees 13 minutes 21 seconds East, 547.57 feet;

Thence South 89 degrees 40 minutes 59 seconds West, 103.10 feet;

Thence South 18 degrees 18 minutes 54 seconds West, 113.44 feet, to the beginning of a non-tangent curve concave Southwesterly, with a radius of 55.00 feet and a radial bearing of South 51 degrees 49 minutes 54 seconds East;

Thence Southerly along said curve through a central angle of 34 degrees 03 minutes 31 seconds, with a curve length of 32.69 feet;

Thence North 55 degrees 09 minutes 58 seconds East, 138.41 feet;

Thence South 00 degrees 13 minutes 21 seconds East, 748.35 feet;

Thence North 89 degrees 51 minutes 27 seconds West, 2,317.80 feet, to the POINT OF BEGINNING

Said overall portion of land contains 3,106,554 square feet or 71.3167 acres, more or less, and being subject to any easements, restrictions, and/or rights-of-ways of record or otherwise.

This description shown hereon is not to be used to violate subdivision regulations of the State, County and/or Municipality, or any other land division restrictions.



Exhibit B
Assessor's Parcel Number and Owner's Name

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Assessor Parcel Number	Owner
504-45-614	KL LHB AZ AIV LLC
504-45-615	KL LHB AZ AIV LLC
504-45-616	KL LHB AZ AIV LLC
504-45-617	KL LHB AZ AIV LLC
504-45-618	KL LHB AZ AIV LLC
504-45-619	KL LHB AZ AIV LLC
504-45-620	KL LHB AZ AIV LLC
504-45-621	KL LHB AZ AIV LLC
504-45-622	KL LHB AZ AIV LLC
504-45-623	KL LHB AZ AIV LLC
504-45-624	KL LHB AZ AIV LLC
504-45-625	KL LHB AZ AIV LLC
504-45-626	KL LHB AZ AIV LLC
504-45-627	KL LHB AZ AIV LLC
504-45-628	KL LHB AZ AIV LLC
504-45-629	KL LHB AZ AIV LLC
504-45-630	KL LHB AZ AIV LLC
504-45-631	KL LHB AZ AIV LLC
504-45-632	KL LHB AZ AIV LLC
504-45-633	KL LHB AZ AIV LLC
504-45-634	KL LHB AZ AIV LLC
504-45-635	KL LHB AZ AIV LLC
504-45-636	KL LHB AZ AIV LLC
504-45-637	KL LHB AZ AIV LLC
504-45-638	KL LHB AZ AIV LLC
504-45-639	KL LHB AZ AIV LLC
504-45-640	KL LHB AZ AIV LLC
504-45-641	KL LHB AZ AIV LLC
504-45-642	KL LHB AZ AIV LLC
504-45-643	KL LHB AZ AIV LLC
504-45-644	KL LHB AZ AIV LLC
504-45-645	BEAZER HOMES HOLDINGS LLC
504-45-646	BEAZER HOMES HOLDINGS LLC
504-45-647	BEAZER HOMES HOLDINGS LLC
504-45-648	BEAZER HOMES HOLDINGS LLC
504-45-649	BEAZER HOMES HOLDINGS LLC
504-45-650	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Assessor Parcel Number	Owner
504-45-651	KL LHB AZ AIV LLC
504-45-652	KL LHB AZ AIV LLC
504-45-653	KL LHB AZ AIV LLC
504-45-654	KL LHB AZ AIV LLC
504-45-655	KL LHB AZ AIV LLC
504-45-656	KL LHB AZ AIV LLC
504-45-657	KL LHB AZ AIV LLC
504-45-658	KL LHB AZ AIV LLC
504-45-659	KL LHB AZ AIV LLC
504-45-660	KL LHB AZ AIV LLC
504-45-661	KL LHB AZ AIV LLC
504-45-662	KL LHB AZ AIV LLC
504-45-663	KL LHB AZ AIV LLC
504-45-664	KL LHB AZ AIV LLC
504-45-665	KL LHB AZ AIV LLC
504-45-666	KL LHB AZ AIV LLC
504-45-667	KL LHB AZ AIV LLC
504-45-668	KL LHB AZ AIV LLC
504-45-669	KL LHB AZ AIV LLC
504-45-670	KL LHB AZ AIV LLC
504-45-671	KL LHB AZ AIV LLC
504-45-672	KL LHB AZ AIV LLC
504-45-673	KL LHB AZ AIV LLC
504-45-674	KL LHB AZ AIV LLC
504-45-675	KL LHB AZ AIV LLC
504-45-676	KL LHB AZ AIV LLC
504-45-677	KL LHB AZ AIV LLC
504-45-678	KL LHB AZ AIV LLC
504-45-679	KL LHB AZ AIV LLC
504-45-680	KL LHB AZ AIV LLC
504-45-681	KL LHB AZ AIV LLC
504-45-682	KL LHB AZ AIV LLC
504-45-683	KL LHB AZ AIV LLC
504-45-684	KL LHB AZ AIV LLC
504-45-685	KL LHB AZ AIV LLC
504-45-686	KL LHB AZ AIV LLC
504-45-687	KL LHB AZ AIV LLC
504-45-688	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Assessor Parcel Number	Owner
504-45-689	KL LHB AZ AIV LLC
504-45-690	KL LHB AZ AIV LLC
504-45-691	KL LHB AZ AIV LLC
504-45-692	KL LHB AZ AIV LLC
504-45-693	KL LHB AZ AIV LLC
504-45-694	KL LHB AZ AIV LLC
504-45-695	KL LHB AZ AIV LLC
504-45-696	KL LHB AZ AIV LLC
504-45-697	KL LHB AZ AIV LLC
504-45-698	KL LHB AZ AIV LLC
504-45-699	KL LHB AZ AIV LLC
504-45-700	KL LHB AZ AIV LLC
504-45-701	KL LHB AZ AIV LLC
504-45-702	KL LHB AZ AIV LLC
504-45-703	KL LHB AZ AIV LLC
504-45-704	KL LHB AZ AIV LLC
504-45-705	KL LHB AZ AIV LLC
504-45-706	KL LHB AZ AIV LLC
504-45-707	KL LHB AZ AIV LLC
504-45-708	KL LHB AZ AIV LLC
504-45-709	KL LHB AZ AIV LLC
504-45-710	KL LHB AZ AIV LLC
504-45-711	KL LHB AZ AIV LLC
504-45-712	KL LHB AZ AIV LLC
504-45-713	KL LHB AZ AIV LLC
504-45-714	KL LHB AZ AIV LLC
504-45-715	BEAZER HOMES HOLDINGS LLC
504-45-716	BEAZER HOMES HOLDINGS LLC
504-45-717	BEAZER HOMES HOLDINGS LLC
504-45-718	BEAZER HOMES HOLDINGS LLC
504-45-719	BEAZER HOMES HOLDINGS LLC
504-45-720	KL LHB AZ AIV LLC
504-45-721	KL LHB AZ AIV LLC
504-45-722	KL LHB AZ AIV LLC
504-45-723	KL LHB AZ AIV LLC
504-45-724	KL LHB AZ AIV LLC
504-45-725	KL LHB AZ AIV LLC
504-45-726	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Assessor Parcel Number	Owner
504-45-727	KL LHB AZ AIV LLC
504-45-728	KL LHB AZ AIV LLC
504-45-729	KL LHB AZ AIV LLC
504-45-730	KL LHB AZ AIV LLC
504-45-731	KL LHB AZ AIV LLC
504-45-732	KL LHB AZ AIV LLC
504-45-733	BEAZER HOMES HOLDINGS LLC
504-45-734	BEAZER HOMES HOLDINGS LLC
504-45-735	KL LHB AZ AIV LLC
504-45-736	KL LHB AZ AIV LLC
504-45-737	KL LHB AZ AIV LLC
504-45-738	KL LHB AZ AIV LLC
504-45-739	KL LHB AZ AIV LLC
504-45-740	KL LHB AZ AIV LLC
504-45-741	KL LHB AZ AIV LLC
504-45-742	KL LHB AZ AIV LLC
504-45-743	KL LHB AZ AIV LLC
504-45-744	KL LHB AZ AIV LLC
504-45-745	KL LHB AZ AIV LLC
504-45-746	KL LHB AZ AIV LLC
504-45-747	KL LHB AZ AIV LLC
504-45-748	KL LHB AZ AIV LLC
504-45-749	KL LHB AZ AIV LLC
504-45-750	KL LHB AZ AIV LLC
504-45-751	KL LHB AZ AIV LLC
504-45-752	KL LHB AZ AIV LLC
504-45-753	BEAZER HOMES HOLDINGS LLC
504-45-754	BEAZER HOMES HOLDINGS LLC
504-45-755	BEAZER HOMES HOLDINGS LLC
504-45-756	BEAZER HOMES HOLDINGS LLC
504-45-757	BEAZER HOMES HOLDINGS LLC
504-45-758	BEAZER HOMES HOLDINGS LLC
504-45-759	BEAZER HOMES HOLDINGS LLC
504-45-760	BEAZER HOMES HOLDINGS LLC
504-45-761	BEAZER HOMES HOLDINGS LLC
504-45-762	BEAZER HOMES HOLDINGS LLC
504-45-763	BEAZER HOMES HOLDINGS LLC
504-45-764	BEAZER HOMES HOLDINGS LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Assessor Parcel Number	Owner
504-45-765	BEAZER HOMES HOLDINGS LLC
504-45-766	BEAZER HOMES HOLDINGS LLC
504-45-767	BEAZER HOMES HOLDINGS LLC
504-45-768	BEAZER HOMES HOLDINGS LLC
504-45-769	BEAZER HOMES HOLDINGS LLC
504-45-770	BEAZER HOMES HOLDINGS LLC
504-45-771	KL LHB AZ AIV LLC
504-45-772	KL LHB AZ AIV LLC
504-45-773	KL LHB AZ AIV LLC
504-45-774	KL LHB AZ AIV LLC
504-45-775	KL LHB AZ AIV LLC
504-45-776	KL LHB AZ AIV LLC
504-45-777	KL LHB AZ AIV LLC
504-45-778	KL LHB AZ AIV LLC
504-45-779	KL LHB AZ AIV LLC
504-45-780	KL LHB AZ AIV LLC
504-45-781	KL LHB AZ AIV LLC
504-45-782	KL LHB AZ AIV LLC
504-45-783	KL LHB AZ AIV LLC
504-45-784	KL LHB AZ AIV LLC
504-45-785	KL LHB AZ AIV LLC
504-45-786	KL LHB AZ AIV LLC
504-45-787	KL LHB AZ AIV LLC
504-45-788	KL LHB AZ AIV LLC
504-45-789	KL LHB AZ AIV LLC
504-45-790	KL LHB AZ AIV LLC
504-45-791	KL LHB AZ AIV LLC
504-45-792	KL LHB AZ AIV LLC
504-45-793	KL LHB AZ AIV LLC
504-45-794	KL LHB AZ AIV LLC
504-45-795	KL LHB AZ AIV LLC
504-45-796	KL LHB AZ AIV LLC
504-45-797	KL LHB AZ AIV LLC
504-45-798	KL LHB AZ AIV LLC
504-45-799	KL LHB AZ AIV LLC
504-45-800	BEAZER HOMES HOLDINGS LLC
504-45-801	BEAZER HOMES HOLDINGS LLC
504-45-802	BEAZER HOMES HOLDINGS LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Assessor Parcel Number	Owner
504-45-803	BEAZER HOMES HOLDINGS LLC
504-45-804	BEAZER HOMES HOLDINGS LLC
504-45-805	BEAZER HOMES HOLDINGS LLC
504-45-806	BEAZER HOMES HOLDINGS LLC
504-45-807	BEAZER HOMES HOLDINGS LLC
504-45-808	BEAZER HOMES HOLDINGS LLC
504-45-809	BEAZER HOMES HOLDINGS LLC
504-45-810	BEAZER HOMES HOLDINGS LLC
504-45-811	BEAZER HOMES HOLDINGS LLC
504-45-812	BEAZER HOMES HOLDINGS LLC
504-45-813	BEAZER HOMES HOLDINGS LLC
504-45-814	BEAZER HOMES HOLDINGS LLC
504-45-815	BEAZER HOMES HOLDINGS LLC
504-45-816	BEAZER HOMES HOLDINGS LLC
504-45-817	BEAZER HOMES HOLDINGS LLC
504-45-818	BEAZER HOMES HOLDINGS LLC
504-45-819	BEAZER HOMES HOLDINGS LLC
504-45-820	BEAZER HOMES HOLDINGS LLC
504-45-821	BEAZER HOMES HOLDINGS LLC
504-45-822	KL LHB AZ AIV LLC
504-45-823	KL LHB AZ AIV LLC
504-45-824	KL LHB AZ AIV LLC
504-45-825	KL LHB AZ AIV LLC
504-45-826	KL LHB AZ AIV LLC
504-45-827	KL LHB AZ AIV LLC
504-45-828	KL LHB AZ AIV LLC
504-45-829	KL LHB AZ AIV LLC
504-45-830	KL LHB AZ AIV LLC
504-45-831	KL LHB AZ AIV LLC
504-45-832	KL LHB AZ AIV LLC
504-45-833	KL LHB AZ AIV LLC
504-45-834	KL LHB AZ AIV LLC
504-45-835	KL LHB AZ AIV LLC
504-45-836	KL LHB AZ AIV LLC
504-45-837	KL LHB AZ AIV LLC
504-45-838	KL LHB AZ AIV LLC
504-45-839	KL LHB AZ AIV LLC
504-45-840	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

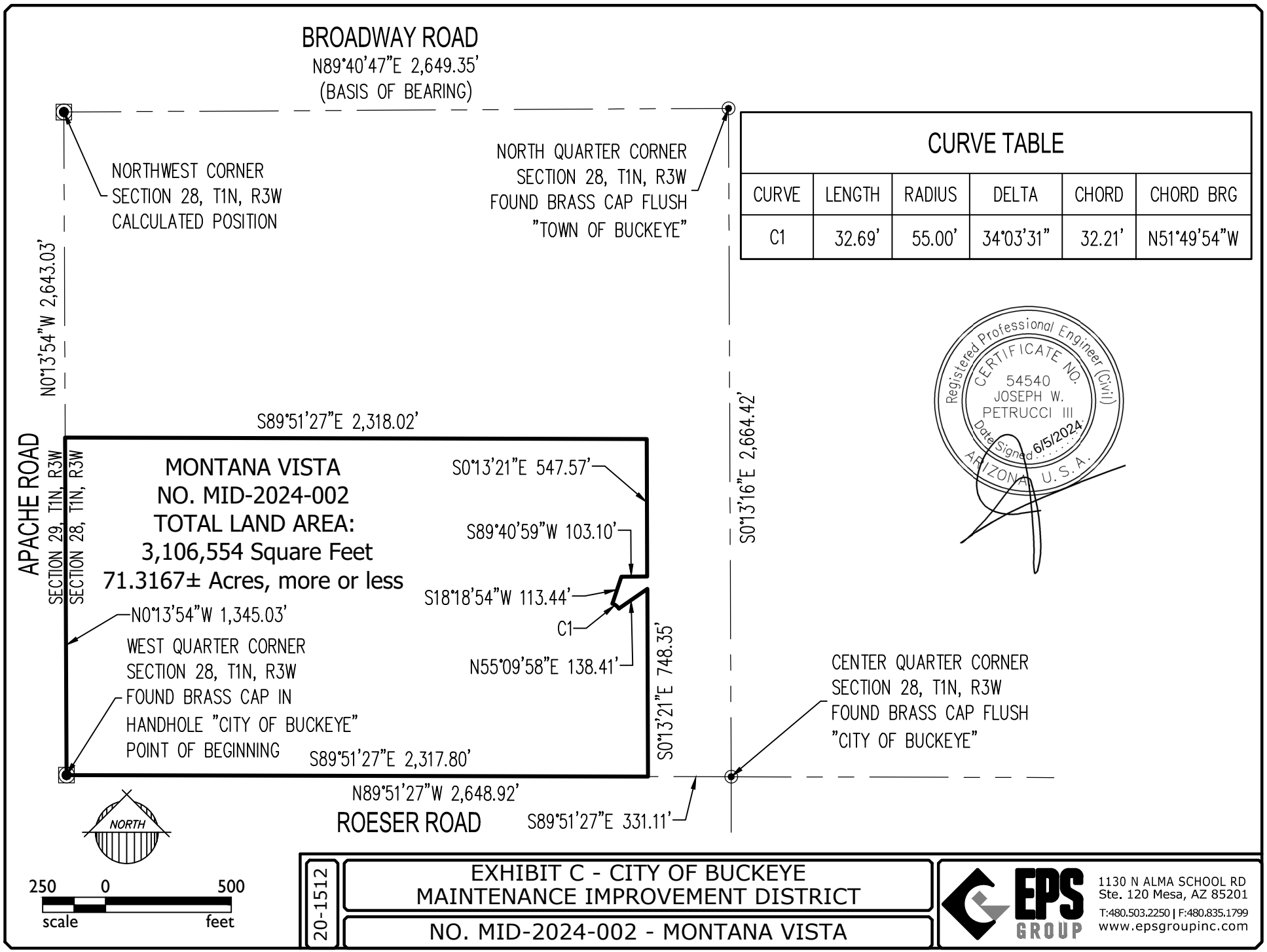
Assessor Parcel Number	Owner
504-45-841	KL LHB AZ AIV LLC
504-45-842	KL LHB AZ AIV LLC
504-45-843	KL LHB AZ AIV LLC
504-45-844	KL LHB AZ AIV LLC
504-45-845	KL LHB AZ AIV LLC
504-45-846	KL LHB AZ AIV LLC
504-45-847	KL LHB AZ AIV LLC
504-45-848	KL LHB AZ AIV LLC
504-45-849	KL LHB AZ AIV LLC
504-45-850	KL LHB AZ AIV LLC
504-45-851	KL LHB AZ AIV LLC
504-45-852	KL LHB AZ AIV LLC
504-45-853	KL LHB AZ AIV LLC
504-45-854	KL LHB AZ AIV LLC
504-45-855	KL LHB AZ AIV LLC
504-45-856	KL LHB AZ AIV LLC
504-45-857	KL LHB AZ AIV LLC
504-45-858	KL LHB AZ AIV LLC
504-45-859	KL LHB AZ AIV LLC
504-45-860	KL LHB AZ AIV LLC
504-45-861	KL LHB AZ AIV LLC
504-45-862	BEAZER HOMES HOLDINGS LLC
504-45-863	BEAZER HOMES HOLDINGS LLC
504-45-864	KL LHB AZ AIV LLC
504-45-865	KL LHB AZ AIV LLC
504-45-866	KL LHB AZ AIV LLC
504-45-867	KL LHB AZ AIV LLC
504-45-868	KL LHB AZ AIV LLC
504-45-869	KL LHB AZ AIV LLC
504-45-870	KL LHB AZ AIV LLC
504-45-871	KL LHB AZ AIV LLC
504-45-872	KL LHB AZ AIV LLC
504-45-873	KL LHB AZ AIV LLC
504-45-874	KL LHB AZ AIV LLC
504-45-875	KL LHB AZ AIV LLC
504-45-876	KL LHB AZ AIV LLC
504-45-877	KL LHB AZ AIV LLC
504-45-878	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Assessor Parcel Number	Owner
504-45-879	KL LHB AZ AIV LLC
504-45-880	KL LHB AZ AIV LLC
504-45-881	KL LHB AZ AIV LLC
504-45-882	KL LHB AZ AIV LLC
504-45-883	KL LHB AZ AIV LLC
504-45-884	KL LHB AZ AIV LLC
504-45-885	KL LHB AZ AIV LLC
504-45-886	KL LHB AZ AIV LLC
504-45-887	KL LHB AZ AIV LLC
504-45-888	KL LHB AZ AIV LLC
504-45-889	KL LHB AZ AIV LLC
504-45-890	KL LHB AZ AIV LLC
504-45-891	KL LHB AZ AIV LLC
504-45-892	KL LHB AZ AIV LLC
504-45-893	KL LHB AZ AIV LLC
504-45-894	KL LHB AZ AIV LLC
504-45-895	KL LHB AZ AIV LLC
504-45-896	KL LHB AZ AIV LLC
504-45-897	KL LHB AZ AIV LLC
504-45-898	KL LHB AZ AIV LLC
504-45-899	KL LHB AZ AIV LLC
504-45-900	KL LHB AZ AIV LLC
504-45-901	KL LHB AZ AIV LLC
504-45-902	KL LHB AZ AIV LLC
504-45-903	KL LHB AZ AIV LLC
504-45-904	KL LHB AZ AIV LLC
504-45-905	KL LHB AZ AIV LLC
504-45-906	KL LHB AZ AIV LLC
504-45-907	KL LHB AZ AIV LLC

Exhibit C
Boundary Map



CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BRG
C1	32.69'	55.00'	34°03'31"	32.21'	N51°49'54"W

Registered Professional Engineer (Civil)
CERTIFICATE NO.
54540
JOSEPH W.
PETRUCCI III
Date Signed 6/5/2024
ARIZONA U.S.A.

20-1512

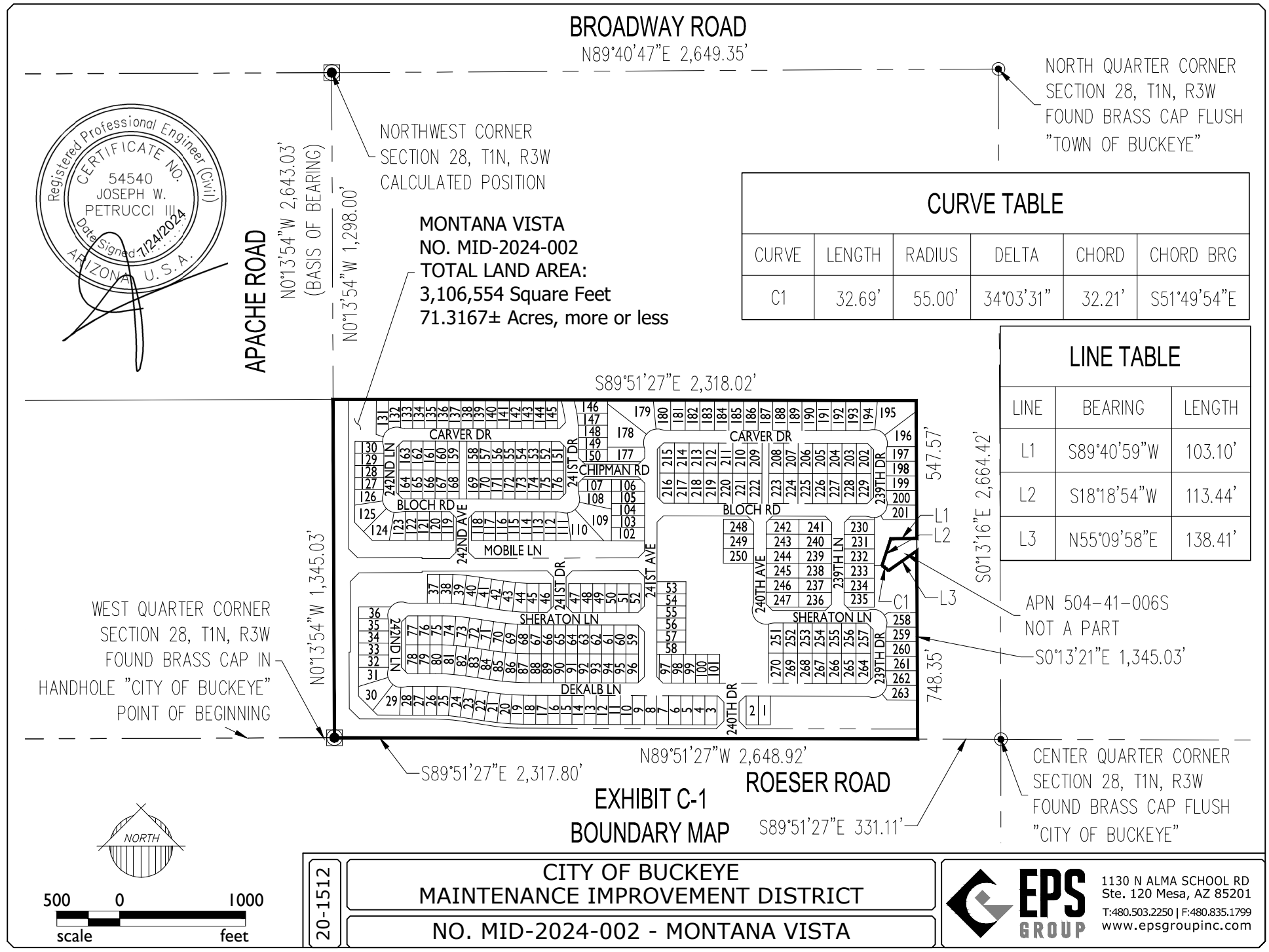
EXHIBIT C - CITY OF BUCKEYE
MAINTENANCE IMPROVEMENT DISTRICT

NO. MID-2024-002 - MONTANA VISTA

EPS GROUP
1130 N ALMA SCHOOL RD
Ste. 120 Mesa, AZ 85201
T:480.503.2250 | F:480.835.1799
www.epsgroupinc.com

Jun 04, 2024 10:57am S:\Projects\2020\20-1512\Civil_Construction Documents\Legals\20-1512 MID.dwg

Exhibit C-1
Boundary Map of Annexed Area (Parcel Detail)



CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BRG
C1	32.69'	55.00'	34°03'31"	32.21'	S51°49'54"E

LINE TABLE

LINE	BEARING	LENGTH
L1	S89°40'59"W	103.10'
L2	S18°18'54"W	113.44'
L3	N55°09'58"E	138.41'

Registered Professional Engineer (Civil)
CERTIFICATE NO.
54540
JOSEPH W.
PETRUCCI III
Date Signed 7/24/2024
ARIZONA U.S.A.

EXHIBIT C-1
BOUNDARY MAP

NORTH

500 0 1000
scale feet

20-1512

CITY OF BUCKEYE
MAINTENANCE IMPROVEMENT DISTRICT
NO. MID-2024-002 - MONTANA VISTA

EPS GROUP
1130 N ALMA SCHOOL RD
Ste. 120 Mesa, AZ 85201
T:480.503.2250 | F:480.835.1799
www.epsgroupinc.com

Jul 24, 2024 11:11am S:\Projects\2020\20-1512\Civil_Construction Documents\Legals\20-1512 MID C-1.dwg

When Recorded, Return to:

Lucinda J. Aja, City Clerk
City of Buckeye
530 East Monroe Avenue
Buckeye, Arizona 85326

PETITION, WAIVER AND CONSENT TO FORMATION OF A MAINTENANCE IMPROVEMENT DISTRICT BY THE CITY OF BUCKEYE

MONTANA VISTA
MID-2024-002

To: Honorable Mayor and Councilmembers, City of Buckeye, Arizona

Pursuant to Arizona Revised Statutes ("*A.R.S.*") Title 48, Chapter 4, Article 2 (the "*Improvement District Law*"), the undersigned property owner(s) (the "*Petitioner*") respectfully petitions the Mayor and City Council (the "*City Council*") of the City of Buckeye, Arizona (the "*City*") to order the formation of a residential municipal maintenance improvement district under the Improvement District Law. In support of this Petition, Waiver and Consent to Formation of a Maintenance Improvement District by the City of Buckeye (this "*Petition*"), the Petitioner agrees to waive certain rights under the Improvement District Law and hereby consents to the formation of a residential municipal maintenance improvement district encompassing the land shown on *Exhibits A*, *B*, *C*, and *C-1*, attached hereto and incorporated by reference herein.

1. Name of District. The Petitioner hereby requests the proposed district to be named the "City of Buckeye Maintenance Improvement District No. MID-2024-002" (the "*District*").

2. Area of District. The property comprising the proposed District is described by a legal description, Assessor's parcel number(s), and a map or plat of the area, all as set forth in *Exhibits A*, *B*, *C*, and *C-1*. The proposed District consists of an aggregate of 3,106,554 square feet or 71.3167 acres, more or less, which are entirely within the corporate boundaries of the City. The Petitioner respectfully requests that the land shown on *Exhibits A*, *B*, *C*, and *C-1* be included within the District. The Assessor's parcel number(s) set forth in *Exhibit B* is for convenience only. Should either the legal description set forth in *Exhibit A* or the Assessor's parcel number(s) set forth in *Exhibit B* conflict with *Exhibit C-1*, *Exhibit C-1* shall govern.

3. Ownership. The Petitioner is the sole owner of all non-public real property within the proposed District.

4. Purpose. The District is proposed to be formed for the purpose of providing for operation, maintenance, repair and improvement of parkings, parkways, retention basins and detention basins within, adjacent to, or that serve the District, and public landscaping, street lights, all headwalls, pumps, piping, canals, washes, ditches, storm drain inlets,

scuppers, dry wells, and other adjuncts and appliances related to such parkings, parkways, retention basins and detention basins. To enhance such purposes the Petitioner grants to the City the public use of all such parkings, parkways, retention basins and detention basins to carry out all District purposes.

5. Public Convenience and Necessity. Public convenience, necessity and welfare will be promoted by the formation of the District, the inclusion of the property described in *Exhibits A*, *B*, *C*, and *C-1* within the District, and the levying of an annual ad valorem tax or annual special assessment upon all of the non-public real property within the District.

6. Fees and Reimbursement. The Petitioner has paid all application fees for the formation of the District and further agrees to reimburse the City for all reasonable legal and engineering fees and costs incurred by the City with respect to the formation of the District.

7. Document Requirements. The Petitioner has previously submitted the following documents to the City's Development Services Department:

   a. Street landscaping layout plans.
   b. One 24" x 36" copy of the District diagram showing each lot or parcel.
   c. A metes and bounds legal description of the District boundary, accompanied by a list of Assessor's parcel number(s) within the proposed District and a map showing the District boundary (with back-up material showing that the boundary closes, as necessary).

The Petitioner or the Petitioner's engineer will submit the following documents to the City's Development Services Department concurrently with the submission of this fully executed Petition:

   d. Proof of payment of the District application fees.
   e. Two 8-1/2" x 11" recordable copies of a legal description of the District boundary and a map showing the District boundary.

8. Expansion of or Annexation to the District. The Petitioner waives any objection to, or protest against, any future enlargement or enlargements of the District and also waives all notices of such enlargement or enlargements, whether required to be published, posted, or mailed with respect to the later enlargement of the District's boundaries. The Petitioner further waives any objection to, or protest against, the consolidation of the District with any other similar district or districts.

9. Waiver and Consent. The Petitioner, with full knowledge of its rights being waived hereunder, hereby expressly waives:

   a. The right to challenge or object to any and all irregularities, illegalities or deficiencies which may exist in the acts or proceedings resulting in the resolution of intention and the resolution ordering the work relating to the formation of the District;
   b. The right to challenge or object to any and all irregularities, illegalities or deficiencies which may exist in the acts or proceedings that result in the adoption of any and all

future resolutions of intention, resolutions ordering work, resolutions enlarging the District, and notices pertaining thereto;

c. Any necessity for publication, posting, mailing or recording of the resolution of intention and the notice of proposed improvements pursuant to A.R.S. § 48-578;
d. All protest rights whatsoever under A.R.S. § 48-579(A) and (B), which provide for protests against the work;
e. All objections to the extent of the District under A.R.S. § 48-579(C);
f. All objections to the lack of plans and specifications, the engineer's estimate and an assessment diagram, all which are unnecessary for completion of the District's formation or purpose; and
g. Any necessity for any notice or hearing with respect to land owned by the Petitioner now within the proposed boundaries of the District.

10. Expenses. The Petitioner hereby petitions the City Council to provide for the expenses of the District by assessment of the total sum upon the several lots, each respectively in proportion to the benefits to be received by each lot within the District, pursuant to A.R.S. § 48-574(D). The Petitioner further requests that no publicly owned land or property owned by a homeowners' association shall be liable to pay any expenses of the District. The Petitioner hereby agrees that each non-public parcel within the property proposed to be included in the District receives the same benefits as each other non-public parcel proposed to be included in the District.

11. Waiver of Petition. This Petition shall be deemed to be a petition of more than one-half (1/2) of the taxable property units and more than one-half (1/2) of the assessed valuation within the District and as such shall also be deemed to be a waiver of any and all requirements to file a petition under A.R.S. § 48-576, as amended.

12. Public Benefit. The operation, maintenance, repair and improvements of parkings, parkways, retention basins and detention basins within, adjacent to, or serving the District is of more than local or ordinary public benefit and the costs and expense thereof should be charged against the property within the District, all of which will benefit thereby.

13. Successors and Assigns. To the extent permitted by law, this Petition shall be binding on all successors or assigns of the Petitioner who hereafter own or have an interest in the property described in *Exhibits A*, *B*, *C*, and *C-1* attached hereto.

14. Authority to Sign Petition. The individual(s) signing this Petition represents and warrants to the City that he/she is duly authorized to (i) sign the Petition to form or enlarge the District, as applicable; (ii) bind the Petitioner to the matters set forth in this Petition; and (iii) agree to hold the City harmless for, from and against any claims in connection with the formation or enlargement of the District.

15. Recordation. This Petition may be recorded in the office of the Maricopa County Recorder and in the office of the Superintendent of Streets of the City.

16. Name. The Owner requests that the proposed District be named "*City of Buckeye Maintenance Improvement District No. MID-2024-002*".

The Petitioner hereby requests the City Council of the City to adopt a resolution of intention to order the proposed improvements and to proceed with the improvements requested herein.

PROPERTY: See attached *Exhibits A, B, C,* and *C-1*.

IN WITNESS WHEREOF, the undersigned representative(s) of the Petitioner has executed this Petition as of the date shown below.

[Remainder of Page Intentionally Left Blank]

[Signature Page(s) Follows]

IN WITNESS WHEREOF, the undersigned authorized representative(s) has executed this Petition as of the ____ day of _____, 20_____.

PETITIONER:

KL LHB AZ AIV LLC,
A Delaware limited liability company

By: Nathan Holt
Nathan Holt

Its: Authorized Signer

Date: August 14, 2024

STATE OF ARIZONA)
) ss.
County of Maricopa)

VERIFICATION

Nathan Holt, after being first duly sworn upon oath, deposes and states:

That I am an authorized signer for KL LHB AZ AIV, LLC, and Petitioner herein; I have been duly authorized to sign this Petition and make this Verification in that capacity; that I have read the foregoing Petition, and I know the contents thereof to be true.

SUBSCRIBED AND SWORN TO by Nathan Holt before me, the undersigned notary public, this 14th day of August, 20 24.

Julie Gillett
Notary Public

(Seal and Expiration Date) 08/05/2026

JULIE GILLETT
Notary Public - State of Arizona
MARICOPA COUNTY
Commission # 635441
Expires August 05, 2026

PETITIONER:

BEAZER HOMES HOLDINGS, LLC,
a Delaware limited liability company

By: _____	By: _____
Ryan M. Johnson	Thomas P. Haggerty
Its: Manager	Its: Authorized Signatory, West Region
Date: 8.15.24	Date: 8/15/24

STATE OF Arizona)
) ss.
County of Maricopa)

VERIFICATION

Ryan Johnson, after being first duly sworn upon oath, deposes and states:

That I am an authorized signer for Beazer Homes Holdings, LLC, the Petitioner herein; I have been duly authorized to sign this Petition and make this Verification in that capacity; that I have read the foregoing Petition, and I know the contents thereof to be true.

SUBSCRIBED AND SWORN TO by Ryan M. Johnson before me, the undersigned notary public, this 15 day of August, 2024.

CARLY GUTHRIE
Notary Public - Arizona
Maricopa County
Commission # 604054
My Comm. Expires Jun 5, 2025

(Seal and Expiration Date)

Carly Guthrie
Notary Public

VERIFICATION

Thomas P. Haggerty, after being first duly sworn upon oath, deposes and states:

That I am an authorized signer for Beazer Homes Holdings, LLC, the Petitioner herein; I have been duly authorized to sign this Petition and make this Verification in that capacity; that I have read the foregoing Petition, and I know the contents thereof to be true.

SUBSCRIBED AND SWORN TO by Thomas P. Haggerty before me, the undersigned notary public, this 15 day of August, 2024.

CARLY GUTHRIE
Notary Public - Arizona
Maricopa County
Commission # 604054
My Comm. Expires Jun 5, 2025

(Seal and Expiration Date)

Carly Guthrie
Notary Public

RECEIPT this _____ day of _____, 20_____ of the foregoing Petition is hereby acknowledged by the City Clerk of the City of Buckeye, Arizona, who will deliver said Petition to the City Council for action.

_____

Lucinda J. Aja, City Clerk

Exhibit "A"
CITY OF BUCKEYE MAINTENANCE IMPROVEMENT DISTRICT
NO. MID-2024-002 – MONTANA VISTA

Job No. 20-1512 May 30, 2024

A portion of the Northwest Quarter of Section 28 Township 1 North, Range 3 West, Gila and Salt River Base and Meridian, City of Buckeye, Maricopa County, Arizona, being more particularly described as follows:

BEGINNING at the West Quarter corner of said Section 28, said point also being the centerline intersection of Apache Road and Roeser Roads, from which the center of said Section 28, being a City of Buckeye Brass Cap Bears North 00 degrees 51 minutes 27seconds West;

Thence North 00 degrees 13 minutes 54 seconds West, along the section line, 1,345.03 feet;

Thence South 89 degrees 51 minutes 27 seconds East, 2,318.02 feet;

Thence South 00 degrees 13 minutes 21 seconds East, 547.57 feet;

Thence South 89 degrees 40 minutes 59 seconds West, 103.10 feet;

Thence South 18 degrees 18 minutes 54 seconds West, 113.44 feet, to the beginning of a non-tangent curve concave Southwesterly, with a radius of 55.00 feet and a radial bearing of South 51 degrees 49 minutes 54 seconds East;

Thence Southerly along said curve through a central angle of 34 degrees 03 minutes 31 seconds, with a curve length of 32.69 feet;

Thence North 55 degrees 09 minutes 58 seconds East, 138.41 feet;

Thence South 00 degrees 13 minutes 21 seconds East, 748.35 feet;

Thence North 89 degrees 51 minutes 27 seconds West, 2,317.80 feet, to the POINT OF BEGINNING

Said overall portion of land contains 3,106,554 square feet or 71.3167 acres, more or less, and being subject to any easements, restrictions, and/or rights-of-ways of record or otherwise.

This description shown hereon is not to be used to violate subdivision regulations of the State, County and/or Municipality, or any other land division restrictions.



EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
1	504-45-614	KL LHB AZ AIV LLC
2	504-45-615	KL LHB AZ AIV LLC
3	504-45-616	KL LHB AZ AIV LLC
4	504-45-617	KL LHB AZ AIV LLC
5	504-45-618	KL LHB AZ AIV LLC
6	504-45-619	KL LHB AZ AIV LLC
7	504-45-620	KL LHB AZ AIV LLC
8	504-45-621	KL LHB AZ AIV LLC
9	504-45-622	KL LHB AZ AIV LLC
10	504-45-623	KL LHB AZ AIV LLC
11	504-45-624	KL LHB AZ AIV LLC
12	504-45-625	KL LHB AZ AIV LLC
13	504-45-626	KL LHB AZ AIV LLC
14	504-45-627	KL LHB AZ AIV LLC
15	504-45-628	KL LHB AZ AIV LLC
16	504-45-629	KL LHB AZ AIV LLC
17	504-45-630	KL LHB AZ AIV LLC
18	504-45-631	KL LHB AZ AIV LLC
19	504-45-632	KL LHB AZ AIV LLC
20	504-45-633	KL LHB AZ AIV LLC
21	504-45-634	KL LHB AZ AIV LLC
22	504-45-635	KL LHB AZ AIV LLC
23	504-45-636	KL LHB AZ AIV LLC
24	504-45-637	KL LHB AZ AIV LLC
25	504-45-638	KL LHB AZ AIV LLC
26	504-45-639	KL LHB AZ AIV LLC
27	504-45-640	KL LHB AZ AIV LLC
28	504-45-641	KL LHB AZ AIV LLC
29	504-45-642	KL LHB AZ AIV LLC
30	504-45-643	KL LHB AZ AIV LLC
31	504-45-644	KL LHB AZ AIV LLC
32	504-45-645	BEAZER HOMES HOLDINGS LLC
33	504-45-646	BEAZER HOMES HOLDINGS LLC
34	504-45-647	BEAZER HOMES HOLDINGS LLC
35	504-45-648	BEAZER HOMES HOLDINGS LLC
36	504-45-649	BEAZER HOMES HOLDINGS LLC
37	504-45-650	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
38	504-45-651	KL LHB AZ AIV LLC
39	504-45-652	KL LHB AZ AIV LLC
40	504-45-653	KL LHB AZ AIV LLC
41	504-45-654	KL LHB AZ AIV LLC
42	504-45-655	KL LHB AZ AIV LLC
43	504-45-656	KL LHB AZ AIV LLC
44	504-45-657	KL LHB AZ AIV LLC
45	504-45-658	KL LHB AZ AIV LLC
46	504-45-659	KL LHB AZ AIV LLC
47	504-45-660	KL LHB AZ AIV LLC
48	504-45-661	KL LHB AZ AIV LLC
49	504-45-662	KL LHB AZ AIV LLC
50	504-45-663	KL LHB AZ AIV LLC
51	504-45-664	KL LHB AZ AIV LLC
52	504-45-665	KL LHB AZ AIV LLC
53	504-45-666	KL LHB AZ AIV LLC
54	504-45-667	KL LHB AZ AIV LLC
55	504-45-668	KL LHB AZ AIV LLC
56	504-45-669	KL LHB AZ AIV LLC
57	504-45-670	KL LHB AZ AIV LLC
58	504-45-671	KL LHB AZ AIV LLC
59	504-45-672	KL LHB AZ AIV LLC
60	504-45-673	KL LHB AZ AIV LLC
61	504-45-674	KL LHB AZ AIV LLC
62	504-45-675	KL LHB AZ AIV LLC
63	504-45-676	KL LHB AZ AIV LLC
64	504-45-677	KL LHB AZ AIV LLC
65	504-45-678	KL LHB AZ AIV LLC
66	504-45-679	KL LHB AZ AIV LLC
67	504-45-680	KL LHB AZ AIV LLC
68	504-45-681	KL LHB AZ AIV LLC
69	504-45-682	KL LHB AZ AIV LLC
70	504-45-683	KL LHB AZ AIV LLC
71	504-45-684	KL LHB AZ AIV LLC
72	504-45-685	KL LHB AZ AIV LLC
73	504-45-686	KL LHB AZ AIV LLC
74	504-45-687	KL LHB AZ AIV LLC
75	504-45-688	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
76	504-45-689	KL LHB AZ AIV LLC
77	504-45-690	KL LHB AZ AIV LLC
78	504-45-691	KL LHB AZ AIV LLC
79	504-45-692	KL LHB AZ AIV LLC
80	504-45-693	KL LHB AZ AIV LLC
81	504-45-694	KL LHB AZ AIV LLC
82	504-45-695	KL LHB AZ AIV LLC
83	504-45-696	KL LHB AZ AIV LLC
84	504-45-697	KL LHB AZ AIV LLC
85	504-45-698	KL LHB AZ AIV LLC
86	504-45-699	KL LHB AZ AIV LLC
87	504-45-700	KL LHB AZ AIV LLC
88	504-45-701	KL LHB AZ AIV LLC
89	504-45-702	KL LHB AZ AIV LLC
90	504-45-703	KL LHB AZ AIV LLC
91	504-45-704	KL LHB AZ AIV LLC
92	504-45-705	KL LHB AZ AIV LLC
93	504-45-706	KL LHB AZ AIV LLC
94	504-45-707	KL LHB AZ AIV LLC
95	504-45-708	KL LHB AZ AIV LLC
96	504-45-709	KL LHB AZ AIV LLC
97	504-45-710	KL LHB AZ AIV LLC
98	504-45-711	KL LHB AZ AIV LLC
99	504-45-712	KL LHB AZ AIV LLC
100	504-45-713	KL LHB AZ AIV LLC
101	504-45-714	KL LHB AZ AIV LLC
102	504-45-715	BEAZER HOMES HOLDINGS LLC
103	504-45-716	BEAZER HOMES HOLDINGS LLC
104	504-45-717	BEAZER HOMES HOLDINGS LLC
105	504-45-718	BEAZER HOMES HOLDINGS LLC
106	504-45-719	BEAZER HOMES HOLDINGS LLC
107	504-45-720	KL LHB AZ AIV LLC
108	504-45-721	KL LHB AZ AIV LLC
109	504-45-722	KL LHB AZ AIV LLC
110	504-45-723	KL LHB AZ AIV LLC
111	504-45-724	KL LHB AZ AIV LLC
112	504-45-725	KL LHB AZ AIV LLC
113	504-45-726	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
114	504-45-727	KL LHB AZ AIV LLC
115	504-45-728	KL LHB AZ AIV LLC
116	504-45-729	KL LHB AZ AIV LLC
117	504-45-730	KL LHB AZ AIV LLC
118	504-45-731	KL LHB AZ AIV LLC
119	504-45-732	KL LHB AZ AIV LLC
120	504-45-733	BEAZER HOMES HOLDINGS LLC
121	504-45-734	BEAZER HOMES HOLDINGS LLC
122	504-45-735	KL LHB AZ AIV LLC
123	504-45-736	KL LHB AZ AIV LLC
124	504-45-737	KL LHB AZ AIV LLC
125	504-45-738	KL LHB AZ AIV LLC
126	504-45-739	KL LHB AZ AIV LLC
127	504-45-740	KL LHB AZ AIV LLC
128	504-45-741	KL LHB AZ AIV LLC
129	504-45-742	KL LHB AZ AIV LLC
130	504-45-743	KL LHB AZ AIV LLC
131	504-45-744	KL LHB AZ AIV LLC
132	504-45-745	KL LHB AZ AIV LLC
133	504-45-746	KL LHB AZ AIV LLC
134	504-45-747	KL LHB AZ AIV LLC
135	504-45-748	KL LHB AZ AIV LLC
136	504-45-749	KL LHB AZ AIV LLC
137	504-45-750	KL LHB AZ AIV LLC
138	504-45-751	KL LHB AZ AIV LLC
139	504-45-752	KL LHB AZ AIV LLC
140	504-45-753	BEAZER HOMES HOLDINGS LLC
141	504-45-754	BEAZER HOMES HOLDINGS LLC
142	504-45-755	BEAZER HOMES HOLDINGS LLC
143	504-45-756	BEAZER HOMES HOLDINGS LLC
144	504-45-757	BEAZER HOMES HOLDINGS LLC
145	504-45-758	BEAZER HOMES HOLDINGS LLC
146	504-45-759	BEAZER HOMES HOLDINGS LLC
147	504-45-760	BEAZER HOMES HOLDINGS LLC
148	504-45-761	BEAZER HOMES HOLDINGS LLC
149	504-45-762	BEAZER HOMES HOLDINGS LLC
150	504-45-763	BEAZER HOMES HOLDINGS LLC
151	504-45-764	BEAZER HOMES HOLDINGS LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
152	504-45-765	BEAZER HOMES HOLDINGS LLC
153	504-45-766	BEAZER HOMES HOLDINGS LLC
154	504-45-767	BEAZER HOMES HOLDINGS LLC
155	504-45-768	BEAZER HOMES HOLDINGS LLC
156	504-45-769	BEAZER HOMES HOLDINGS LLC
157	504-45-770	BEAZER HOMES HOLDINGS LLC
158	504-45-771	KL LHB AZ AIV LLC
159	504-45-772	KL LHB AZ AIV LLC
160	504-45-773	KL LHB AZ AIV LLC
161	504-45-774	KL LHB AZ AIV LLC
162	504-45-775	KL LHB AZ AIV LLC
163	504-45-776	KL LHB AZ AIV LLC
164	504-45-777	KL LHB AZ AIV LLC
165	504-45-778	KL LHB AZ AIV LLC
166	504-45-779	KL LHB AZ AIV LLC
167	504-45-780	KL LHB AZ AIV LLC
168	504-45-781	KL LHB AZ AIV LLC
169	504-45-782	KL LHB AZ AIV LLC
170	504-45-783	KL LHB AZ AIV LLC
171	504-45-784	KL LHB AZ AIV LLC
172	504-45-785	KL LHB AZ AIV LLC
173	504-45-786	KL LHB AZ AIV LLC
174	504-45-787	KL LHB AZ AIV LLC
175	504-45-788	KL LHB AZ AIV LLC
176	504-45-789	KL LHB AZ AIV LLC
177	504-45-790	KL LHB AZ AIV LLC
178	504-45-791	KL LHB AZ AIV LLC
179	504-45-792	KL LHB AZ AIV LLC
180	504-45-793	KL LHB AZ AIV LLC
181	504-45-794	KL LHB AZ AIV LLC
182	504-45-795	KL LHB AZ AIV LLC
183	504-45-796	KL LHB AZ AIV LLC
184	504-45-797	KL LHB AZ AIV LLC
185	504-45-798	KL LHB AZ AIV LLC
186	504-45-799	KL LHB AZ AIV LLC
187	504-45-800	BEAZER HOMES HOLDINGS LLC
188	504-45-801	BEAZER HOMES HOLDINGS LLC
189	504-45-802	BEAZER HOMES HOLDINGS LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
190	504-45-803	BEAZER HOMES HOLDINGS LLC
191	504-45-804	BEAZER HOMES HOLDINGS LLC
192	504-45-805	BEAZER HOMES HOLDINGS LLC
193	504-45-806	BEAZER HOMES HOLDINGS LLC
194	504-45-807	BEAZER HOMES HOLDINGS LLC
195	504-45-808	BEAZER HOMES HOLDINGS LLC
196	504-45-809	BEAZER HOMES HOLDINGS LLC
197	504-45-810	BEAZER HOMES HOLDINGS LLC
198	504-45-811	BEAZER HOMES HOLDINGS LLC
199	504-45-812	BEAZER HOMES HOLDINGS LLC
200	504-45-813	BEAZER HOMES HOLDINGS LLC
201	504-45-814	BEAZER HOMES HOLDINGS LLC
202	504-45-815	BEAZER HOMES HOLDINGS LLC
203	504-45-816	BEAZER HOMES HOLDINGS LLC
204	504-45-817	BEAZER HOMES HOLDINGS LLC
205	504-45-818	BEAZER HOMES HOLDINGS LLC
206	504-45-819	BEAZER HOMES HOLDINGS LLC
207	504-45-820	BEAZER HOMES HOLDINGS LLC
208	504-45-821	BEAZER HOMES HOLDINGS LLC
209	504-45-822	KL LHB AZ AIV LLC
210	504-45-823	KL LHB AZ AIV LLC
211	504-45-824	KL LHB AZ AIV LLC
212	504-45-825	KL LHB AZ AIV LLC
213	504-45-826	KL LHB AZ AIV LLC
214	504-45-827	KL LHB AZ AIV LLC
215	504-45-828	KL LHB AZ AIV LLC
216	504-45-829	KL LHB AZ AIV LLC
217	504-45-830	KL LHB AZ AIV LLC
218	504-45-831	KL LHB AZ AIV LLC
219	504-45-832	KL LHB AZ AIV LLC
220	504-45-833	KL LHB AZ AIV LLC
221	504-45-834	KL LHB AZ AIV LLC
222	504-45-835	KL LHB AZ AIV LLC
223	504-45-836	KL LHB AZ AIV LLC
224	504-45-837	KL LHB AZ AIV LLC
225	504-45-838	KL LHB AZ AIV LLC
226	504-45-839	KL LHB AZ AIV LLC
227	504-45-840	KL LHB AZ AIV LLC

EXHIBIT B

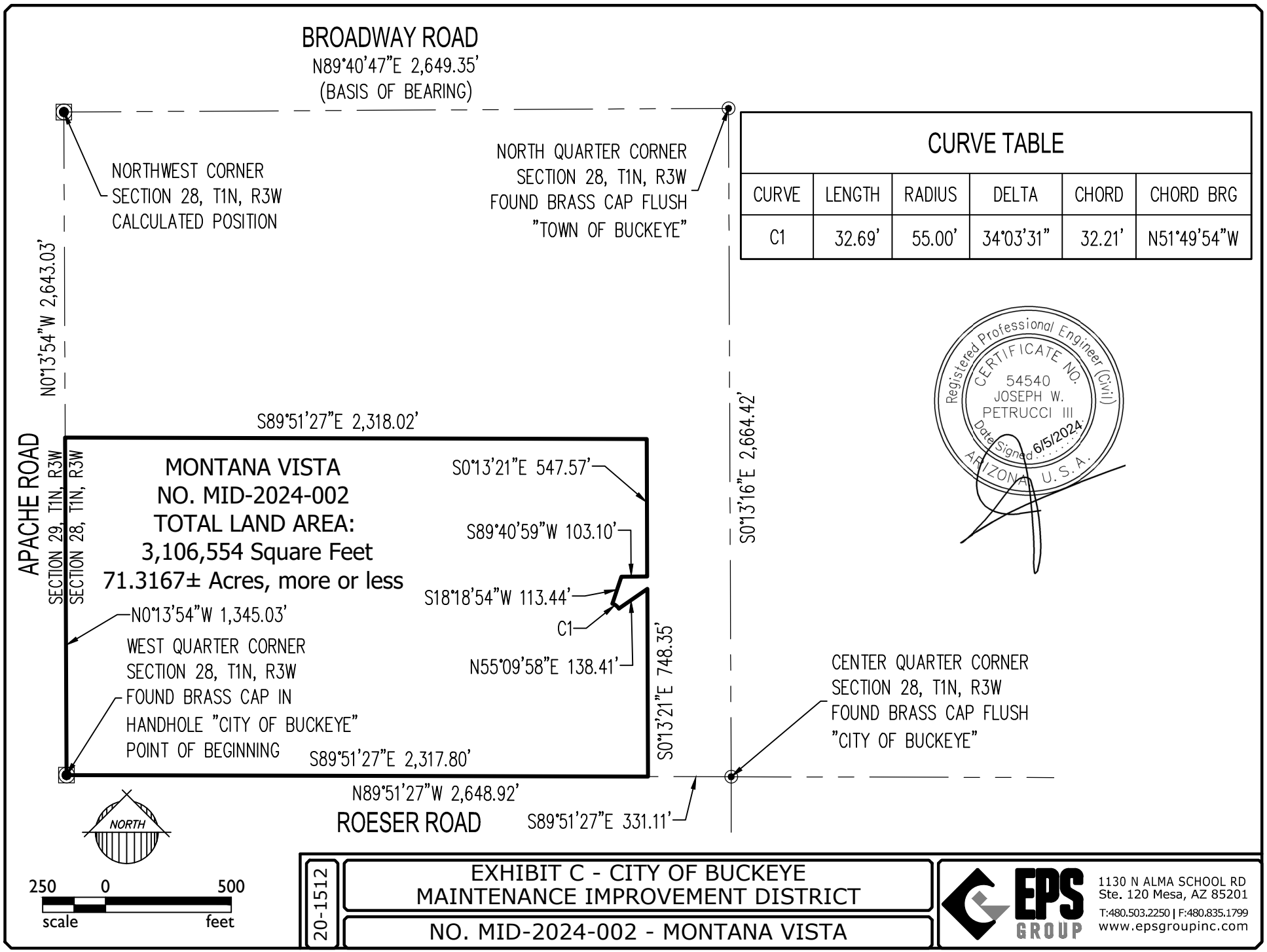
City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
228	504-45-841	KL LHB AZ AIV LLC
229	504-45-842	KL LHB AZ AIV LLC
230	504-45-843	KL LHB AZ AIV LLC
231	504-45-844	KL LHB AZ AIV LLC
232	504-45-845	KL LHB AZ AIV LLC
233	504-45-846	KL LHB AZ AIV LLC
234	504-45-847	KL LHB AZ AIV LLC
235	504-45-848	KL LHB AZ AIV LLC
236	504-45-849	KL LHB AZ AIV LLC
237	504-45-850	KL LHB AZ AIV LLC
238	504-45-851	KL LHB AZ AIV LLC
239	504-45-852	KL LHB AZ AIV LLC
240	504-45-853	KL LHB AZ AIV LLC
241	504-45-854	KL LHB AZ AIV LLC
242	504-45-855	KL LHB AZ AIV LLC
243	504-45-856	KL LHB AZ AIV LLC
244	504-45-857	KL LHB AZ AIV LLC
245	504-45-858	KL LHB AZ AIV LLC
246	504-45-859	KL LHB AZ AIV LLC
247	504-45-860	KL LHB AZ AIV LLC
248	504-45-861	KL LHB AZ AIV LLC
249	504-45-862	BEAZER HOMES HOLDINGS LLC
250	504-45-863	BEAZER HOMES HOLDINGS LLC
251	504-45-864	KL LHB AZ AIV LLC
252	504-45-865	KL LHB AZ AIV LLC
253	504-45-866	KL LHB AZ AIV LLC
254	504-45-867	KL LHB AZ AIV LLC
255	504-45-868	KL LHB AZ AIV LLC
256	504-45-869	KL LHB AZ AIV LLC
257	504-45-870	KL LHB AZ AIV LLC
258	504-45-871	KL LHB AZ AIV LLC
259	504-45-872	KL LHB AZ AIV LLC
260	504-45-873	KL LHB AZ AIV LLC
261	504-45-874	KL LHB AZ AIV LLC
262	504-45-875	KL LHB AZ AIV LLC
263	504-45-876	KL LHB AZ AIV LLC
264	504-45-877	KL LHB AZ AIV LLC
265	504-45-878	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Maintenance Improvement District
No. MID-2024-002 – Montana Vista
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
266	504-45-879	KL LHB AZ AIV LLC
267	504-45-880	KL LHB AZ AIV LLC
268	504-45-881	KL LHB AZ AIV LLC
269	504-45-882	KL LHB AZ AIV LLC
270	504-45-883	KL LHB AZ AIV LLC
Tract A	504-45-884	KL LHB AZ AIV LLC
Tract B	504-45-885	KL LHB AZ AIV LLC
Tract C	504-45-886	KL LHB AZ AIV LLC
Tract D	504-45-887	KL LHB AZ AIV LLC
Tract E	504-45-888	KL LHB AZ AIV LLC
Tract F	504-45-889	KL LHB AZ AIV LLC
Tract G	504-45-890	KL LHB AZ AIV LLC
Tract H	504-45-891	KL LHB AZ AIV LLC
Tract I	504-45-892	KL LHB AZ AIV LLC
Tract J	504-45-893	KL LHB AZ AIV LLC
Tract K	504-45-894	KL LHB AZ AIV LLC
Tract L	504-45-895	KL LHB AZ AIV LLC
Tract M	504-45-896	KL LHB AZ AIV LLC
Tract N	504-45-897	KL LHB AZ AIV LLC
Tract O	504-45-898	KL LHB AZ AIV LLC
Tract P	504-45-899	KL LHB AZ AIV LLC
Tract Q	504-45-900	KL LHB AZ AIV LLC
Tract R	504-45-901	KL LHB AZ AIV LLC
Tract S	504-45-902	KL LHB AZ AIV LLC
Tract T	504-45-903	KL LHB AZ AIV LLC
Tract U	504-45-904	KL LHB AZ AIV LLC
Tract V	504-45-905	KL LHB AZ AIV LLC
Tract W	504-45-906	KL LHB AZ AIV LLC
Tract X	504-45-907	KL LHB AZ AIV LLC



CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BRG
C1	32.69'	55.00'	34°03'31"	32.21'	N51°49'54"W

Registered Professional Engineer (Civil)
CERTIFICATE NO.
54540
JOSEPH W.
PETRUCCI III
Date Signed 6/5/2024
ARIZONA U.S.A.

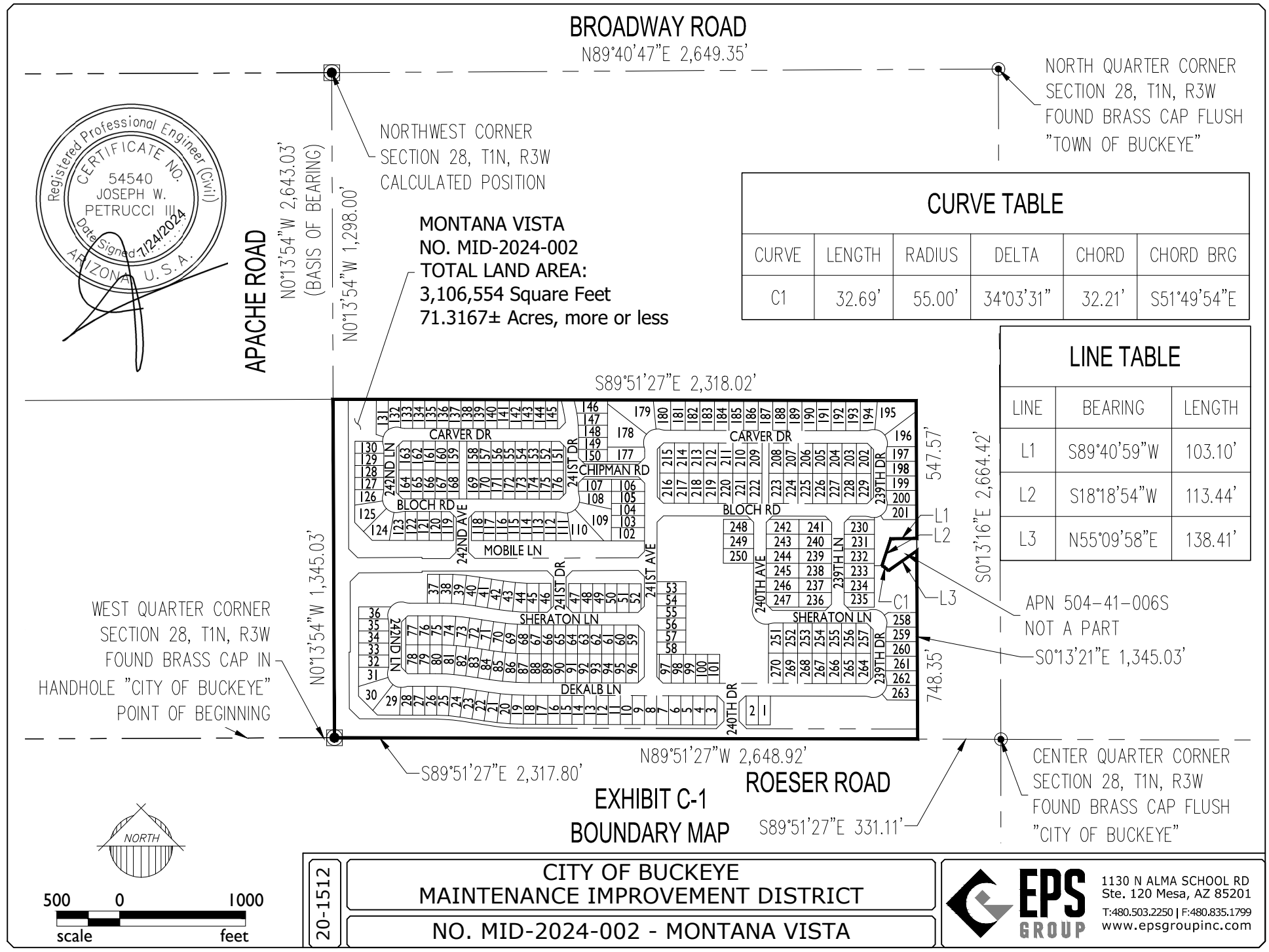
20-1512

EXHIBIT C - CITY OF BUCKEYE MAINTENANCE IMPROVEMENT DISTRICT

NO. MID-2024-002 - MONTANA VISTA

EPS GROUP
1130 N ALMA SCHOOL RD
Ste. 120 Mesa, AZ 85201
T:480.503.2250 | F:480.835.1799
www.epsgroupinc.com

Jun 04, 2024 10:57am S:\Projects\2020\20-1512\Civil_Construction Documents\Legals\20-1512 MID.dwg



Registered Professional Engineer (Civil)
CERTIFICATE NO.
54540
JOSEPH W.
PETRUCCI III
Date Signed 7/24/2024
ARIZONA U.S.A.

CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BRG
C1	32.69'	55.00'	34°03'31"	32.21'	S51°49'54"E

LINE TABLE

LINE	BEARING	LENGTH
L1	S89°40'59"W	103.10'
L2	S18°18'54"W	113.44'
L3	N55°09'58"E	138.41'

NORTH

500 0 1000
scale feet

EXHIBIT C-1
BOUNDARY MAP

20-1512

CITY OF BUCKEYE
MAINTENANCE IMPROVEMENT DISTRICT
NO. MID-2024-002 - MONTANA VISTA

EPS GROUP
1130 N ALMA SCHOOL RD
Ste. 120 Mesa, AZ 85201
T:480.503.2250 | F:480.835.1799
www.epsgroupinc.com

Jul 24, 2024 11:11am S:\Projects\2020\20-1512\Civil_Construction Documents\Legals\20-1512 MID C-1.dwg

CITY OF BUCKEYE
Regular Council Meeting
COUNCIL ACTION REPORT

MEETING DATE: 09/03/24	**AGENDA ITEM:** 4.O. SLID - Resolution 55-24. Montana Vista Intent to expand Street Lighting Improvement District No. 2006-SLID-009
DATE PREPARED: 08/29/24	**DISTRICT NO.:** 3
STAFF LIAISON: Brian Craig, Development Services Director, bcraig@buckeyeaz.gov, (623) 349-6209	
DEPARTMENT: Development Services	**AGENDA ITEM TYPE:** Consent Agenda Items / New Business

ACTION/MOTION: (This language identifies the formal motion to be made by the Council)
Council to take action on Resolution No. 55-24 enlarging City of Buckeye Street Lighting Improvement District No. 2006-SLID-009 and ordering recording and filing of this Resolution.

SUMMARY

PROJECT DESCRIPTION:

Street Lighting Improvement Districts (SLIDs) are established to purchase (not generate) energy for street lighting within the District and adjacent street so that the costs are not borne by the City in its Highway User Revenue Fund.

BENEFITS:
Both SLIDs and Maintenance Improvement Districts (MIDs) provide for the benefit of ensuring that there is a balance of revenue and expenditures to provide for the quality of life for the residents/owners of a particular development without an undue burden upon the existing community. SLIDs ensure that only owners that benefit from the lighting in their community pay for that service. Having the costs of street lighting within a SLID borne by the owners in a development ensures that the revenue needed to fund these costs is always in place

FUTURE ACTION:

A budget and further Council action will take place at the beginning of the next fiscal year to implement this District.

FINANCIAL IMPACT STATEMENT:
N/A

CURRENT FISCAL YEAR TOTAL COST:
N/A

BUDGETED:
No

FISCAL YEAR:
FY 25/26

FUND/DEPARTMENT:

Items related to a project or facility location must include an attached vicinity map for Council Review.
ATTACHMENTS:
08.21.2024 VS Resolution 55-24 - 2006-SLID-009 -Expansion - Montana Vista!.pdf
Montana_Vista_2006-SLID-009_Petition_-_FULLY_EXECUTED (smf 08_21_2024).pdf

When Recorded, Return to:

City of Buckeye
ATTN: City Clerk, Lucinda J. Aja
530 East Monroe Avenue
Buckeye, Arizona 85326

RESOLUTION NO. 55-24

RESOLUTION ENLARGING CITY OF BUCKEYE STREET LIGHTING IMPROVEMENT DISTRICT NO. 2006-SLID-009 AND ORDERING RECORDING AND FILING OF THIS RESOLUTION.

WHEREAS, on January 18, 2011, the Mayor and City Council of the City of Buckeye, Arizona (the "*City*") passed and adopted Resolution No. 01-11 ordering the formation of City of Buckeye Street Lighting Improvement District No. 2006-SLID-009 (the "*District*"), solely for the purpose of purchasing (and not generating) energy for lighting of public streets and parks; and

WHEREAS, the owner of certain property adjoining the District has filed a petition seeking to enlarge the District to include the property described in the attached *Exhibits A*, *B*, *C*, and *C-1* (collectively, the "*Annexed Area*"); and

WHEREAS, by this Resolution the City Council of the City will enlarge the District by adding the Annexed Area to the District;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BUCKEYE, ARIZONA, as follows:

Section 1. District Enlargement. The District is enlarged by the addition of the Annexed Area, as shown on *Exhibits A*, *B*, *C* and *C-1* attached hereto and incorporated by reference into this Resolution. The Assessor's parcel numbers shown on *Exhibit B* is for convenience only. If either the legal description set forth in *Exhibit A* or the Assessor's parcel numbers set forth in *Exhibit B* conflict with *Exhibit C-1*, *Exhibit C-1* shall govern and be determinative of a parcel's inclusion within, or exclusion from, the District, subject to the restrictions of Section 2 of this Resolution.

Section 2. Excluded Property; Annual Tax. No publicly owned land or property owned by a homeowners' association will be liable to pay any portion of the District's costs and expenses. The annual tax levied upon the District will remain in full force and effect and will apply to the District as enlarged by this Resolution. The District taxes will continue to be levied based on the number and classification of non-public parcels within the enlarged District, excluding those parcels which are publicly owned or owned by a homeowners' association.

Section 3. Recording and Filing. The City Clerk is ordered and directed to cause a certified copy of this Resolution to be recorded in the office of the Maricopa County Recorder.

The City Clerk is further ordered and directed to file certified copies of this Resolution with the Director of the Arizona Department of Revenue and the Maricopa County Assessor, pursuant to A.R.S. § 42-17257.

Section 4. Extension for Filing. If either the enlargement of the District occurs after November 1 of the year preceding the year in which initial taxes are to be levied, or this Resolution is not filed with both the Arizona Department of Revenue and the Maricopa County Assessor prior to such November 1, the Mayor and City Council hereby request, subject to the November 30 deadline for such request as provided in A.R.S. § 42-17257(B), that the Director of the Arizona Department of Revenue extend the deadline prescribed by A.R.S. § 42-17257 to December 20, 2024.

PASSED AND ADOPTED by the Mayor and City Council of the City of Buckeye, Arizona, this 3rd day of September, 2024.

_____
Eric W. Orsborn, Mayor

ATTEST:

_____
Lucinda J. Aja, City Clerk

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

Attachments:
Exhibit A: Legal Description
Exhibit B: Assessor's Parcel Numbers
Exhibit C: Boundary Map of Annexed Area, including match line with Existing 2006-SLID-009
Exhibit C-1: Boundary Map of Annexed Area (Parcel Detail)

//
//

CERTIFICATION

I, Lucinda J. Aja, the duly appointed and acting City Clerk of the City of Buckeye, Arizona, do hereby certify that the above and foregoing Resolution No. 55-24 was duly passed by the Mayor and City Council of the City of Buckeye, Arizona, at a regular meeting held on September 3, 2024, and the vote was ____ aye's, ____ nay's, ____ abstained and ____ were absent and that the Mayor and ___ Council Members were present thereat.

DATED: September 3, 2024.

_____
Lucinda J. Aja, City Clerk

//
//

Exhibit A
Legal Description

EXHIBIT A
LEGAL DESCRIPTION
CITY OF BUCKEYE STREET LIGHT IMPROVEMENT DISTRICT
NO. 2006-SLID-009 – MONTANA VISTA EXPANSION

Job No. 20-1512 July 11, 2024

A portion of the Northwest Quarter of Section 28 Township 1 North, Range 3 West, Gila and Salt River Base and Meridian, City of Buckeye, Maricopa County, Arizona, being more particularly described as follows:

BEGINNING at the West Quarter corner of said Section 28, said point also being the centerline intersection of Apache Road and Roeser Roads, from which the center of said Section 28, being a City of Buckeye Brass Cap Bears North 00 degrees 51 minutes 27seconds West;

Thence North 00 degrees 13 minutes 54 seconds West, along the section line, 1,345.03 feet;

Thence South 89 degrees 51 minutes 27 seconds East, 2,318.02 feet;

Thence South 00 degrees 13 minutes 21 seconds East, 547.57 feet;

Thence South 89 degrees 40 minutes 59 seconds West, 103.10 feet;

Thence South 18 degrees 18 minutes 54 seconds West, 113.44 feet, to the beginning of a non-tangent curve concave Southwesterly, with a radius of 55.00 feet and a radial bearing of South 51 degrees 49 minutes 54 seconds East;

Thence Southerly along said curve through a central angle of 34 degrees 03 minutes 31 seconds, with a curve length of 32.69 feet;

Thence North 55 degrees 09 minutes 58 seconds East, 138.41 feet;

Thence South 00 degrees 13 minutes 21 seconds East, 748.35 feet;

Thence North 89 degrees 51 minutes 27 seconds West, 2,317.80 feet, to the POINT OF BEGINNING

Said overall portion of land contains 3,106,554 square feet or 71.3167 acres, more or less, and being subject to any easements, restrictions, and/or rights-of-ways of record or otherwise.

This description shown hereon is not to be used to violate subdivision regulations of the State, County and/or Municipality, or any other land division restrictions.



Exhibit B
Assessor's Parcel Numbers

EXHIBIT B

City of Buckeye Street Lighting Improvement District
No. 2006-SLID-009 – Montana Vista Expansion
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
1	504-45-614	KL LHB AZ AIV LLC
2	504-45-615	KL LHB AZ AIV LLC
3	504-45-616	KL LHB AZ AIV LLC
4	504-45-617	KL LHB AZ AIV LLC
5	504-45-618	KL LHB AZ AIV LLC
6	504-45-619	KL LHB AZ AIV LLC
7	504-45-620	KL LHB AZ AIV LLC
8	504-45-621	KL LHB AZ AIV LLC
9	504-45-622	KL LHB AZ AIV LLC
10	504-45-623	KL LHB AZ AIV LLC
11	504-45-624	KL LHB AZ AIV LLC
12	504-45-625	KL LHB AZ AIV LLC
13	504-45-626	KL LHB AZ AIV LLC
14	504-45-627	KL LHB AZ AIV LLC
15	504-45-628	KL LHB AZ AIV LLC
16	504-45-629	KL LHB AZ AIV LLC
17	504-45-630	KL LHB AZ AIV LLC
18	504-45-631	KL LHB AZ AIV LLC
19	504-45-632	KL LHB AZ AIV LLC
20	504-45-633	KL LHB AZ AIV LLC
21	504-45-634	KL LHB AZ AIV LLC
22	504-45-635	KL LHB AZ AIV LLC
23	504-45-636	KL LHB AZ AIV LLC
24	504-45-637	KL LHB AZ AIV LLC
25	504-45-638	KL LHB AZ AIV LLC
26	504-45-639	KL LHB AZ AIV LLC
27	504-45-640	KL LHB AZ AIV LLC
28	504-45-641	KL LHB AZ AIV LLC
29	504-45-642	KL LHB AZ AIV LLC
30	504-45-643	KL LHB AZ AIV LLC
31	504-45-644	KL LHB AZ AIV LLC
32	504-45-645	BEAZER HOMES HOLDINGS LLC
33	504-45-646	BEAZER HOMES HOLDINGS LLC
34	504-45-647	BEAZER HOMES HOLDINGS LLC
35	504-45-648	BEAZER HOMES HOLDINGS LLC
36	504-45-649	BEAZER HOMES HOLDINGS LLC
37	504-45-650	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Street Lighting Improvement District
No. 2006-SLID-009 – Montana Vista Expansion
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
38	504-45-651	KL LHB AZ AIV LLC
39	504-45-652	KL LHB AZ AIV LLC
40	504-45-653	KL LHB AZ AIV LLC
41	504-45-654	KL LHB AZ AIV LLC
42	504-45-655	KL LHB AZ AIV LLC
43	504-45-656	KL LHB AZ AIV LLC
44	504-45-657	KL LHB AZ AIV LLC
45	504-45-658	KL LHB AZ AIV LLC
46	504-45-659	KL LHB AZ AIV LLC
47	504-45-660	KL LHB AZ AIV LLC
48	504-45-661	KL LHB AZ AIV LLC
49	504-45-662	KL LHB AZ AIV LLC
50	504-45-663	KL LHB AZ AIV LLC
51	504-45-664	KL LHB AZ AIV LLC
52	504-45-665	KL LHB AZ AIV LLC
53	504-45-666	KL LHB AZ AIV LLC
54	504-45-667	KL LHB AZ AIV LLC
55	504-45-668	KL LHB AZ AIV LLC
56	504-45-669	KL LHB AZ AIV LLC
57	504-45-670	KL LHB AZ AIV LLC
58	504-45-671	KL LHB AZ AIV LLC
59	504-45-672	KL LHB AZ AIV LLC
60	504-45-673	KL LHB AZ AIV LLC
61	504-45-674	KL LHB AZ AIV LLC
62	504-45-675	KL LHB AZ AIV LLC
63	504-45-676	KL LHB AZ AIV LLC
64	504-45-677	KL LHB AZ AIV LLC
65	504-45-678	KL LHB AZ AIV LLC
66	504-45-679	KL LHB AZ AIV LLC
67	504-45-680	KL LHB AZ AIV LLC
68	504-45-681	KL LHB AZ AIV LLC
69	504-45-682	KL LHB AZ AIV LLC
70	504-45-683	KL LHB AZ AIV LLC
71	504-45-684	KL LHB AZ AIV LLC
72	504-45-685	KL LHB AZ AIV LLC
73	504-45-686	KL LHB AZ AIV LLC
74	504-45-687	KL LHB AZ AIV LLC
75	504-45-688	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Street Lighting Improvement District
No. 2006-SLID-009 – Montana Vista Expansion
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
76	504-45-689	KL LHB AZ AIV LLC
77	504-45-690	KL LHB AZ AIV LLC
78	504-45-691	KL LHB AZ AIV LLC
79	504-45-692	KL LHB AZ AIV LLC
80	504-45-693	KL LHB AZ AIV LLC
81	504-45-694	KL LHB AZ AIV LLC
82	504-45-695	KL LHB AZ AIV LLC
83	504-45-696	KL LHB AZ AIV LLC
84	504-45-697	KL LHB AZ AIV LLC
85	504-45-698	KL LHB AZ AIV LLC
86	504-45-699	KL LHB AZ AIV LLC
87	504-45-700	KL LHB AZ AIV LLC
88	504-45-701	KL LHB AZ AIV LLC
89	504-45-702	KL LHB AZ AIV LLC
90	504-45-703	KL LHB AZ AIV LLC
91	504-45-704	KL LHB AZ AIV LLC
92	504-45-705	KL LHB AZ AIV LLC
93	504-45-706	KL LHB AZ AIV LLC
94	504-45-707	KL LHB AZ AIV LLC
95	504-45-708	KL LHB AZ AIV LLC
96	504-45-709	KL LHB AZ AIV LLC
97	504-45-710	KL LHB AZ AIV LLC
98	504-45-711	KL LHB AZ AIV LLC
99	504-45-712	KL LHB AZ AIV LLC
100	504-45-713	KL LHB AZ AIV LLC
101	504-45-714	KL LHB AZ AIV LLC
102	504-45-715	BEAZER HOMES HOLDINGS LLC
103	504-45-716	BEAZER HOMES HOLDINGS LLC
104	504-45-717	BEAZER HOMES HOLDINGS LLC
105	504-45-718	BEAZER HOMES HOLDINGS LLC
106	504-45-719	BEAZER HOMES HOLDINGS LLC
107	504-45-720	KL LHB AZ AIV LLC
108	504-45-721	KL LHB AZ AIV LLC
109	504-45-722	KL LHB AZ AIV LLC
110	504-45-723	KL LHB AZ AIV LLC
111	504-45-724	KL LHB AZ AIV LLC
112	504-45-725	KL LHB AZ AIV LLC
113	504-45-726	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Street Lighting Improvement District
No. 2006-SLID-009 – Montana Vista Expansion
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
114	504-45-727	KL LHB AZ AIV LLC
115	504-45-728	KL LHB AZ AIV LLC
116	504-45-729	KL LHB AZ AIV LLC
117	504-45-730	KL LHB AZ AIV LLC
118	504-45-731	KL LHB AZ AIV LLC
119	504-45-732	KL LHB AZ AIV LLC
120	504-45-733	BEAZER HOMES HOLDINGS LLC
121	504-45-734	BEAZER HOMES HOLDINGS LLC
122	504-45-735	KL LHB AZ AIV LLC
123	504-45-736	KL LHB AZ AIV LLC
124	504-45-737	KL LHB AZ AIV LLC
125	504-45-738	KL LHB AZ AIV LLC
126	504-45-739	KL LHB AZ AIV LLC
127	504-45-740	KL LHB AZ AIV LLC
128	504-45-741	KL LHB AZ AIV LLC
129	504-45-742	KL LHB AZ AIV LLC
130	504-45-743	KL LHB AZ AIV LLC
131	504-45-744	KL LHB AZ AIV LLC
132	504-45-745	KL LHB AZ AIV LLC
133	504-45-746	KL LHB AZ AIV LLC
134	504-45-747	KL LHB AZ AIV LLC
135	504-45-748	KL LHB AZ AIV LLC
136	504-45-749	KL LHB AZ AIV LLC
137	504-45-750	KL LHB AZ AIV LLC
138	504-45-751	KL LHB AZ AIV LLC
139	504-45-752	KL LHB AZ AIV LLC
140	504-45-753	BEAZER HOMES HOLDINGS LLC
141	504-45-754	BEAZER HOMES HOLDINGS LLC
142	504-45-755	BEAZER HOMES HOLDINGS LLC
143	504-45-756	BEAZER HOMES HOLDINGS LLC
144	504-45-757	BEAZER HOMES HOLDINGS LLC
145	504-45-758	BEAZER HOMES HOLDINGS LLC
146	504-45-759	BEAZER HOMES HOLDINGS LLC
147	504-45-760	BEAZER HOMES HOLDINGS LLC
148	504-45-761	BEAZER HOMES HOLDINGS LLC
149	504-45-762	BEAZER HOMES HOLDINGS LLC
150	504-45-763	BEAZER HOMES HOLDINGS LLC
151	504-45-764	BEAZER HOMES HOLDINGS LLC

EXHIBIT B

City of Buckeye Street Lighting Improvement District
No. 2006-SLID-009 – Montana Vista Expansion
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
152	504-45-765	BEAZER HOMES HOLDINGS LLC
153	504-45-766	BEAZER HOMES HOLDINGS LLC
154	504-45-767	BEAZER HOMES HOLDINGS LLC
155	504-45-768	BEAZER HOMES HOLDINGS LLC
156	504-45-769	BEAZER HOMES HOLDINGS LLC
157	504-45-770	BEAZER HOMES HOLDINGS LLC
158	504-45-771	KL LHB AZ AIV LLC
159	504-45-772	KL LHB AZ AIV LLC
160	504-45-773	KL LHB AZ AIV LLC
161	504-45-774	KL LHB AZ AIV LLC
162	504-45-775	KL LHB AZ AIV LLC
163	504-45-776	KL LHB AZ AIV LLC
164	504-45-777	KL LHB AZ AIV LLC
165	504-45-778	KL LHB AZ AIV LLC
166	504-45-779	KL LHB AZ AIV LLC
167	504-45-780	KL LHB AZ AIV LLC
168	504-45-781	KL LHB AZ AIV LLC
169	504-45-782	KL LHB AZ AIV LLC
170	504-45-783	KL LHB AZ AIV LLC
171	504-45-784	KL LHB AZ AIV LLC
172	504-45-785	KL LHB AZ AIV LLC
173	504-45-786	KL LHB AZ AIV LLC
174	504-45-787	KL LHB AZ AIV LLC
175	504-45-788	KL LHB AZ AIV LLC
176	504-45-789	KL LHB AZ AIV LLC
177	504-45-790	KL LHB AZ AIV LLC
178	504-45-791	KL LHB AZ AIV LLC
179	504-45-792	KL LHB AZ AIV LLC
180	504-45-793	KL LHB AZ AIV LLC
181	504-45-794	KL LHB AZ AIV LLC
182	504-45-795	KL LHB AZ AIV LLC
183	504-45-796	KL LHB AZ AIV LLC
184	504-45-797	KL LHB AZ AIV LLC
185	504-45-798	KL LHB AZ AIV LLC
186	504-45-799	KL LHB AZ AIV LLC
187	504-45-800	BEAZER HOMES HOLDINGS LLC
188	504-45-801	BEAZER HOMES HOLDINGS LLC
189	504-45-802	BEAZER HOMES HOLDINGS LLC

EXHIBIT B

City of Buckeye Street Lighting Improvement District
No. 2006-SLID-009 – Montana Vista Expansion
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
190	504-45-803	BEAZER HOMES HOLDINGS LLC
191	504-45-804	BEAZER HOMES HOLDINGS LLC
192	504-45-805	BEAZER HOMES HOLDINGS LLC
193	504-45-806	BEAZER HOMES HOLDINGS LLC
194	504-45-807	BEAZER HOMES HOLDINGS LLC
195	504-45-808	BEAZER HOMES HOLDINGS LLC
196	504-45-809	BEAZER HOMES HOLDINGS LLC
197	504-45-810	BEAZER HOMES HOLDINGS LLC
198	504-45-811	BEAZER HOMES HOLDINGS LLC
199	504-45-812	BEAZER HOMES HOLDINGS LLC
200	504-45-813	BEAZER HOMES HOLDINGS LLC
201	504-45-814	BEAZER HOMES HOLDINGS LLC
202	504-45-815	BEAZER HOMES HOLDINGS LLC
203	504-45-816	BEAZER HOMES HOLDINGS LLC
204	504-45-817	BEAZER HOMES HOLDINGS LLC
205	504-45-818	BEAZER HOMES HOLDINGS LLC
206	504-45-819	BEAZER HOMES HOLDINGS LLC
207	504-45-820	BEAZER HOMES HOLDINGS LLC
208	504-45-821	BEAZER HOMES HOLDINGS LLC
209	504-45-822	KL LHB AZ AIV LLC
210	504-45-823	KL LHB AZ AIV LLC
211	504-45-824	KL LHB AZ AIV LLC
212	504-45-825	KL LHB AZ AIV LLC
213	504-45-826	KL LHB AZ AIV LLC
214	504-45-827	KL LHB AZ AIV LLC
215	504-45-828	KL LHB AZ AIV LLC
216	504-45-829	KL LHB AZ AIV LLC
217	504-45-830	KL LHB AZ AIV LLC
218	504-45-831	KL LHB AZ AIV LLC
219	504-45-832	KL LHB AZ AIV LLC
220	504-45-833	KL LHB AZ AIV LLC
221	504-45-834	KL LHB AZ AIV LLC
222	504-45-835	KL LHB AZ AIV LLC
223	504-45-836	KL LHB AZ AIV LLC
224	504-45-837	KL LHB AZ AIV LLC
225	504-45-838	KL LHB AZ AIV LLC
226	504-45-839	KL LHB AZ AIV LLC
227	504-45-840	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Street Lighting Improvement District
No. 2006-SLID-009 – Montana Vista Expansion
Assessor Parcel Numbers

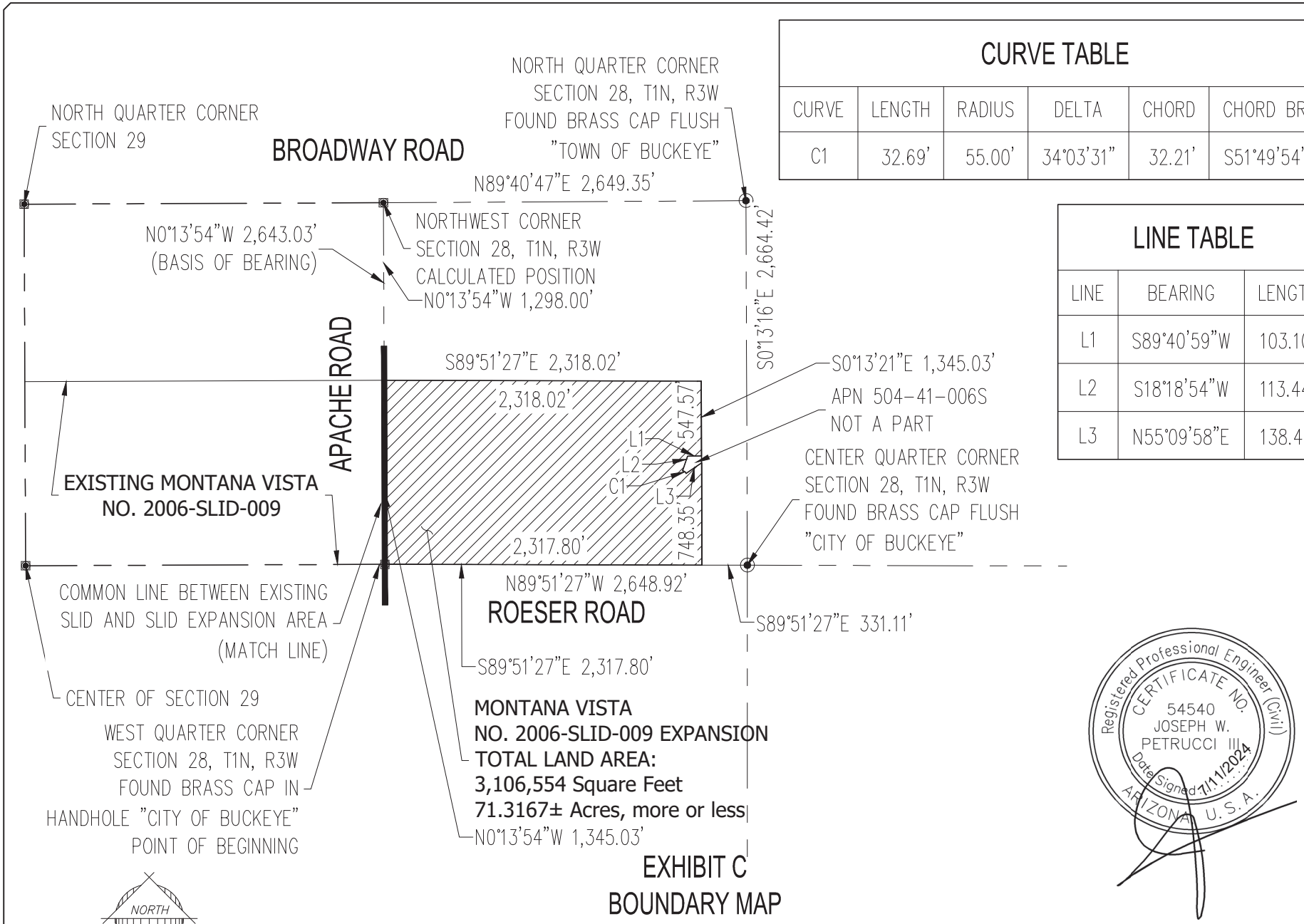
Lot Number	Assessor Parcel Number	Owner
228	504-45-841	KL LHB AZ AIV LLC
229	504-45-842	KL LHB AZ AIV LLC
230	504-45-843	KL LHB AZ AIV LLC
231	504-45-844	KL LHB AZ AIV LLC
232	504-45-845	KL LHB AZ AIV LLC
233	504-45-846	KL LHB AZ AIV LLC
234	504-45-847	KL LHB AZ AIV LLC
235	504-45-848	KL LHB AZ AIV LLC
236	504-45-849	KL LHB AZ AIV LLC
237	504-45-850	KL LHB AZ AIV LLC
238	504-45-851	KL LHB AZ AIV LLC
239	504-45-852	KL LHB AZ AIV LLC
240	504-45-853	KL LHB AZ AIV LLC
241	504-45-854	KL LHB AZ AIV LLC
242	504-45-855	KL LHB AZ AIV LLC
243	504-45-856	KL LHB AZ AIV LLC
244	504-45-857	KL LHB AZ AIV LLC
245	504-45-858	KL LHB AZ AIV LLC
246	504-45-859	KL LHB AZ AIV LLC
247	504-45-860	KL LHB AZ AIV LLC
248	504-45-861	KL LHB AZ AIV LLC
249	504-45-862	BEAZER HOMES HOLDINGS LLC
250	504-45-863	BEAZER HOMES HOLDINGS LLC
251	504-45-864	KL LHB AZ AIV LLC
252	504-45-865	KL LHB AZ AIV LLC
253	504-45-866	KL LHB AZ AIV LLC
254	504-45-867	KL LHB AZ AIV LLC
255	504-45-868	KL LHB AZ AIV LLC
256	504-45-869	KL LHB AZ AIV LLC
257	504-45-870	KL LHB AZ AIV LLC
258	504-45-871	KL LHB AZ AIV LLC
259	504-45-872	KL LHB AZ AIV LLC
260	504-45-873	KL LHB AZ AIV LLC
261	504-45-874	KL LHB AZ AIV LLC
262	504-45-875	KL LHB AZ AIV LLC
263	504-45-876	KL LHB AZ AIV LLC
264	504-45-877	KL LHB AZ AIV LLC
265	504-45-878	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Street Lighting Improvement District
No. 2006-SLID-009 – Montana Vista Expansion
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
266	504-45-879	KL LHB AZ AIV LLC
267	504-45-880	KL LHB AZ AIV LLC
268	504-45-881	KL LHB AZ AIV LLC
269	504-45-882	KL LHB AZ AIV LLC
270	504-45-883	KL LHB AZ AIV LLC
Tract A	504-45-884	KL LHB AZ AIV LLC
Tract B	504-45-885	KL LHB AZ AIV LLC
Tract C	504-45-886	KL LHB AZ AIV LLC
Tract D	504-45-887	KL LHB AZ AIV LLC
Tract E	504-45-888	KL LHB AZ AIV LLC
Tract F	504-45-889	KL LHB AZ AIV LLC
Tract G	504-45-890	KL LHB AZ AIV LLC
Tract H	504-45-891	KL LHB AZ AIV LLC
Tract I	504-45-892	KL LHB AZ AIV LLC
Tract J	504-45-893	KL LHB AZ AIV LLC
Tract K	504-45-894	KL LHB AZ AIV LLC
Tract L	504-45-895	KL LHB AZ AIV LLC
Tract M	504-45-896	KL LHB AZ AIV LLC
Tract N	504-45-897	KL LHB AZ AIV LLC
Tract O	504-45-898	KL LHB AZ AIV LLC
Tract P	504-45-899	KL LHB AZ AIV LLC
Tract Q	504-45-900	KL LHB AZ AIV LLC
Tract R	504-45-901	KL LHB AZ AIV LLC
Tract S	504-45-902	KL LHB AZ AIV LLC
Tract T	504-45-903	KL LHB AZ AIV LLC
Tract U	504-45-904	KL LHB AZ AIV LLC
Tract V	504-45-905	KL LHB AZ AIV LLC
Tract W	504-45-906	KL LHB AZ AIV LLC
Tract X	504-45-907	KL LHB AZ AIV LLC

Exhibit C
Boundary Map of Annexed Area



CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BRG
C1	32.69'	55.00'	34°03'31"	32.21'	S51°49'54"E

LINE TABLE

LINE	BEARING	LENGTH
L1	S89°40'59"W	103.10'
L2	S18°18'54"W	113.44'
L3	N55°09'58"E	138.41'

Registered Professional Engineer (Civil)
CERTIFICATE NO.
54540
JOSEPH W.
PETRUCCI III
Date Signed 1/11/2024
ARIZONA U.S.A.

20-1512

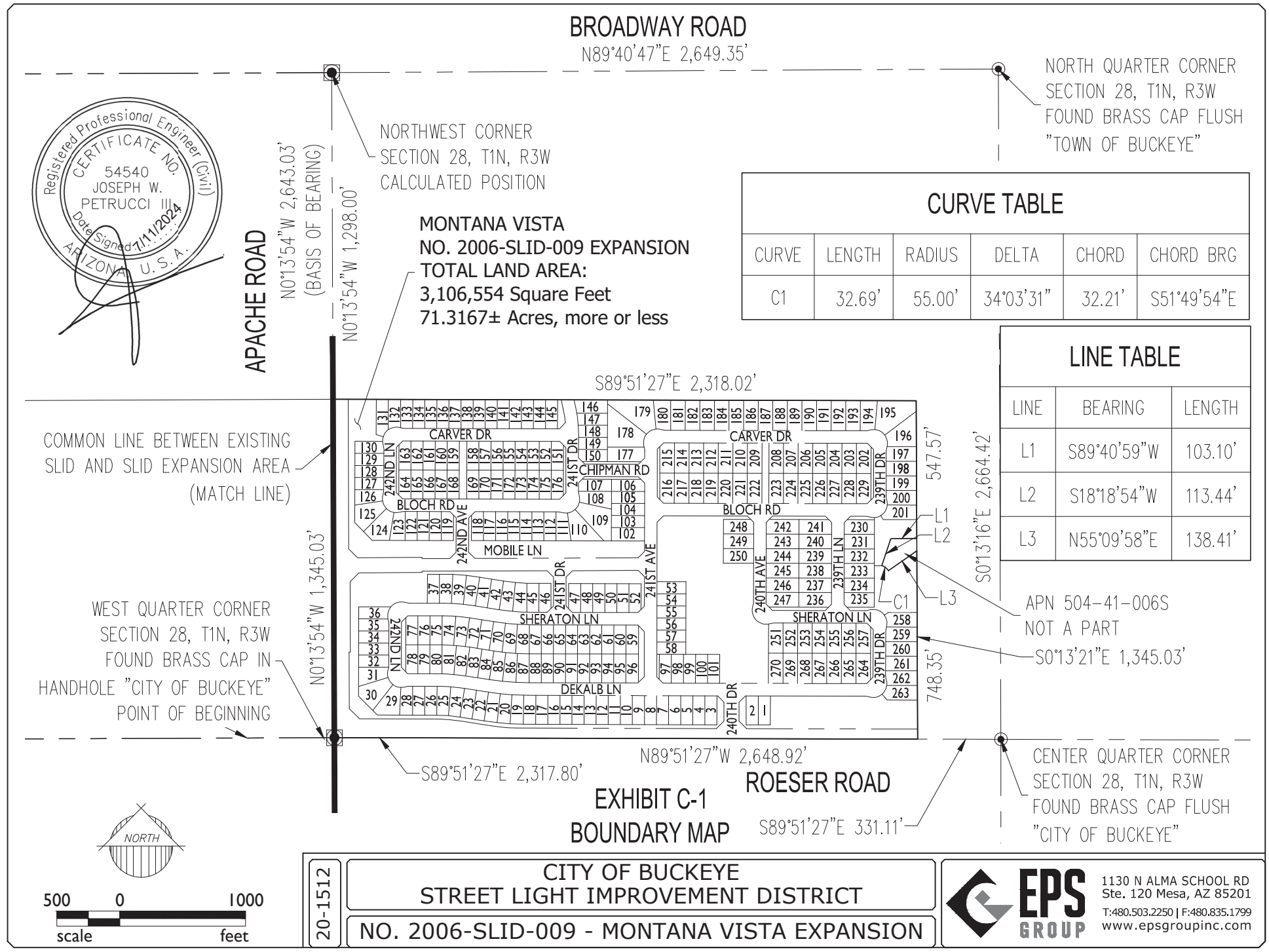
CITY OF BUCKEYE
STREET LIGHT IMPROVEMENT DISTRICT

NO. 2006-SLID-009- MONTANA VISTA EXPANSION

EPS GROUP
1130 N ALMA SCHOOL RD
Ste. 120 Mesa, AZ 85201
T:480.503.2250 | F:480.835.1799
www.epsgroupinc.com

I 11, 2024 4:12pm S:\Projects\2020\20-1512\Civil_Construction Documents\Legals\20-1512 SLID EXB A.dwg

Exhibit C-1
Boundary Map of Annexed Area
(Parcel Detail)



CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BRG
C1	32.69'	55.00'	34°03'31"	32.21'	S51°49'54"E

LINE TABLE

LINE	BEARING	LENGTH
L1	S89°40'59"W	103.10'
L2	S18°18'54"W	113.44'
L3	N55°09'58"E	138.41'

20-1512

CITY OF BUCKEYE
STREET LIGHT IMPROVEMENT DISTRICT

NO. 2006-SLID-009 - MONTANA VISTA EXPANSION

EPS GROUP
1130 N ALMA SCHOOL RD
Ste. 120 Mesa, AZ 85201
T:480.503.2250 | F:480.835.1799
www.epsgroupinc.com

I 11, 2024 4:05pm S:\Projects\2020\20-1512\Civil_Construction Documents\Legals\20-1512 SLID 500 scale.dwg

When Recorded, Return to:

City of Buckeye
ATTN: City Clerk, Lucinda J. Aja
530 East Monroe Avenue
Buckeye, Arizona 85326

PETITION, WAIVER AND CONSENT TO INCLUSION OF ADDITIONAL LAND WITHIN AN EXISTING STREET LIGHTING IMPROVEMENT DISTRICT BY THE CITY OF BUCKEYE

MONTANA VISTA
ANNEXATION TO 2006-SLID-009

To: Honorable Mayor and Councilmembers City of Buckeye, Arizona

Pursuant to Arizona Revised Statutes ("*A.R.S.*") Title 48, Chapter 4, Article 2 (the "*Improvement District Law*"), the undersigned property owner(s) (the "*Petitioner*") respectfully petitions the City Council of the City of Buckeye, Arizona ("*City Council*") to order the enlargement of the existing City of Buckeye Street Lighting Improvement District No. 2006-SLID-009 (the "*District*") under the Improvement District Law. In support of this Petition, Waiver and Consent to Inclusion of Additional Land within an Existing Street Lighting Improvement District by the City of Buckeye (this "*Petition*"), the Petitioner agrees to waive certain rights under the Improvement District Law and hereby consents to the annexation and inclusion of the land shown on *Exhibits A*, *B*, *C*, and *C-1* to be annexed into the District.

1. Area to be Added to District. The property comprising the proposed addition to the existing District is described by a legal description, Assessor's parcel number(s) and a map or plat of the area, all as set forth in *Exhibits A*, *B*, *C*, and *C-1*, attached hereto and incorporated herein by this reference. The proposed enlarged District consists of an aggregate of 3,117,592 square feet or 71.5701± acres and is entirely within the corporate boundaries of the City of Buckeye, Arizona (the "*City*"). The Petitioner respectfully requests that the land shown on *Exhibits A*, *B*, *C*, and *C-1* be annexed into and become included within the District. The Assessor's parcel number(s) set forth in *Exhibit B* is for convenience only. Should either the legal description set forth in *Exhibit A* or Assessor's parcel number(s) set forth in *Exhibit B* conflict with *Exhibit C-1*, *Exhibit C-1* shall govern.

2. Authority. The Petitioner is the sole owner of all non-public real property within the area proposed to be annexed to the District.

3. Purpose. The District was formed solely for the purchase of energy for lighting the streets and public parks within and adjacent to the District.

4. Public Convenience and Necessity. The necessity for the enlargement of the District is the purchase of energy for lighting the streets and public parks within the proposed enlarged

District by the levying of an annual ad valorem tax or by an equal apportionment of taxes upon all of the non-public real property of the District as provided in A.R.S. § 48-616(C).

5. Payment of Costs by Petitioner. The Petitioner agrees to pay the costs and expenses of operation, repair and energy for street lighting within and surrounding the proposed addition to the District that operate prior to July 1, 2025, because the District will not be able to levy taxes for such expenses of the area added to the District prior to the City's fiscal year 2025/2026. Tax collections of taxes levied on the addition to be annexed to the District will not be posted to the City until on or about July 1, 2025 and the City does not expect to receive taxes from the property described in *Exhibits A*, *B*, *C*, and *C-1* before November 1, 2025.

6. Reimbursement. The Petitioner agrees to reimburse the City for all reasonable legal and engineering fees and costs incurred by the City with respect to the enlargement of the District.

7. Expansion of or Annexation to the District. The Petitioner waives any objections to, or protest against, future enlargement or enlargements of the District and also waives all notices of such enlargement or enlargements, whether required to be published, posted, or mailed with respect to the later enlargement of the District's boundaries; the Petitioner further waives any objection to, or protest against, the consolidation of the District with any other similar district or districts.

8. Waiver and Consent. The Petitioner, with full knowledge of its rights being waived hereunder, hereby expressly waives:

a) The right to challenge or object to any and all irregularities, illegalities or deficiencies which may exist in the acts or proceedings that resulted in or will result in the adoption of the Resolution of Intention, the Resolution Forming the District, and the Resolution(s) Enlarging the District, or any Notices pertaining thereto;

b) Any necessity for publication, posting, or mailing of the Resolution(s) Enlarging the District, Notices of Proposed Improvements, or Notices described in A.R.S. §§ 48-574(J) and 48-616(M);

c) All protest rights whatsoever under A.R.S. §§ 48-579(A)-(B) and 48-616(M), which provide for protests against the work or objections to the extent of the enlargement of the District; and

d) Any necessity for any notice or hearing with respect to land owned by the Petitioner now within the District or within the property comprising the proposed addition to the District.

9. Fees. The Petitioner has paid, or will pay, any and all District application fees.

10. Equal Apportionment. The Petitioner hereby petitions the City Council to equally apportion the District's annual taxes based on the number and classifications of properties within the proposed enlarged District pursuant to A.R.S. § 48-616(J).

11. Waiver. This Petition shall also be deemed to be a petition of more than one-half (1/2) of the taxable property units and more than one-half (1/2) of the assessed valuation within the proposed addition to the District and as such shall also be deemed to be a waiver of any and all requirements to file a petition under A.R.S. § 48-576, as amended.

12. Public Benefit. The purchase of energy to operate street lighting improvements within the area to be annexed is of more than local or ordinary public benefit.

13. Successors and Assigns. To the extent permitted by law, this Petition shall be binding on all successors or assigns of the Petitioner who hereafter own or have an interest in the property described in *Exhibits A*, *B*, *C*, and *C-1* attached hereto.

14. Authority to Sign Petition. The individual(s) signing this Petition represents and warrants to the City that s/he is duly authorized to (i) sign the Petition to form or enlarge the District, as applicable; (ii) bind the Petitioner to the matters set forth in this Petition; and (iii) agree to hold the City harmless for, from and against any claims in connection with the formation or enlargement of the District.

15. Recordation. This Petition may be recorded in the office of the Maricopa County Recorder and in the office of the Superintendent of Streets of the City.

PROPERTY: See attached *Exhibits A*, *B*, *C*, and *C-1*.

IN WITNESS WHEREOF, the undersigned representative(s) of the Petitioner has executed this Petition as of the date shown below.

[Remainder of Page Intentionally Left Blank]

[Signature Page(s) Follows]

IN WITNESS WHEREOF, the undersigned authorized representative has executed this Petition as of the ____ day of ., 20_____.

PETITIONER:

KL LHB AZ AIV LLC,
A Delaware limited liability company

By: Nathan Holt
Nathan Holt

Its: Authorized Signer

Date: August 14, 2024

STATE OF ARIZONA)
) ss.
County of Maricopa)

VERIFICATION

Nathan Holt, after being first duly sworn upon oath, deposes and states:

That I am an authorized signer for KL LHB AZ AIV, LLC, and Petitioner herein; I have been duly authorized to sign this Petition and make this Verification in that capacity; that I have read the foregoing Petition, and I know the contents thereof to be true.

SUBSCRIBED AND SWORN TO by Nathan Holt before me, the undersigned notary public, this 14th day of August, 2024.

Julie Gillett
Notary Public

(Seal and Expiration Date) 08/05/2026

JULIE GILLETT
Notary Public - State of Arizona
MARICOPA COUNTY
Commission # 635441
Expires August 05, 2026

PETITIONER:

BEAZER HOMES HOLDINGS, LLC,
a Delaware limited liability company

By: _____ Ryan M. Johnson Its: Manager Date: 8-15-24	By: _____ Thomas P. Haggerty Its: Authorized Signatory, West Region Date: 8/15/24

STATE OF Arizona)
) ss.
County of Maricopa)

VERIFICATION

Ryan M. Johnson, after being first duly sworn upon oath, deposes and states:

That I am an authorized signer for Beazer Homes Holdings, LLC, the Petitioner herein; I have been duly authorized to sign this Petition and make this Verification in that capacity; that I have read the foregoing Petition, and I know the contents thereof to be true.

SUBSCRIBED AND SWORN TO by Ryan M. Johnson before me, the undersigned notary public, this 15 day of August, 2024.

_____
Notary Public

VERIFICATION

Thomas P. Haggerty, after being first duly sworn upon oath, deposes and states:

That I am an authorized signer for Beazer Homes Holdings, LLC, the Petitioner herein; I have been duly authorized to sign this Petition and make this Verification in that capacity; that I have read the foregoing Petition, and I know the contents thereof to be true.

SUBSCRIBED AND SWORN TO by Thomas P. Haggerty before me, the undersigned notary public, this 15 day of August, 2024.

_____
Notary Public

CARLY GUTHRIE
Notary Public - Arizona
Maricopa County
Commission # 604054
My Comm. Expires Jun 5, 2025

RECEIPT this _____ day of _____, 20_____ of the foregoing Petition is hereby acknowledged by the City Clerk of the City of Buckeye, Arizona, who will deliver said Petition to the City Council for action.

_____

Lucinda J. Aja, City Clerk

EXHIBIT A
LEGAL DESCRIPTION
CITY OF BUCKEYE STREET LIGHT IMPROVEMENT DISTRICT
NO. 2006-SLID-009 – MONTANA VISTA EXPANSION

Job No. 20-1512 June 7, 2024

A portion of the Northwest Quarter of Section 28 Township 1 North, Range 3 West, Gila and Salt River Base and Meridian, City of Buckeye, Maricopa County, Arizona, being more particularly described as follows:

BEGINNING at the West Quarter corner of said Section 28, said point also being the centerline intersection of Apache Road and Roeser Roads, from which the center of said Section 28, being a City of Buckeye Brass Cap Bears North 00 degrees 51 minutes 27seconds West;

Thence North 00 degrees 13 minutes 54 seconds West, along the section line, 1,345.03 feet;

Thence South 89 degrees 51 minutes 27 seconds East, 2,318.02 feet;

Thence South 00 degrees 13 minutes 21 seconds East, 1,345.03 feet;

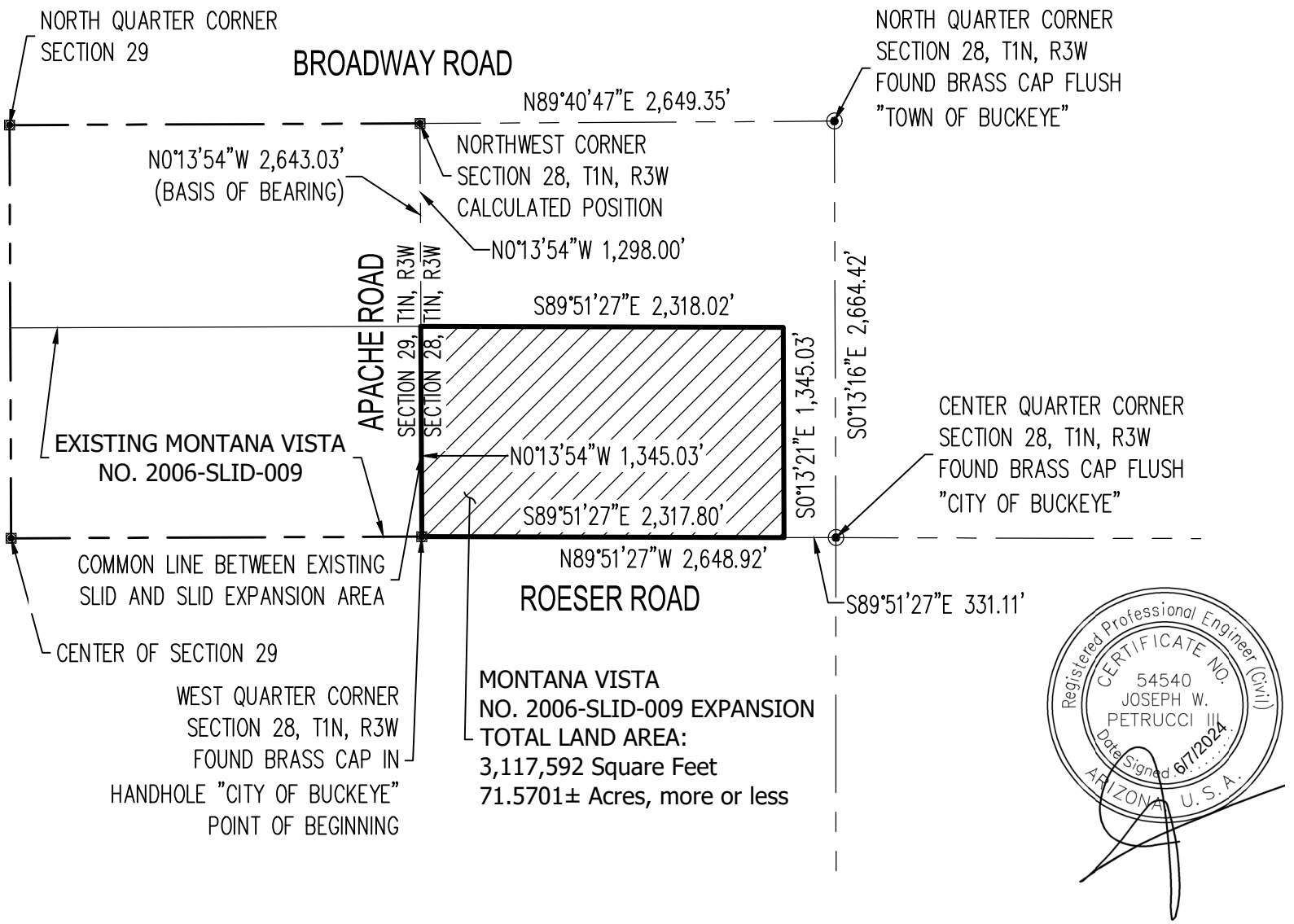
Thence North 89 degrees 51 minutes 27 seconds West, 2,317.80 feet, to the POINT OF BEGINNING

Said overall portion of land contains 3,117,592 square feet or 71.5701 acres, more or less, and being subject to any easements, restrictions, and/or rights-of-ways of record or otherwise.

This description shown hereon is not to be used to violate subdivision regulations of the State, County and/or Municipality, or any other land division restrictions.



EPS Group, Inc. • 1130 N. Alma School Rd, Suite 120 • Mesa, AZ 85201
Tel (480) 503-2250 • Fax (480) 503-2258



NORTH

500 0 1000

scale feet

20-1512

CITY OF BUCKEYE
STREET LIGHT IMPROVEMENT DISTRICT

NO. 2006-SLID-009 - MONTANA VISTA EXPANSION

EPS GROUP
1130 N ALMA SCHOOL RD
Ste. 120 Mesa, AZ 85201
T:480.503.2250 | F:480.835.1799
www.epsgroupinc.com

Jun 07, 2024 2:52pm S:\Projects\2020\20-1512\Civil_Construction Documents\Legals\20-1512 SLID EXB A.dwg

EXHIBIT B

City of Buckeye Street Lighting Improvement District
No. 2006-SLID-009 – Montana Vista Expansion
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
1	504-45-614	KL LHB AZ AIV LLC
2	504-45-615	KL LHB AZ AIV LLC
3	504-45-616	KL LHB AZ AIV LLC
4	504-45-617	KL LHB AZ AIV LLC
5	504-45-618	KL LHB AZ AIV LLC
6	504-45-619	KL LHB AZ AIV LLC
7	504-45-620	KL LHB AZ AIV LLC
8	504-45-621	KL LHB AZ AIV LLC
9	504-45-622	KL LHB AZ AIV LLC
10	504-45-623	KL LHB AZ AIV LLC
11	504-45-624	KL LHB AZ AIV LLC
12	504-45-625	KL LHB AZ AIV LLC
13	504-45-626	KL LHB AZ AIV LLC
14	504-45-627	KL LHB AZ AIV LLC
15	504-45-628	KL LHB AZ AIV LLC
16	504-45-629	KL LHB AZ AIV LLC
17	504-45-630	KL LHB AZ AIV LLC
18	504-45-631	KL LHB AZ AIV LLC
19	504-45-632	KL LHB AZ AIV LLC
20	504-45-633	KL LHB AZ AIV LLC
21	504-45-634	KL LHB AZ AIV LLC
22	504-45-635	KL LHB AZ AIV LLC
23	504-45-636	KL LHB AZ AIV LLC
24	504-45-637	KL LHB AZ AIV LLC
25	504-45-638	KL LHB AZ AIV LLC
26	504-45-639	KL LHB AZ AIV LLC
27	504-45-640	KL LHB AZ AIV LLC
28	504-45-641	KL LHB AZ AIV LLC
29	504-45-642	KL LHB AZ AIV LLC
30	504-45-643	KL LHB AZ AIV LLC
31	504-45-644	KL LHB AZ AIV LLC
32	504-45-645	BEAZER HOMES HOLDINGS LLC
33	504-45-646	BEAZER HOMES HOLDINGS LLC
34	504-45-647	BEAZER HOMES HOLDINGS LLC
35	504-45-648	BEAZER HOMES HOLDINGS LLC
36	504-45-649	BEAZER HOMES HOLDINGS LLC
37	504-45-650	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Street Lighting Improvement District
No. 2006-SLID-009 – Montana Vista Expansion
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
38	504-45-651	KL LHB AZ AIV LLC
39	504-45-652	KL LHB AZ AIV LLC
40	504-45-653	KL LHB AZ AIV LLC
41	504-45-654	KL LHB AZ AIV LLC
42	504-45-655	KL LHB AZ AIV LLC
43	504-45-656	KL LHB AZ AIV LLC
44	504-45-657	KL LHB AZ AIV LLC
45	504-45-658	KL LHB AZ AIV LLC
46	504-45-659	KL LHB AZ AIV LLC
47	504-45-660	KL LHB AZ AIV LLC
48	504-45-661	KL LHB AZ AIV LLC
49	504-45-662	KL LHB AZ AIV LLC
50	504-45-663	KL LHB AZ AIV LLC
51	504-45-664	KL LHB AZ AIV LLC
52	504-45-665	KL LHB AZ AIV LLC
53	504-45-666	KL LHB AZ AIV LLC
54	504-45-667	KL LHB AZ AIV LLC
55	504-45-668	KL LHB AZ AIV LLC
56	504-45-669	KL LHB AZ AIV LLC
57	504-45-670	KL LHB AZ AIV LLC
58	504-45-671	KL LHB AZ AIV LLC
59	504-45-672	KL LHB AZ AIV LLC
60	504-45-673	KL LHB AZ AIV LLC
61	504-45-674	KL LHB AZ AIV LLC
62	504-45-675	KL LHB AZ AIV LLC
63	504-45-676	KL LHB AZ AIV LLC
64	504-45-677	KL LHB AZ AIV LLC
65	504-45-678	KL LHB AZ AIV LLC
66	504-45-679	KL LHB AZ AIV LLC
67	504-45-680	KL LHB AZ AIV LLC
68	504-45-681	KL LHB AZ AIV LLC
69	504-45-682	KL LHB AZ AIV LLC
70	504-45-683	KL LHB AZ AIV LLC
71	504-45-684	KL LHB AZ AIV LLC
72	504-45-685	KL LHB AZ AIV LLC
73	504-45-686	KL LHB AZ AIV LLC
74	504-45-687	KL LHB AZ AIV LLC
75	504-45-688	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Street Lighting Improvement District
No. 2006-SLID-009 – Montana Vista Expansion
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
76	504-45-689	KL LHB AZ AIV LLC
77	504-45-690	KL LHB AZ AIV LLC
78	504-45-691	KL LHB AZ AIV LLC
79	504-45-692	KL LHB AZ AIV LLC
80	504-45-693	KL LHB AZ AIV LLC
81	504-45-694	KL LHB AZ AIV LLC
82	504-45-695	KL LHB AZ AIV LLC
83	504-45-696	KL LHB AZ AIV LLC
84	504-45-697	KL LHB AZ AIV LLC
85	504-45-698	KL LHB AZ AIV LLC
86	504-45-699	KL LHB AZ AIV LLC
87	504-45-700	KL LHB AZ AIV LLC
88	504-45-701	KL LHB AZ AIV LLC
89	504-45-702	KL LHB AZ AIV LLC
90	504-45-703	KL LHB AZ AIV LLC
91	504-45-704	KL LHB AZ AIV LLC
92	504-45-705	KL LHB AZ AIV LLC
93	504-45-706	KL LHB AZ AIV LLC
94	504-45-707	KL LHB AZ AIV LLC
95	504-45-708	KL LHB AZ AIV LLC
96	504-45-709	KL LHB AZ AIV LLC
97	504-45-710	KL LHB AZ AIV LLC
98	504-45-711	KL LHB AZ AIV LLC
99	504-45-712	KL LHB AZ AIV LLC
100	504-45-713	KL LHB AZ AIV LLC
101	504-45-714	KL LHB AZ AIV LLC
102	504-45-715	BEAZER HOMES HOLDINGS LLC
103	504-45-716	BEAZER HOMES HOLDINGS LLC
104	504-45-717	BEAZER HOMES HOLDINGS LLC
105	504-45-718	BEAZER HOMES HOLDINGS LLC
106	504-45-719	BEAZER HOMES HOLDINGS LLC
107	504-45-720	KL LHB AZ AIV LLC
108	504-45-721	KL LHB AZ AIV LLC
109	504-45-722	KL LHB AZ AIV LLC
110	504-45-723	KL LHB AZ AIV LLC
111	504-45-724	KL LHB AZ AIV LLC
112	504-45-725	KL LHB AZ AIV LLC
113	504-45-726	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Street Lighting Improvement District
No. 2006-SLID-009 – Montana Vista Expansion
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
152	504-45-765	BEAZER HOMES HOLDINGS LLC
153	504-45-766	BEAZER HOMES HOLDINGS LLC
154	504-45-767	BEAZER HOMES HOLDINGS LLC
155	504-45-768	BEAZER HOMES HOLDINGS LLC
156	504-45-769	BEAZER HOMES HOLDINGS LLC
157	504-45-770	BEAZER HOMES HOLDINGS LLC
158	504-45-771	KL LHB AZ AIV LLC
159	504-45-772	KL LHB AZ AIV LLC
160	504-45-773	KL LHB AZ AIV LLC
161	504-45-774	KL LHB AZ AIV LLC
162	504-45-775	KL LHB AZ AIV LLC
163	504-45-776	KL LHB AZ AIV LLC
164	504-45-777	KL LHB AZ AIV LLC
165	504-45-778	KL LHB AZ AIV LLC
166	504-45-779	KL LHB AZ AIV LLC
167	504-45-780	KL LHB AZ AIV LLC
168	504-45-781	KL LHB AZ AIV LLC
169	504-45-782	KL LHB AZ AIV LLC
170	504-45-783	KL LHB AZ AIV LLC
171	504-45-784	KL LHB AZ AIV LLC
172	504-45-785	KL LHB AZ AIV LLC
173	504-45-786	KL LHB AZ AIV LLC
174	504-45-787	KL LHB AZ AIV LLC
175	504-45-788	KL LHB AZ AIV LLC
176	504-45-789	KL LHB AZ AIV LLC
177	504-45-790	KL LHB AZ AIV LLC
178	504-45-791	KL LHB AZ AIV LLC
179	504-45-792	KL LHB AZ AIV LLC
180	504-45-793	KL LHB AZ AIV LLC
181	504-45-794	KL LHB AZ AIV LLC
182	504-45-795	KL LHB AZ AIV LLC
183	504-45-796	KL LHB AZ AIV LLC
184	504-45-797	KL LHB AZ AIV LLC
185	504-45-798	KL LHB AZ AIV LLC
186	504-45-799	KL LHB AZ AIV LLC
187	504-45-800	BEAZER HOMES HOLDINGS LLC
188	504-45-801	BEAZER HOMES HOLDINGS LLC
189	504-45-802	BEAZER HOMES HOLDINGS LLC

EXHIBIT B

City of Buckeye Street Lighting Improvement District
No. 2006-SLID-009 – Montana Vista Expansion
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
114	504-45-727	KL LHB AZ AIV LLC
115	504-45-728	KL LHB AZ AIV LLC
116	504-45-729	KL LHB AZ AIV LLC
117	504-45-730	KL LHB AZ AIV LLC
118	504-45-731	KL LHB AZ AIV LLC
119	504-45-732	KL LHB AZ AIV LLC
120	504-45-733	BEAZER HOMES HOLDINGS LLC
121	504-45-734	BEAZER HOMES HOLDINGS LLC
122	504-45-735	KL LHB AZ AIV LLC
123	504-45-736	KL LHB AZ AIV LLC
124	504-45-737	KL LHB AZ AIV LLC
125	504-45-738	KL LHB AZ AIV LLC
126	504-45-739	KL LHB AZ AIV LLC
127	504-45-740	KL LHB AZ AIV LLC
128	504-45-741	KL LHB AZ AIV LLC
129	504-45-742	KL LHB AZ AIV LLC
130	504-45-743	KL LHB AZ AIV LLC
131	504-45-744	KL LHB AZ AIV LLC
132	504-45-745	KL LHB AZ AIV LLC
133	504-45-746	KL LHB AZ AIV LLC
134	504-45-747	KL LHB AZ AIV LLC
135	504-45-748	KL LHB AZ AIV LLC
136	504-45-749	KL LHB AZ AIV LLC
137	504-45-750	KL LHB AZ AIV LLC
138	504-45-751	KL LHB AZ AIV LLC
139	504-45-752	KL LHB AZ AIV LLC
140	504-45-753	BEAZER HOMES HOLDINGS LLC
141	504-45-754	BEAZER HOMES HOLDINGS LLC
142	504-45-755	BEAZER HOMES HOLDINGS LLC
143	504-45-756	BEAZER HOMES HOLDINGS LLC
144	504-45-757	BEAZER HOMES HOLDINGS LLC
145	504-45-758	BEAZER HOMES HOLDINGS LLC
146	504-45-759	BEAZER HOMES HOLDINGS LLC
147	504-45-760	BEAZER HOMES HOLDINGS LLC
148	504-45-761	BEAZER HOMES HOLDINGS LLC
149	504-45-762	BEAZER HOMES HOLDINGS LLC
150	504-45-763	BEAZER HOMES HOLDINGS LLC
151	504-45-764	BEAZER HOMES HOLDINGS LLC

EXHIBIT B

City of Buckeye Street Lighting Improvement District
No. 2006-SLID-009 – Montana Vista Expansion
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
190	504-45-803	BEAZER HOMES HOLDINGS LLC
191	504-45-804	BEAZER HOMES HOLDINGS LLC
192	504-45-805	BEAZER HOMES HOLDINGS LLC
193	504-45-806	BEAZER HOMES HOLDINGS LLC
194	504-45-807	BEAZER HOMES HOLDINGS LLC
195	504-45-808	BEAZER HOMES HOLDINGS LLC
196	504-45-809	BEAZER HOMES HOLDINGS LLC
197	504-45-810	BEAZER HOMES HOLDINGS LLC
198	504-45-811	BEAZER HOMES HOLDINGS LLC
199	504-45-812	BEAZER HOMES HOLDINGS LLC
200	504-45-813	BEAZER HOMES HOLDINGS LLC
201	504-45-814	BEAZER HOMES HOLDINGS LLC
202	504-45-815	BEAZER HOMES HOLDINGS LLC
203	504-45-816	BEAZER HOMES HOLDINGS LLC
204	504-45-817	BEAZER HOMES HOLDINGS LLC
205	504-45-818	BEAZER HOMES HOLDINGS LLC
206	504-45-819	BEAZER HOMES HOLDINGS LLC
207	504-45-820	BEAZER HOMES HOLDINGS LLC
208	504-45-821	BEAZER HOMES HOLDINGS LLC
209	504-45-822	KL LHB AZ AIV LLC
210	504-45-823	KL LHB AZ AIV LLC
211	504-45-824	KL LHB AZ AIV LLC
212	504-45-825	KL LHB AZ AIV LLC
213	504-45-826	KL LHB AZ AIV LLC
214	504-45-827	KL LHB AZ AIV LLC
215	504-45-828	KL LHB AZ AIV LLC
216	504-45-829	KL LHB AZ AIV LLC
217	504-45-830	KL LHB AZ AIV LLC
218	504-45-831	KL LHB AZ AIV LLC
219	504-45-832	KL LHB AZ AIV LLC
220	504-45-833	KL LHB AZ AIV LLC
221	504-45-834	KL LHB AZ AIV LLC
222	504-45-835	KL LHB AZ AIV LLC
223	504-45-836	KL LHB AZ AIV LLC
224	504-45-837	KL LHB AZ AIV LLC
225	504-45-838	KL LHB AZ AIV LLC
226	504-45-839	KL LHB AZ AIV LLC
227	504-45-840	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Street Lighting Improvement District
No. 2006-SLID-009 – Montana Vista Expansion
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
228	504-45-841	KL LHB AZ AIV LLC
229	504-45-842	KL LHB AZ AIV LLC
230	504-45-843	KL LHB AZ AIV LLC
231	504-45-844	KL LHB AZ AIV LLC
232	504-45-845	KL LHB AZ AIV LLC
233	504-45-846	KL LHB AZ AIV LLC
234	504-45-847	KL LHB AZ AIV LLC
235	504-45-848	KL LHB AZ AIV LLC
236	504-45-849	KL LHB AZ AIV LLC
237	504-45-850	KL LHB AZ AIV LLC
238	504-45-851	KL LHB AZ AIV LLC
239	504-45-852	KL LHB AZ AIV LLC
240	504-45-853	KL LHB AZ AIV LLC
241	504-45-854	KL LHB AZ AIV LLC
242	504-45-855	KL LHB AZ AIV LLC
243	504-45-856	KL LHB AZ AIV LLC
244	504-45-857	KL LHB AZ AIV LLC
245	504-45-858	KL LHB AZ AIV LLC
246	504-45-859	KL LHB AZ AIV LLC
247	504-45-860	KL LHB AZ AIV LLC
248	504-45-861	KL LHB AZ AIV LLC
249	504-45-862	BEAZER HOMES HOLDINGS LLC
250	504-45-863	BEAZER HOMES HOLDINGS LLC
251	504-45-864	KL LHB AZ AIV LLC
252	504-45-865	KL LHB AZ AIV LLC
253	504-45-866	KL LHB AZ AIV LLC
254	504-45-867	KL LHB AZ AIV LLC
255	504-45-868	KL LHB AZ AIV LLC
256	504-45-869	KL LHB AZ AIV LLC
257	504-45-870	KL LHB AZ AIV LLC
258	504-45-871	KL LHB AZ AIV LLC
259	504-45-872	KL LHB AZ AIV LLC
260	504-45-873	KL LHB AZ AIV LLC
261	504-45-874	KL LHB AZ AIV LLC
262	504-45-875	KL LHB AZ AIV LLC
263	504-45-876	KL LHB AZ AIV LLC
264	504-45-877	KL LHB AZ AIV LLC
265	504-45-878	KL LHB AZ AIV LLC

EXHIBIT B

City of Buckeye Street Lighting Improvement District
No. 2006-SLID-009 – Montana Vista Expansion
Assessor Parcel Numbers

Lot Number	Assessor Parcel Number	Owner
266	504-45-879	KL LHB AZ AIV LLC
267	504-45-880	KL LHB AZ AIV LLC
268	504-45-881	KL LHB AZ AIV LLC
269	504-45-882	KL LHB AZ AIV LLC
270	504-45-883	KL LHB AZ AIV LLC
Tract A	504-45-884	KL LHB AZ AIV LLC
Tract B	504-45-885	KL LHB AZ AIV LLC
Tract C	504-45-886	KL LHB AZ AIV LLC
Tract D	504-45-887	KL LHB AZ AIV LLC
Tract E	504-45-888	KL LHB AZ AIV LLC
Tract F	504-45-889	KL LHB AZ AIV LLC
Tract G	504-45-890	KL LHB AZ AIV LLC
Tract H	504-45-891	KL LHB AZ AIV LLC
Tract I	504-45-892	KL LHB AZ AIV LLC
Tract J	504-45-893	KL LHB AZ AIV LLC
Tract K	504-45-894	KL LHB AZ AIV LLC
Tract L	504-45-895	KL LHB AZ AIV LLC
Tract M	504-45-896	KL LHB AZ AIV LLC
Tract N	504-45-897	KL LHB AZ AIV LLC
Tract O	504-45-898	KL LHB AZ AIV LLC
Tract P	504-45-899	KL LHB AZ AIV LLC
Tract Q	504-45-900	KL LHB AZ AIV LLC
Tract R	504-45-901	KL LHB AZ AIV LLC
Tract S	504-45-902	KL LHB AZ AIV LLC
Tract T	504-45-903	KL LHB AZ AIV LLC
Tract U	504-45-904	KL LHB AZ AIV LLC
Tract V	504-45-905	KL LHB AZ AIV LLC
Tract W	504-45-906	KL LHB AZ AIV LLC
Tract X	504-45-907	KL LHB AZ AIV LLC
Not a Part	504-41-006S	SHEA HOMES LP

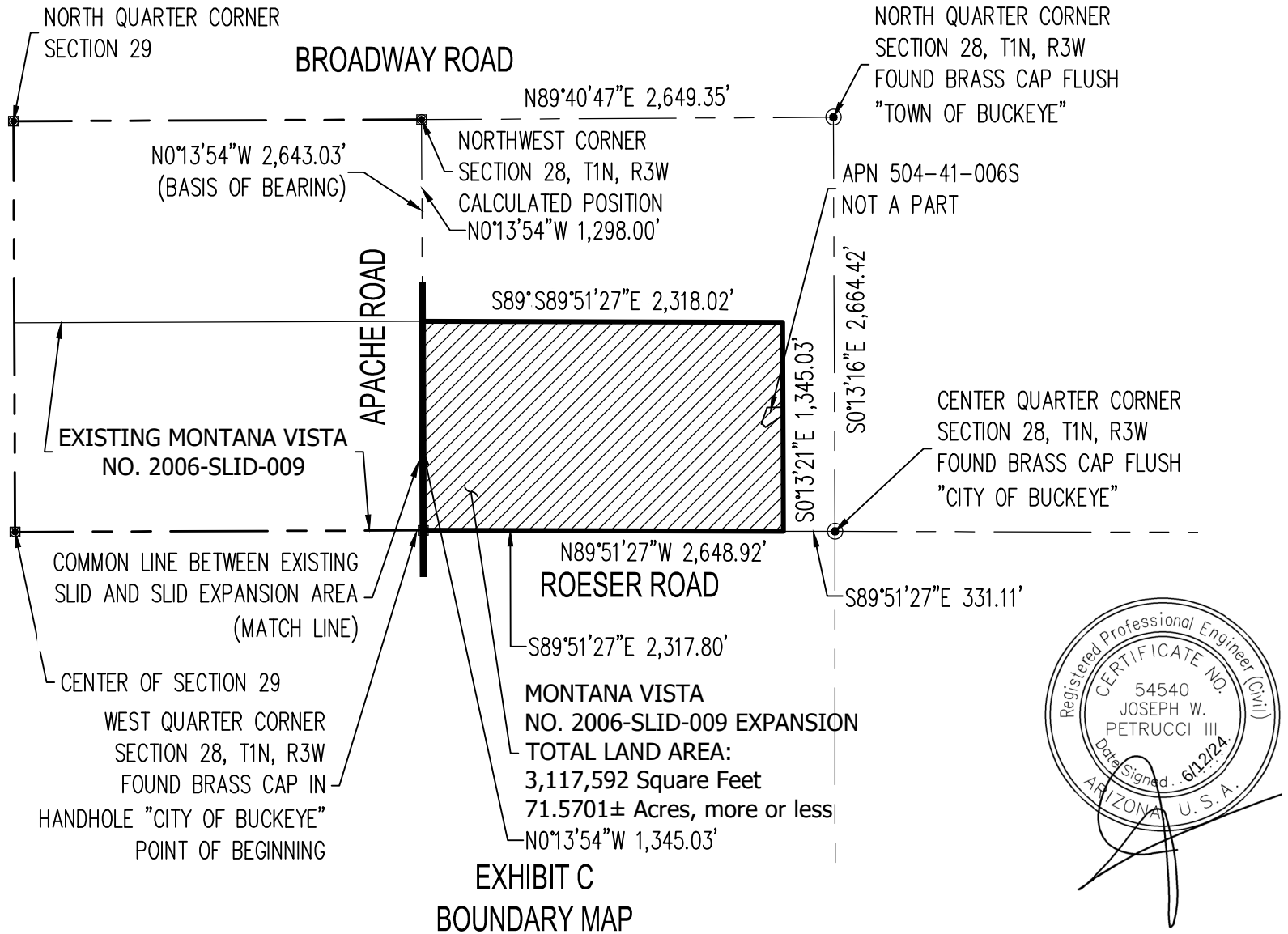


EXHIBIT C

BOUNDARY MAP

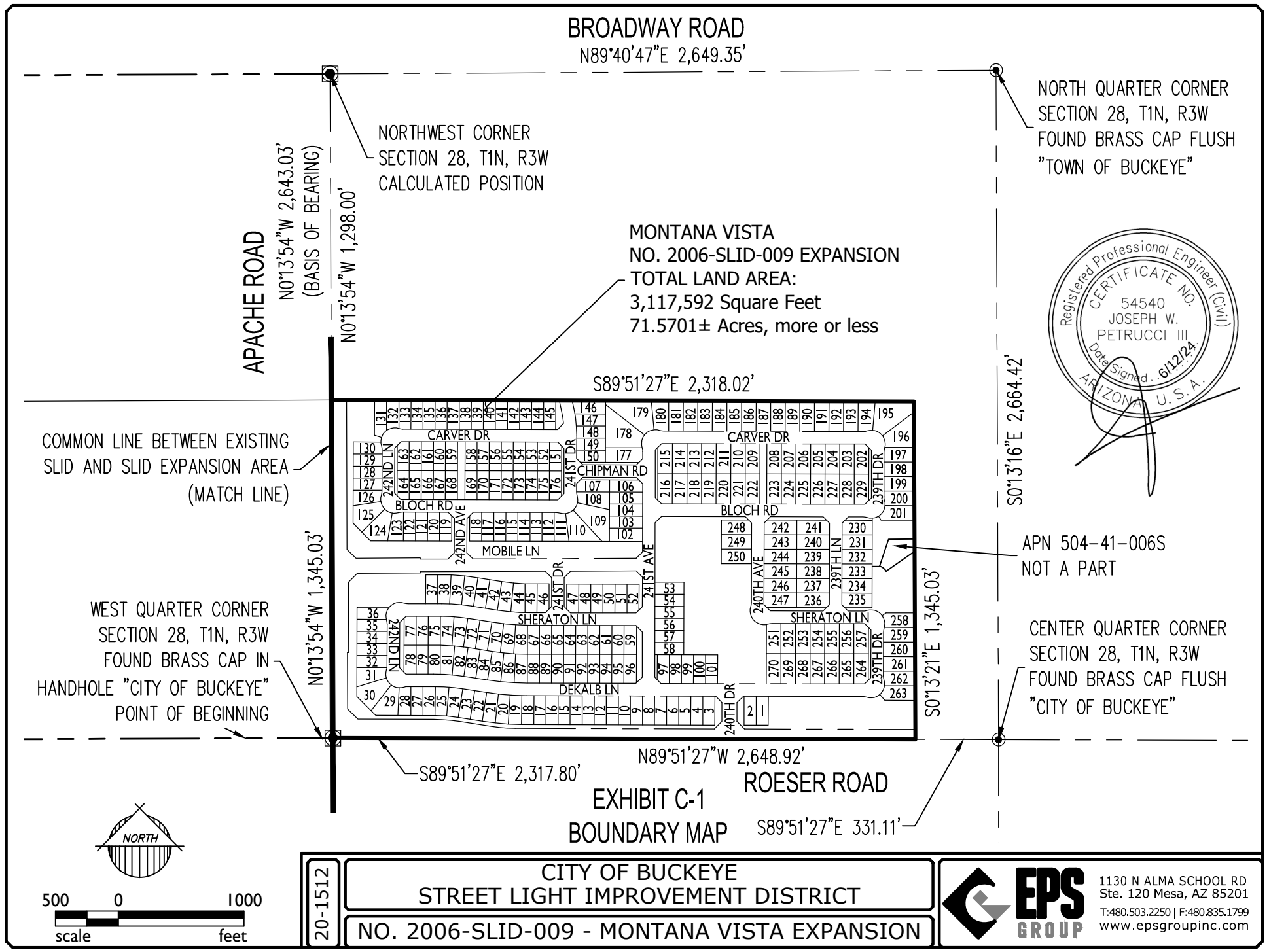
20-1512

CITY OF BUCKEYE
STREET LIGHT IMPROVEMENT DISTRICT

NO. 2006-SLID-009- MONTANA VISTA EXPANSION

EPS GROUP
1130 N ALMA SCHOOL RD
Ste. 120 Mesa, AZ 85201
T:480.503.2250 | F:480.835.1799
www.epsgroupinc.com

Jun 13, 2024 11:24am S:\Projects\2020\20-1512\Civil_Construction Documents\Legals\20-1512 SLID EXB A.dwg



Registered Professional Engineer (Civil)
CERTIFICATE NO.
54540
JOSEPH W.
PETRUCCI III
Date Signed: 6/12/24
ARIZONA U.S.A.

EXHIBIT C-1
BOUNDARY MAP

20-1512

CITY OF BUCKEYE
STREET LIGHT IMPROVEMENT DISTRICT

NO. 2006-SLID-009 - MONTANA VISTA EXPANSION

EPS GROUP
1130 N ALMA SCHOOL RD
Ste. 120 Mesa, AZ 85201
T:480.503.2250 | F:480.835.1799
www.epsgroupinc.com

Jun 13, 2024 11:27am S:\Projects\2020\20-1512\Civil_Construction Documents\Legals\20-1512 SLID 500 scale.dwg

CITY OF BUCKEYE
Regular Council Meeting
COUNCIL ACTION REPORT

MEETING DATE: 09/03/24	**AGENDA ITEM:** 4.P. FIN - Job Order Contracts for General and Wastewater/Water
DATE PREPARED: 08/29/24	**DISTRICT NO.:** All
STAFF LIAISON: Nicola Perrera, Procurement Manager, nperrera@buckeyeaz.gov, (623) 349-6174	
DEPARTMENT: Financial Services	**AGENDA ITEM TYPE:** Consent Agenda Items / New Business

ACTION/MOTION: (This language identifies the formal motion to be made by the Council)
Council to take action on the Job Order Contracts resultant contracts from the Job Order Contracts (Nos. 2025081, 2025082, 2025083, 2025084, 2025085, 2025086, 2025087, 2025088, 2025089, 2025090, 2025091, 2025092, 2025093, 2025094, 2025095, 2025096, 2025097, 2025100, 2025101, 2025102, 2025103, 2025104, 2025105, 2025106, 2025107, 2025108, 2025109, 2025110, 2025111, 2025112, 2025113, and 2025114) between the City of Buckeye and M.R. Tanner Development and Construction, LLC, Haydon Companies, LLC, Sunland Asphalt & Construction, LLC, Talis Construction Corporation, Willmeng Construction, Inc., Haydon Companies, LLC, J. Banicki Construction, Inc., Brycon Corporation, S.D. Crane Builders, Inc., Combs Construction Company, Inc., KBE Building Corporation, BWC Enterprises, Inc., Achen-Gardner Construction, LLC, B & F Contracting, Inc., TF Contracting Services, LLC, DCS Contracting, Inc., Felix Construction Company, MGC Contractors, Inc., Hunter Contracting Co., Schofield Civil Construction, LLC, PCL Construction, Inc., and ASR Construction Group, LLC; authorize the awarding of the Contracts and the City Manager to execute any future Delivery Orders under these contracts on behalf of the City of Buckeye.

SUMMARY

PROJECT DESCRIPTION:

The Finance Department has issued a Request for Qualifications (RFQ) No. 2024193 and 2024194 on May 20, 2024, for multiple Job Order Contracting categories. The City received multiple Statement of Qualifications (SOQs). Three (3) five (5) person evaluation panels recommended, based on criteria listed in the RFQs, the above Contractors to be awarded contracts.

There is no money associated with these Contracts. The maximum term for the contracts will be five years, one year base term with four optional years. Delivery Orders will be issued when a need arises for services under specific categories. Individual Delivery Orders/Projects will be limited to $2,000,000.00 and under and each contractor will be limited to $6,000,000.00 in total for all Delivery Orders/Projects per fiscal year.

Category 1: Street Maintenance

Contract No. 2025081 M.R. Tanner Development and Construction, LLC

Contract No. 2025082 Haydon Companies, LLC

Contract No. 2025083 Sunland Asphalt & Construction, LLC

Contract No. 2025084 TALIS Construction Corporation

Category 2: General Construction Services

Contract No. 2025085 Willmeng Construction, Inc.

Contract No. 2025086 Haydon Companies, LLC

Contract No. 2025087 J. Banicki Construction, Inc.

Contract No. 2025088 Brycon Corporation

Contract No. 2025089 S.D. Crane Builders, Inc.

Category 3: Road Construction Services

Contract No. 2025090 Haydon Companies, LLC

Contract No. 2025091 J. Banicki Construction, Inc.

Contract No. 2025092 Combs Construction, Inc

Contract No. 2025093 Sunland Asphalt & Construction, LLC

Contract No. 2025094 M.R. Tanner Development and Construction, LLC

Category 4: Steel Building/Structure Construction Services

Contract No. 2025095 S.D. Crane Builders, Inc.

Contract No. 2025096 KBE Building Corporation

Contract No. 2025097 BWC Enterprises, Inc. dba Woodruff Construction

RFQ No. 2024194 Job Order Contracting – Water/Wastewater

Category 1: Water/Wastewater Pipeline Utility and Infrastructure

Contract No. 2025100 Achen-Gardner Construction, LLC

Contract No. 2025101 B&F Contracting, Inc.

Contract No. 2025102 Haydon Companies, LLC

Contract No. 2025103 TF Contracting Services LLC

Contract No. 2025104 DCS Contracting, Inc.

Category 2: Water Production Facility Infrastructure

Contract No. 2025105 Haydon Companies, LLC

Contract No. 2025106 Felix Construction Company

Contract No. 2025107 MGC Contractors, Inc.

Contract No. 2025108 Hunter Contracting Co.

Contract No. 2025109 Schofield Civil Construction LLC

Category 3: Wastewater Treatment Facility Infrastructure

Contract No. 2025110 PCL Construction, Inc.

Contract No. 2025111 ASR Construction Group LLC

Contract No. 2025112 Felix Construction Company

Contract No. 2025113 MGC Contractors, Inc.

Contract No. 2025114 Hunter Contracting Co.

There is no money associated with these Contracts and Delivery Orders will be issued when a need arises for their services.

BENEFITS:
Job Order Contracting is a delivery method that helps the City complete a large number of repairs, maintenance, renovations and new construction projects with a single competitively awarded contract. Job Order Contracting cuts down on the time needed to start a project.

FUTURE ACTION:
The Contracting and Procurement Division will administer the Job Order Contracts and utilize their services as needed.

FINANCIAL IMPACT STATEMENT:
None

CURRENT FISCAL YEAR TOTAL COST:
$0

BUDGETED:
No

FISCAL YEAR:
2024-2025

Items related to a project or facility location must include an attached vicinity map for Council Review.
ATTACHMENTS:
Contract No. 2025103- TF Contracting.pdf
Contract No. 2025104- DCS Contracting.pdf
Contract No. 2025105- Haydon.pdf
Contract No. 2025106- Felix.pdf
Contract No. 2025107- MGC Contractors.pdf
Contract No. 2025110- PLC Construction.pdf
Contract No. 2025111- ASR Construction.pdf
Contract No. 2025112- Felix.pdf

Contract No. 2025113- MGC Contractors.pdf

Contract No. 2025114- Hunter.pdf
Contract No. 2026096- KBE Building.pdf
Contract No. 20250108- Hunter.pdf
Contract No. 20250109- Schofield Civil.pdf
Contract No.2025082-Haydon Street Maintenance.pdf
Contract_No.2025081_MR_ Tanner.pdf
Contract No. 2025083- Sunland Asphalt.pdf
Contract No. 2025084- Talis Construction.pdf
Contract No. 2025085 Willmeng Construction.pdf
Contract No. 2025086- Haydon Companies.pdf
Contract No. 2025087- J. Banicki.pdf
Contract No. 2025088- Brycon.pdf
Contract No. 2025089- SD Crane Builders.pdf
Contract No. 2025090- Haydon Companies.pdf
Contract No. 2025091- J. Banicki.pdf
Contract No. 2025092- Combs.pdf
Contract No. 2025093- Sunland Asphalt.pdf
Contract No. 2025094- MR Tanner.pdf
Contract No. 2025095- SD Crane Builders.pdf
Contract No. 2025097- BWC Enterprises.pdf
Contract No. 2025100- Achen-Gardner.pdf
Contract No. 2025101- B & F.pdf
Contract No. 2025102- Haydon.pdf

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
TF CONTRACTING SERVICES LLC

CONTRACT NO. 2025103

This JOB ORDER CONTRACT FOR Category 1: Water/Wastewater Pipeline Utility & Infrastructure (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and TF Contracting Services LLC, an Arizona limited liability company (the "Contractor"). This Contract is for Water/Wastewater Pipeline Utility & Infrastructure, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – Water/Wastewater for "Category 1: Water/Wastewater Pipeline Utility & Infrastructure (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Water/Wastewater Pipeline Utility & Infrastructure.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Water/Wastewater Pipeline Utility & Infrastructure for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

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

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Water/Wastewater Pipeline Utility & Infrastructure category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

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

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

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

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

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

ARTICLE 3
DEFINITIONS

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

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

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

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

"City's Representative" means the person designated within this Contract.

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

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

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

"Construction Work" means the construction component of the Project.

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

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

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

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

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

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

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

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

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

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

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

"Liquidated Damages" means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Details for Public Works Construction.

"Materials" means goods, items, or supplies utilized in the completion of the Work.

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

"Payment Application" means the City form used by the Contractor to request payment for Work performed.

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

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

"Project Schedule" means a schedule as prescribed in this Contract or subsequent Job Orders.

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

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

"Schedule of Construction" means the timeline submitted by the Contractor for the completion of the Work.

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

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

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

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

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

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

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

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

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

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

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

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

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

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

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

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

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

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

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

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

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

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

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

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

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

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

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

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

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

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

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

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

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

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

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

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

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

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

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

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

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

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

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

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

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

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

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

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

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

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

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

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

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

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

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

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

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

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

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

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

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

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

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

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

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

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

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

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

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

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

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

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

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

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

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

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

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

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

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

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

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

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

ARTICLE 15
CLAIMS BY CONTRACTOR

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

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

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

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

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

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

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

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

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

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

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

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

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

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

ARTICLE 17
SUSPENSION AND TERMINATION

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

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

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

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

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

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

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

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

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

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

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

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

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

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

ARTICLE 21
GIFT TO PUBLIC SERVANT

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

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

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

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

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

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

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

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

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: TF Contracting Services LLC
Kyle Foley, Vice President
1440 Missouri Ave., Suite 100
Phoenix, Arizona 85142
Phone: 602.909.6995
Email: kfoley@tfcontractingaz.com

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

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

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

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

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

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

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

TF CONTRACTING SERVICES LLC,
an Arizona limited liability company

Kyle Foley
_____
Kyle Foley, Vice President

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

William Kauppi
_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

Adobe Acrobat Sign Transaction Number: CBJCHBCAABAADVpZl8ozgjbvr3Hw 597 Dj4b5

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
WATER/WASTEWATER PIPELINE UTILITY & INFRASTRUCTURE
BETWEEN
CITY OF BUCKEYE
AND
TF CONTRACTING SERVICES LLC

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
DCS CONTRACTING, INC.

CONTRACT NO. 2025104

This JOB ORDER CONTRACT FOR Category 1: Water/Wastewater Pipeline Utility & Infrastructure (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and DCS Contracting, Inc., an Arizona corporation (the "Contractor"). This Contract is for Water/Wastewater Pipeline Utility & Infrastructure, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – Water/Wastewater for "Category 1: Water/Wastewater Pipeline Utility & Infrastructure (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Water/Wastewater Pipeline Utility & Infrastructure.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Water/Wastewater Pipeline Utility & Infrastructure for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

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

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Water/Wastewater Pipeline Utility & Infrastructure category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

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

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

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

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

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

ARTICLE 3
DEFINITIONS

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

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

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

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

"City's Representative" means the person designated within this Contract.

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

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

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

"Construction Work" means the construction component of the Project.

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

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

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

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

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

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

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

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

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

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

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

"Liquidated Damages" means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Details for Public Works Construction.

"Materials" means goods, items, or supplies utilized in the completion of the Work.

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

"Payment Application" means the City form used by the Contractor to request payment for Work performed.

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

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

"Project Schedule" means a schedule as prescribed in this Contract or subsequent Job Orders.

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

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

"Schedule of Construction" means the timeline submitted by the Contractor for the completion of the Work.

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

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

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

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

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

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

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

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

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

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

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

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

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

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

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

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

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

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

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

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

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

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

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

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

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

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

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

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

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

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

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

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

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

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

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

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

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

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

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

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

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

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

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

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

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

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

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

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

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

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

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

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

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

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

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

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

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

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

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

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

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

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

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

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

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

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

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

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

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

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

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

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

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

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

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

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

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

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

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

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

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

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

ARTICLE 15
CLAIMS BY CONTRACTOR

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

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

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

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

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

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

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

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

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

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

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

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

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

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

ARTICLE 17
SUSPENSION AND TERMINATION

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

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

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

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

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

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

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

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

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

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

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

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

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

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

ARTICLE 21
GIFT TO PUBLIC SERVANT

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

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

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

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

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

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

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

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

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: DCS Contracting, Inc.
Brandon Byrne, President
11535 E. Germann Road
Chandler, Arizona 85286
Phone: 480.732.9238 Ext. 201
Email: brandon.byrne@dcscontracting.com

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

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

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

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

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

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

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

DCS CONTRACTING, INC.,
an Arizona corporation

Brandon Byrne
_____
Brandon Byrne, President

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

William Kauppi
_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
WATER/WASTEWATER PIPELINE UTILITY & INFRASTRUCTURE
BETWEEN
CITY OF BUCKEYE
AND
DCS CONTRACTING, INC.

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
HAYDON COMPANIES, LLC

CONTRACT NO. 2025105

This JOB ORDER CONTRACT FOR Category 2: Water Production Facility Infrastructure (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and Haydon Companies, LLC, an Arizona limited liability company (the "Contractor"). This Contract is for Water Production Facility Infrastructure, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – Water/Wastewater for "Category 2: Water Production Facility Infrastructure (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Water Production Facility Infrastructure.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Water Production Facility Infrastructure for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

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

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Water Production Facility Infrastructure category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

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

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

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

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

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

ARTICLE 3
DEFINITIONS

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

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

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

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

"City's Representative" means the person designated within this Contract.

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

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

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

"Construction Work" means the construction component of the Project.

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

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

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

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

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

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

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

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

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

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

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

“Liquidated Damages” means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments’ (MAG) Uniform Standard Specifications and Details for Public Works Construction.

“Materials” means goods, items, or supplies utilized in the completion of the Work.

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

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

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

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

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

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

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

“Schedule of Construction” means the timeline submitted by the Contractor for the completion of the Work.

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

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

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

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

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

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

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

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

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

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

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

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

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

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

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

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

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

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

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

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

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

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

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

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

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

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

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

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

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

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

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

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

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

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

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

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

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

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

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

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

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

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

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

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

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

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

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

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

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

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

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

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

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

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

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

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

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

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

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

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

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

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

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

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

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

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

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

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

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

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

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

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

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

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

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

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

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

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

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

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

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

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

ARTICLE 15
CLAIMS BY CONTRACTOR

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

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

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

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

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

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

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

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

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

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

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

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

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

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

ARTICLE 17
SUSPENSION AND TERMINATION

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

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

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

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

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

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

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

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

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

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

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

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

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

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

ARTICLE 21
GIFT TO PUBLIC SERVANT

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

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

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

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

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

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

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

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

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: Haydon Companies, LLC
Katie Haydon, President and CEO
4640 E. Cotton Gin Loop
Phoenix, Arizona 85040
Phone: 602.296.1496
Email: khaydon@haydonbc.com

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

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

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

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

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

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

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

HAYDON COMPANIES, LLC,
an Arizona limited liability company

Matt Carpenter
_____
Matt Carpenter, Chief Operating Officer

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

William Kauppi
_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

Adobe Acrobat Sign Transaction Number: CBJCHBCAABAAzcQwaq8_NHTNtlqd1jIt715XmrwA_kPC

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
WATER PRODUCTION FACILITY INFRASTRUCTURE
BETWEEN
CITY OF BUCKEYE
AND
HAYDON COMPANIES, LLC

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
FELIX CONSTRUCTION COMPANY

CONTRACT NO. 2025106

This JOB ORDER CONTRACT FOR Category 2: Water Production Facility Infrastructure (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and Felix Construction Company, an Arizona corporation (the "Contractor"). This Contract is for Water Production Facility Infrastructure, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – Water/Wastewater for "Category 2: Water Production Facility Infrastructure (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Water Production Facility Infrastructure.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Water Production Facility Infrastructure for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

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

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Water Production Facility Infrastructure category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

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

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

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

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

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

ARTICLE 3
DEFINITIONS

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

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

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

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

"City's Representative" means the person designated within this Contract.

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

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

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

"Construction Work" means the construction component of the Project.

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

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

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

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

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

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

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

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

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

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

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

“Liquidated Damages” means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments’ (MAG) Uniform Standard Specifications and Details for Public Works Construction.

“Materials” means goods, items, or supplies utilized in the completion of the Work.

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

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

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

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

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

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

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

“Schedule of Construction” means the timeline submitted by the Contractor for the completion of the Work.

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

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

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

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

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

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

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

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

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

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

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

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

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

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

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

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

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

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

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

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

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

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

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

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

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

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

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

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

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

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

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

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

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

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

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

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

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

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

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

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

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

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

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

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

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

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

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

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

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

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

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

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

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

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

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

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

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

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

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

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

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

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

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

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

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

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

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

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

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

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

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

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

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

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

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

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

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

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

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

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

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

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

ARTICLE 15
CLAIMS BY CONTRACTOR

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

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

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

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

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

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

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

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

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

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

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

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

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

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

ARTICLE 17
SUSPENSION AND TERMINATION

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

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

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

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

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

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

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

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

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

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

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

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

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

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

ARTICLE 21
GIFT TO PUBLIC SERVANT

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

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

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

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

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

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

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

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

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: Felix Construction Company
David Giannetto, Principal
2530 S. 52nd Avenue
Phoenix, Arizona 85043
Phone: 602.625.4811
Email: davidg@felixconstruction.com

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

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

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

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

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

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

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

FELIX CONSTRUCTION COMPANY,
an Arizona corporation

_____
David Giannetto, Principal

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

Adobe Acrobat Sign Transaction Number: CBJCHBCAABAAJqL57j-cq5cjtKAGWTU117fOH6MGTKA

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
WATER PRODUCTION FACILITY INFRASTRUCTURE
BETWEEN
CITY OF BUCKEYE
AND
FELIX CONSTRUCTION COMPANY

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
MGC CONTRACTORS, INC.

CONTRACT NO. 2025107

This JOB ORDER CONTRACT FOR Category 2: Water Production Facility Infrastructure (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and MGC Contractors, Inc., an Arizona corporation (the "Contractor"). This Contract is for Water Production Facility Infrastructure, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – Water/Wastewater for "Category 2: Water Production Facility Infrastructure (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Water Production Facility Infrastructure.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Water Production Facility Infrastructure for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

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

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Water Production Facility Infrastructure category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

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

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

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

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

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

ARTICLE 3
DEFINITIONS

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

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

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

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

"City's Representative" means the person designated within this Contract.

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

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

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

"Construction Work" means the construction component of the Project.

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

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

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

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

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

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

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

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

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

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

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

"Liquidated Damages" means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Details for Public Works Construction.

"Materials" means goods, items, or supplies utilized in the completion of the Work.

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

"Payment Application" means the City form used by the Contractor to request payment for Work performed.

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

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

"Project Schedule" means a schedule as prescribed in this Contract or subsequent Job Orders.

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

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

"Schedule of Construction" means the timeline submitted by the Contractor for the completion of the Work.

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

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

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

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

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

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

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

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

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

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

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

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

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

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

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

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

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

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

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

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

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

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

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

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

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

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

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

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

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

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

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

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

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

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

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

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

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

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

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

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

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

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

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

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

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

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

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

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

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

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

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

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

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

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

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

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

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

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

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

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

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

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

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

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

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

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

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

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

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

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

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

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

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

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

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

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

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

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

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

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

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

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

ARTICLE 15
CLAIMS BY CONTRACTOR

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

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

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

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

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

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

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

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

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

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

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

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

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

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

ARTICLE 17
SUSPENSION AND TERMINATION

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

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

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

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

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

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

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

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

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

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

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

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

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

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

ARTICLE 21
GIFT TO PUBLIC SERVANT

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

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

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

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

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

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

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

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

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: MGC Contractors, Inc.
Greg Beetem, Vice President
4110 E. Elwood Street
Phoenix, Arizona 85040
Phone: 602.437.5000
Email: greg@mgccontractors.com

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

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

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

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

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

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

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

MGC CONTRACTORS, INC.,
an Arizona corporation

_____
Greg Beetem, Vice President

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

Adobe Acrobat Sign Transaction Number: CBJCHBCAABAAddbUlvzN8GFOKbYztJ671to7Gjy5mA

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
WATER PRODUCTION FACILITY INFRASTRUCTURE
BETWEEN
CITY OF BUCKEYE
AND
MGC CONTRACTORS, INC.

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
PCL CONSTRUCTION, INC.

CONTRACT NO. 2025110

This JOB ORDER CONTRACT FOR Category 3: Wastewater Treatment Facility Infrastructure (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and PCL Construction, Inc., a Colorado corporation (the "Contractor"). This Contract is for Wastewater Treatment Facility Infrastructure, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – Water/Wastewater for "Category 3: Wastewater Treatment Facility Infrastructure (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Wastewater Treatment Facility Infrastructure.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Wastewater Treatment Facility Infrastructure for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

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

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Wastewater Treatment Facility Infrastructure category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

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

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

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

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

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

ARTICLE 3
DEFINITIONS

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

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

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

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

"City's Representative" means the person designated within this Contract.

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

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

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

"Construction Work" means the construction component of the Project.

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

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

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

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

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

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

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

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

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

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

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

“Liquidated Damages” means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments’ (MAG) Uniform Standard Specifications and Details for Public Works Construction.

“Materials” means goods, items, or supplies utilized in the completion of the Work.

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

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

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

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

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

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

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

“Schedule of Construction” means the timeline submitted by the Contractor for the completion of the Work.

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

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

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

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

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

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

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

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

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

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

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

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

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

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

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

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

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

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

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

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

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

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

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

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

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

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

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

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

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

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

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

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

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

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

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

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

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

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

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

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

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

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

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

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

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

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

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

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

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

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

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

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

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

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

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

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

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

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

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

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

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

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

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

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

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

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

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

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

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

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

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

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

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

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

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

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

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

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

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

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

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

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

ARTICLE 15
CLAIMS BY CONTRACTOR

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

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

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

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

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

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

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

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

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

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

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

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

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

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

ARTICLE 17
SUSPENSION AND TERMINATION

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

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

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

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

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

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

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

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

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

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

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

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

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

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

ARTICLE 21
GIFT TO PUBLIC SERVANT

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

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

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

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

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

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

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

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

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: PCL Construction, Inc.
Nico Swart, JOC Account Manager
1711 W. Greentree Drive, Unit 200
Tempe, Arizona 85284
Phone: 602.319.8458
Email: nswart@pcl.com

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

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

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

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

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

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

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

PCL CONSTRUCTION, INC.,
a Colorado corporation

_____
Richard Hewitt, President

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

Adobe Acrobat Sign Transaction Number: CBJCHBCAABAAhik3abC25LTCCx8AON2

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
WASTEWATER TREATMENT FACILITY INFRASTRUCTURE
BETWEEN
CITY OF BUCKEYE
AND
PCL CONSTRUCTION, INC.

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
ASR CONSTRUCTION GROUP LLC

CONTRACT NO. 2025111

This JOB ORDER CONTRACT FOR Category 3: Wastewater Treatment Facility Infrastructure (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and ASR Construction Group LLC, an Arizona limited liability company (the "Contractor"). This Contract is for Wastewater Treatment Facility Infrastructure, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – Water/Wastewater for "Category 3: Wastewater Treatment Facility Infrastructure (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Wastewater Treatment Facility Infrastructure.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Wastewater Treatment Facility Infrastructure for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

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

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Wastewater Treatment Facility Infrastructure category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

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

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

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

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

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

ARTICLE 3
DEFINITIONS

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

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

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

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

"City's Representative" means the person designated within this Contract.

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

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

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

"Construction Work" means the construction component of the Project.

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

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

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

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

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

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

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

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

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

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

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

“Liquidated Damages” means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments’ (MAG) Uniform Standard Specifications and Details for Public Works Construction.

“Materials” means goods, items, or supplies utilized in the completion of the Work.

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

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

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

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

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

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

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

“Schedule of Construction” means the timeline submitted by the Contractor for the completion of the Work.

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

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

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

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

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

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

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

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

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

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

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

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

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

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

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

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

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

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

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

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

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

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

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

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

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

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

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

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

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

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

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

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

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

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

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

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

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

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

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

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

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

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

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

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

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

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

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

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

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

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

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

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

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

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

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

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

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

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

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

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

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

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

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

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

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

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

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

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

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

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

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

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

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

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

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

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

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

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

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

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

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

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

ARTICLE 15
CLAIMS BY CONTRACTOR

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

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

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

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

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

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

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

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

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

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

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

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

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: ASR Construction Group LLC
Dan Anderson, ASR Managing Member
1620 S. Stapley Drive, Suite 100
Mesa, Arizona 85204
Phone: 480.435.6398
Email: d.anderson@asr-cg.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

ASR CONSTRUCTION GROUP LLC,
an Arizona limited liability company

Dan Anderson
_____
Dan Anderson, ASR Managing Member

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

William Kauppi
_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

Adobe Acrobat Sign Transaction Number: CBJCHBCAABAAr53-75J-MPEs9i5Zn 'jYlG-z

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
WASTEWATER TREATMENT FACILITY INFRASTRUCTURE
BETWEEN
CITY OF BUCKEYE
AND
ASR CONSTRUCTION GROUP LLC

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
FELIX CONSTRUCTION COMPANY

CONTRACT NO. 2025112

This JOB ORDER CONTRACT FOR Category 3: Wastewater Treatment Facility Infrastructure (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and Felix Construction Company, an Arizona corporation (the "Contractor"). This Contract is for Wastewater Treatment Facility Infrastructure, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – Water/Wastewater for "Category 3: Wastewater Treatment Facility Infrastructure (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Wastewater Treatment Facility Infrastructure.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Wastewater Treatment Facility Infrastructure for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Wastewater Treatment Facility Infrastructure category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

“Differing Site Conditions” means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

“Final Acceptance” means the completion of the Project as prescribed in Article 10.

“Float” means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

“Legal Requirements” means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

“Liquidated Damages” means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments’ (MAG) Uniform Standard Specifications and Details for Public Works Construction.

“Materials” means goods, items, or supplies utilized in the completion of the Work.

“Notice to Proceed” or “NTP” means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

“Payment Application” means the City form used by the Contractor to request payment for Work performed.

“Product Data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

“Project” means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

“Project Schedule” means a schedule as prescribed in this Contract or subsequent Job Orders.

“Project Record Documents” means the documents created pursuant to Article 12.

“Samples” means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

“Schedule of Construction” means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to the City for inspection and copying upon the City's request at any time. Additionally, such records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, audio or video recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: Felix Construction Company
David Giannetto, Principal
2530 S. 52nd Avenue
Phoenix, Arizona 85043
Phone: 602.625.4811
Email: davidg@felixconstruction.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

FELIX CONSTRUCTION COMPANY,
an Arizona corporation

_____
David Giannetto, Principal

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

Adobe Acrobat Sign Transaction Number: CBJCHBCAABAAbKGtWgInZrpGVSYp[illegible]

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
WASTEWATER TREATMENT FACILITY INFRASTRUCTURE
BETWEEN
CITY OF BUCKEYE
AND
FELIX CONSTRUCTION COMPANY

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
MGC CONTRACTORS, INC.

CONTRACT NO. 2025113

This JOB ORDER CONTRACT FOR Category 3: Wastewater Treatment Facility Infrastructure (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and MGC Contractors, Inc., an Arizona corporation (the "Contractor"). This Contract is for Wastewater Treatment Facility Infrastructure, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – Water/Wastewater for "Category 3: Wastewater Treatment Facility Infrastructure (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Wastewater Treatment Facility Infrastructure.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Wastewater Treatment Facility Infrastructure for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Wastewater Treatment Facility Infrastructure category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

"Differing Site Conditions" means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

"Final Acceptance" means the completion of the Project as prescribed in Article 10.

"Float" means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

"Legal Requirements" means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

"Liquidated Damages" means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Details for Public Works Construction.

"Materials" means goods, items, or supplies utilized in the completion of the Work.

"Notice to Proceed" or "NTP" means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

"Payment Application" means the City form used by the Contractor to request payment for Work performed.

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

"Project" means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

"Project Schedule" means a schedule as prescribed in this Contract or subsequent Job Orders.

"Project Record Documents" means the documents created pursuant to Article 12.

"Samples" means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

"Schedule of Construction" means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to the City for inspection and copying upon the City's request at any time. Additionally, such records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, audio or video recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: MGC Contractors, Inc.
Greg Beetem, Vice President
4110 E. Elwood Street
Phoenix, Arizona 85040
Phone: 602.437.5000
Email: greg@mgccontractors.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

MGC CONTRACTORS, INC.,
an Arizona corporation

_____
Greg Beetem, Vice President

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
WASTEWATER TREATMENT FACILITY INFRASTRUCTURE
BETWEEN
CITY OF BUCKEYE
AND
MGC CONTRACTORS, INC.

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
HUNTER CONTRACTING CO.

CONTRACT NO. 2025114

This JOB ORDER CONTRACT FOR Category 3: Wastewater Treatment Facility Infrastructure (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and Hunter Contracting Co., an Arizona corporation (the "Contractor"). This Contract is for Wastewater Treatment Facility Infrastructure, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – Water/Wastewater for "Category 3: Wastewater Treatment Facility Infrastructure (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Water Production Facility Infrastructure.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Wastewater Treatment Facility Infrastructure for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Wastewater Treatment Facility Infrastructure category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

“Differing Site Conditions” means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

“Final Acceptance” means the completion of the Project as prescribed in Article 10.

“Float” means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

“Legal Requirements” means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

“Liquidated Damages” means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments’ (MAG) Uniform Standard Specifications and Details for Public Works Construction.

“Materials” means goods, items, or supplies utilized in the completion of the Work.

“Notice to Proceed” or “NTP” means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

“Payment Application” means the City form used by the Contractor to request payment for Work performed.

“Product Data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

“Project” means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

“Project Schedule” means a schedule as prescribed in this Contract or subsequent Job Orders.

“Project Record Documents” means the documents created pursuant to Article 12.

“Samples” means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

“Schedule of Construction” means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to the City for inspection and copying upon the City's request at any time. Additionally, such records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, audio or video recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: Hunter Contracting Co.
Chuck English, President
701 North Cooper Road
Gilbert, Arizona 85233
Phone: 480.892.0521
Email: chucke@huntercontracting.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

HUNTER CONTRACTING CO.,
an Arizona corporation

_____
Chuck English, President

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

Adobe Acrobat Sign Transaction Number: CBJCHBCAABAAiVbFNcc_gscrsRBDBs8nK6KiO8Qe7bW8

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
WASTEWATER TREATMENT FACILITY INFRASTRUCTURE
BETWEEN
CITY OF BUCKEYE
AND
HUNTER CONTRACTING CO.

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
KBE BUILDING CORPORATION

CONTRACT NO. 2025096

This JOB ORDER CONTRACT FOR Category 4: Steel Building/Structure Construction Services (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and KBE Building Corporation, a Connecticut corporation (the "Contractor"). This Contract is for Steel Building/Structure Construction Services, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – General for "Category 4: Steel Building/Structure Construction Services (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Steel Building/Structure Construction Services.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Steel Building/Structure Construction Services for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Steel Building/Structure Construction Services category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

"Differing Site Conditions" means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

"Final Acceptance" means the completion of the Project as prescribed in Article 10.

"Float" means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

"Legal Requirements" means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

"Liquidated Damages" means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Details for Public Works Construction.

"Materials" means goods, items, or supplies utilized in the completion of the Work.

"Notice to Proceed" or "NTP" means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

"Payment Application" means the City form used by the Contractor to request payment for Work performed.

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

"Project" means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

"Project Schedule" means a schedule as prescribed in this Contract or subsequent Job Orders.

"Project Record Documents" means the documents created pursuant to Article 12.

"Samples" means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

"Schedule of Construction" means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to the City for inspection and copying upon the City's request at any time. Additionally, such records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, audio or video recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: KBE Building Corporation
Cort Darling, Regional Manager
9977 N. 90th Street, Suite 150
Scottsdale, Arizona 25852
Phone: 602.466.9454
Email: cdarling@kbebuilding.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

KBE BUILDING CORPORATION,
a Connecticut corporation

Cortney Darling
_____
Cort Darling, Regional Manager

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

William Kauppi
_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

Adobe Acrobat Sign Transaction Number: CBJCHBCAABAAzpPURd6sJfzbj-M2paaovqdGTXS1_

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
ROAD CONSTRUCTION SERVICES
BETWEEN
CITY OF BUCKEYE
AND
KBE BUILDING CORPORATION

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
HUNTER CONTRACTING CO.

CONTRACT NO. 2025108

This JOB ORDER CONTRACT FOR Category 2: Water Production Facility Infrastructure (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and Hunter Contracting Co., an Arizona corporation (the "Contractor"). This Contract is for Water Production Facility Infrastructure, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – Water/Wastewater for "Category 2: Water Production Facility Infrastructure (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Water Production Facility Infrastructure.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Water Production Facility Infrastructure for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Water Production Facility Infrastructure category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

"Differing Site Conditions" means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

"Final Acceptance" means the completion of the Project as prescribed in Article 10.

"Float" means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

"Legal Requirements" means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

"Liquidated Damages" means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Details for Public Works Construction.

"Materials" means goods, items, or supplies utilized in the completion of the Work.

"Notice to Proceed" or "NTP" means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

"Payment Application" means the City form used by the Contractor to request payment for Work performed.

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

"Project" means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

"Project Schedule" means a schedule as prescribed in this Contract or subsequent Job Orders.

"Project Record Documents" means the documents created pursuant to Article 12.

"Samples" means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

"Schedule of Construction" means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to the City for inspection and copying upon the City's request at any time. Additionally, such records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, audio or video recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: Hunter Contracting Co.
Chuck English, President
701 North Cooper Road
Gilbert, Arizona 85233
Phone: 480.892.0521
Email: chucke@huntercontracting.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

HUNTER CONTRACTING CO.,
an Arizona corporation

_____
Chuck English, President

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

Adobe Acrobat Sign Transaction Number: CBJCHBCAABAAmpHbzoAccwFXQ[illegible]0Puz8

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
WATER PRODUCTION FACILITY INFRASTRUCTURE
BETWEEN
CITY OF BUCKEYE
AND
HUNTER CONTRACTING CO.

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
SCHOFIELD CIVIL CONSTRUCTION LLC

CONTRACT NO. 2025109

This JOB ORDER CONTRACT FOR Category 2: Water Production Facility Infrastructure (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and Schofield Civil Construction LLC, an Arizona limited liability company (the "Contractor"). This Contract is for Water Production Facility Infrastructure, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – Water/Wastewater for "Category 2: Water Production Facility Infrastructure (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Water Production Facility Infrastructure.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Water Production Facility Infrastructure for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Water Production Facility Infrastructure category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

“Differing Site Conditions” means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

“Final Acceptance” means the completion of the Project as prescribed in Article 10.

“Float” means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

“Legal Requirements” means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

“Liquidated Damages” means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments’ (MAG) Uniform Standard Specifications and Details for Public Works Construction.

“Materials” means goods, items, or supplies utilized in the completion of the Work.

“Notice to Proceed” or “NTP” means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

“Payment Application” means the City form used by the Contractor to request payment for Work performed.

“Product Data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

“Project” means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

“Project Schedule” means a schedule as prescribed in this Contract or subsequent Job Orders.

“Project Record Documents” means the documents created pursuant to Article 12.

“Samples” means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

“Schedule of Construction” means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to the City for inspection and copying upon the City's request at any time. Additionally, such records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, audio or video recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: Schofield Civil Construction LLC
Eddie Hawley, JOC Account Manager
22849 N. 19th Avenue #110
Phoenix, Arizona 85027
Phone: 406.390.4000
Email: ech@schofieldcivil.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

SCHOFIELD CIVIL CONSTRUCTION LLC,
an Arizona limited liability company

Eddie Hawley
_____
Eddie Hawley, Secretary

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

William Kauppi
_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
WATER PRODUCTION FACILITY INFRASTRUCTURE
BETWEEN
CITY OF BUCKEYE
AND
SCHOFIELD CIVIL CONSTRUCTION LLC

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
HAYDON COMPANIES, LLC

CONTRACT NO. 2025082

This JOB ORDER CONTRACT FOR Category 1: Street Maintenance (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and Haydon Companies, LLC, an Arizona limited liability company (the "Contractor"). This Contract is for Street Maintenance, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – General for "Category 1: Street Maintenance (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Street Maintenance.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Street Maintenance for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Street Maintenance category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

“Differing Site Conditions” means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

“Final Acceptance” means the completion of the Project as prescribed in Article 10.

“Float” means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

“Legal Requirements” means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

“Liquidated Damages” means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments’ (MAG) Uniform Standard Specifications and Details for Public Works Construction.

“Materials” means goods, items, or supplies utilized in the completion of the Work.

“Notice to Proceed” or “NTP” means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

“Payment Application” means the City form used by the Contractor to request payment for Work performed.

“Product Data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

“Project” means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

“Project Schedule” means a schedule as prescribed in this Contract or subsequent Job Orders.

“Project Record Documents” means the documents created pursuant to Article 12.

“Samples” means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

“Schedule of Construction” means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to the City for inspection and copying upon the City's request at any time. Additionally, such records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, audio or video recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: Haydon Companies, LLC
Katie Haydon, President and CEO
4640 E. Cotton Gin Loop
Phoenix, Arizona 85040
Phone: 602.296.1496
Email: khaydon@haydonbc.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

HAYDON COMPANIES, LLC,
an Arizona limited liability company

Matt Carpenter
_____
Matt Carpenter, Chief Operating Officer

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

William Kauppi
_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
STREET MAINTENANCE
BETWEEN
CITY OF BUCKEYE
AND
HAYDON COMPANIES, LLC

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
M. R. TANNER DEVELOPMENT AND CONSTRUCTION, LLC

CONTRACT NO. 2025081

This JOB ORDER CONTRACT FOR Category 1: Street Maintenance (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and M. R. Tanner Development and Construction, LLC, an Arizona limited liability company (the "Contractor"). This Contract is for Street Maintenance, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – General for "Category 1: Street Maintenance (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Street Maintenance.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Street Maintenance for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Street Maintenance category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

“Differing Site Conditions” means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

“Final Acceptance” means the completion of the Project as prescribed in Article 10.

“Float” means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

“Legal Requirements” means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

“Liquidated Damages” means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments’ (MAG) Uniform Standard Specifications and Details for Public Works Construction.

“Materials” means goods, items, or supplies utilized in the completion of the Work.

“Notice to Proceed” or “NTP” means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

“Payment Application” means the City form used by the Contractor to request payment for Work performed.

“Product Data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

“Project” means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

“Project Schedule” means a schedule as prescribed in this Contract or subsequent Job Orders.

“Project Record Documents” means the documents created pursuant to Article 12.

“Samples” means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

“Schedule of Construction” means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to the City for inspection and copying upon the City's request at any time. Additionally, such records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, audio or video recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: M. R. Tanner Development and Construction, LLC
Josh Skinner, JOC Account Manager
1327 W. San Pedro Street
Gilbert, Arizona 85233
Phone: 480.633.8500
Email: jskinner@mrtanner.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

M. R. TANNER DEVELOPMENT AND CONSTRUCTION, LLC, an Arizona limited liability company

Chad Montoya
_____
Chad Montoya, Vice President

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

William Kauppi
_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
STREET MAINTENANCE
BETWEEN
CITY OF BUCKEYE
AND
M. R. TANNER DEVELOPMENT AND CONSTRUCTION, LLC

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
SUNLAND ASPHALT & CONSTRUCTION, LLC

CONTRACT NO. 2025083

This JOB ORDER CONTRACT FOR Category 1: Street Maintenance (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and Sunland Asphalt & Construction, LLC, a Delaware limited liability company (the "Contractor"). This Contract is for Street Maintenance, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – General for "Category 1: Street Maintenance (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Street Maintenance.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Street Maintenance for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Street Maintenance category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

"Differing Site Conditions" means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

"Final Acceptance" means the completion of the Project as prescribed in Article 10.

"Float" means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

"Legal Requirements" means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

"Liquidated Damages" means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Details for Public Works Construction.

"Materials" means goods, items, or supplies utilized in the completion of the Work.

"Notice to Proceed" or "NTP" means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

"Payment Application" means the City form used by the Contractor to request payment for Work performed.

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

"Project" means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

"Project Schedule" means a schedule as prescribed in this Contract or subsequent Job Orders.

"Project Record Documents" means the documents created pursuant to Article 12.

"Samples" means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

"Schedule of Construction" means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to the City for inspection and copying upon the City's request at any time. Additionally, such records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, audio or video recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: Sunland Asphalt & Construction, LLC
Chance Cherry, Project Manager
3030 S. 7th St.
Phoenix, Arizona 85040
Phone: 602.639.1247
Email: ccherry@sunlandasphalt.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____

Dan Cotterman, City Manager

CONTRACTOR:

SUNLAND ASPHALT & CONSTRUCTION, LLC,
a Delaware limited liability company

IMMANUEL MARTINEZ

Immanuel Martinez, Division Manager
Public Works

ATTEST:

Lucinda Aja, City Clerk

RECOMMENDED:

William Kauppi

William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

K. Scott McCoy, City Attorney

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
STREET MAINTENANCE
BETWEEN
CITY OF BUCKEYE
AND
SUNLAND ASPHALT & CONSTRUCTION, LLC

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
TALIS CONSTRUCTION CORPORATION

CONTRACT NO. 2025084

This JOB ORDER CONTRACT FOR Category 1: Street Maintenance (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and TALIS Construction Corporation, an Arizona corporation (the "Contractor"). This Contract is for Street Maintenance, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – General for "Category 1: Street Maintenance (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Street Maintenance.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Street Maintenance for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Street Maintenance category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

“Differing Site Conditions” means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

“Final Acceptance” means the completion of the Project as prescribed in Article 10.

“Float” means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

“Legal Requirements” means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

“Liquidated Damages” means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments’ (MAG) Uniform Standard Specifications and Details for Public Works Construction.

“Materials” means goods, items, or supplies utilized in the completion of the Work.

“Notice to Proceed” or “NTP” means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

“Payment Application” means the City form used by the Contractor to request payment for Work performed.

“Product Data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

“Project” means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

“Project Schedule” means a schedule as prescribed in this Contract or subsequent Job Orders.

“Project Record Documents” means the documents created pursuant to Article 12.

“Samples” means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

“Schedule of Construction” means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to the City for inspection and copying upon the City's request at any time. Additionally, such records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, audio or video recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: TALIS Construction Corporation
Manuel Lopez, President
1167 West Javelina Ave.
Mesa, Arizona 85210
Phone: 602.397.4833
Email: mlopez@talis.us

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

TALIS Construction Corporation,
an Arizona corporation

_____
Manuel Lopez, President

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

Adobe Acrobat Sign Transaction Number: CBJCHBCAABAA_W5Lyk3MziXs8Yh

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
STREET MAINTENANCE
BETWEEN
CITY OF BUCKEYE
AND
TALIS CONSTRUCTION CORPORATION

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
WILLMENG CONSTRUCTION, INC.

CONTRACT NO. 2025085

This JOB ORDER CONTRACT FOR Category 2: General Construction Services (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and Willmeng Construction, Inc., an Arizona corporation (the "Contractor"). This Contract is for General Construction Services, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – General for "Category 2: General Construction Services (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing General Construction Services.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to General Construction Services for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC General Construction Services category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

"Differing Site Conditions" means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

"Final Acceptance" means the completion of the Project as prescribed in Article 10.

"Float" means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

"Legal Requirements" means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

"Liquidated Damages" means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Details for Public Works Construction.

"Materials" means goods, items, or supplies utilized in the completion of the Work.

"Notice to Proceed" or "NTP" means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

"Payment Application" means the City form used by the Contractor to request payment for Work performed.

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

"Project" means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

"Project Schedule" means a schedule as prescribed in this Contract or subsequent Job Orders.

"Project Record Documents" means the documents created pursuant to Article 12.

"Samples" means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

"Schedule of Construction" means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to the City for inspection and copying upon the City's request at any time. Additionally, such records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, audio or video recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: Willmeng Construction, Inc.
Parrish Rowland, JOC Division Manager
1702 E. Highland Ave.
Phoenix, Arizona 85016
Phone: 480.686.4821
Email: prowland@willmeng.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

WILLMENG CONSTRUCTION, INC.,
an Arizona corporation

_____
James Murphy, Chief Executive Officer

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
ROAD CONSTRUCTION SERVICES
BETWEEN
CITY OF BUCKEYE
AND
WILLMENG CONSTRUCTION, INC.

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
HAYDON COMPANIES, LLC

CONTRACT NO. 2025086

This JOB ORDER CONTRACT FOR Category 2: General Construction Services (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and Haydon Companies, LLC, an Arizona limited liability company (the "Contractor"). This Contract is for General Construction Services, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – General for "Category 2: General Construction Services (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing General Construction Services.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to General Construction Services for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC General Construction Services category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

"Differing Site Conditions" means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

"Final Acceptance" means the completion of the Project as prescribed in Article 10.

"Float" means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

"Legal Requirements" means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

"Liquidated Damages" means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Details for Public Works Construction.

"Materials" means goods, items, or supplies utilized in the completion of the Work.

"Notice to Proceed" or "NTP" means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

"Payment Application" means the City form used by the Contractor to request payment for Work performed.

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

"Project" means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

"Project Schedule" means a schedule as prescribed in this Contract or subsequent Job Orders.

"Project Record Documents" means the documents created pursuant to Article 12.

"Samples" means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

"Schedule of Construction" means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to the City for inspection and copying upon the City's request at any time. Additionally, such records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, audio or video recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: Haydon Companies, LLC
Katie Haydon, President and CEO
4640 E. Cotton Gin Loop
Phoenix, Arizona 85040
Phone: 602.296.1496
Email: khaydon@haydonbc.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

HAYDON COMPANIES, LLC,
an Arizona limited liability company

Matt Carpenter
_____
Matt Carpenter, Chief Operating Officer

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

William Kauppi
_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
GENERAL CONSTRUCTION SERVICES
BETWEEN
CITY OF BUCKEYE
AND
HAYDON COMPANIES, LLC

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
J. BANICKI CONSTRUCTION, INC.

CONTRACT NO. 2025087

This JOB ORDER CONTRACT FOR Category 2: General Construction Services (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and J. Banicki Construction, Inc., an Arizona corporation (the "Contractor"). This Contract is for General Construction Services, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – General for "Category 2: General Construction Services (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing General Construction Services.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to General Construction Services for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC General Construction Services category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

"Differing Site Conditions" means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

"Final Acceptance" means the completion of the Project as prescribed in Article 10.

"Float" means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

"Legal Requirements" means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

"Liquidated Damages" means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Details for Public Works Construction.

"Materials" means goods, items, or supplies utilized in the completion of the Work.

"Notice to Proceed" or "NTP" means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

"Payment Application" means the City form used by the Contractor to request payment for Work performed.

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

"Project" means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

"Project Schedule" means a schedule as prescribed in this Contract or subsequent Job Orders.

"Project Record Documents" means the documents created pursuant to Article 12.

"Samples" means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

"Schedule of Construction" means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to the City for inspection and copying upon the City's request at any time. Additionally, such records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, audio or video recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: J. Banicki Construction, Inc.
Mike Abraham, President
4720 E. Cotton Gin Loop, Ste. 240
Phoenix, Arizona 85040
Phone: 602.390.1243
Email: mabraham@banicki.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

J. BANICKI CONSTRUCTION, INC.,
an Arizona corporation

_____
Mike Abraham, President

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
ROAD CONSTRUCTION SERVICES
BETWEEN
CITY OF BUCKEYE
AND
J. BANICKI CONSTRUCTION, INC.

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
BRYCON CORPORATION

CONTRACT NO. 2025088

This JOB ORDER CONTRACT FOR Category 2: General Construction Services (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and Brycon Corporation, a New Mexico corporation (the "Contractor"). This Contract is for General Construction Services, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – General for "Category 2: General Construction Services (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing General Construction Services.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to General Construction Services for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC General Construction Services category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

"Differing Site Conditions" means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

"Final Acceptance" means the completion of the Project as prescribed in Article 10.

"Float" means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

"Legal Requirements" means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

"Liquidated Damages" means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Details for Public Works Construction.

"Materials" means goods, items, or supplies utilized in the completion of the Work.

"Notice to Proceed" or "NTP" means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

"Payment Application" means the City form used by the Contractor to request payment for Work performed.

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

"Project" means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

"Project Schedule" means a schedule as prescribed in this Contract or subsequent Job Orders.

"Project Record Documents" means the documents created pursuant to Article 12.

"Samples" means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

"Schedule of Construction" means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to the City for inspection and copying upon the City's request at any time. Additionally, such records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, audio or video recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: Brycon Corporation
Kevin Freis, Vice President of Construction
6915 W. Frye Rd.
Chandler, Arizona 85226
Phone: 602.920.6341
Email: kfreis@brycon.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

BRYCON CORPORATION,
a New Mexico corporation

_____
Kevin Freis, Vice President of Construction

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
ROAD CONSTRUCTION SERVICES
BETWEEN
CITY OF BUCKEYE
AND
BRYCON CORPORATION

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
S.D. CRANE BUILDERS, INC.

CONTRACT NO. 2025089

This JOB ORDER CONTRACT FOR Category 2: General Construction Services (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and S.D. Crane Builders, Inc., an Arizona corporation (the "Contractor"). This Contract is for General Construction Services, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – General for "Category 2: General Construction Services (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing General Construction Services.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to General Construction Services for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC General Construction Services category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

"Differing Site Conditions" means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

"Final Acceptance" means the completion of the Project as prescribed in Article 10.

"Float" means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

"Legal Requirements" means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

"Liquidated Damages" means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Details for Public Works Construction.

"Materials" means goods, items, or supplies utilized in the completion of the Work.

"Notice to Proceed" or "NTP" means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

"Payment Application" means the City form used by the Contractor to request payment for Work performed.

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

"Project" means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

"Project Schedule" means a schedule as prescribed in this Contract or subsequent Job Orders.

"Project Record Documents" means the documents created pursuant to Article 12.

"Samples" means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

"Schedule of Construction" means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to the City for inspection and copying upon the City's request at any time. Additionally, such records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, audio or video recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: S.D. Crane Builders, Inc.
Keith Burns, Director of Construction
1215 W. Rio Salado Pkwy., Suite 109
Tempe, Arizona 85281
Phone: 480.832.1777
Email: kburns@sdcranebuilders.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

S.D. CRANE BUILDERS, INC.,
an Arizona corporation

_____
Steven D. Crane, President/CEO

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

Adobe Acrobat Sign Transaction Number: CBJCHBCAABAA6aUweWbrRjuPOu

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
GENERAL CONSTRUCTION SERVICES
BETWEEN
CITY OF BUCKEYE
AND
S.D. CRANE BUILDERS, INC.

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
HAYDON COMPANIES, LLC

CONTRACT NO. 2025090

This JOB ORDER CONTRACT FOR Category 3: Road Construction Services (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and Haydon Companies, LLC, an Arizona limited liability company (the "Contractor"). This Contract is for Road Construction Services, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – General for "Category 3: Road Construction Services (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Road Construction Services.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Road Construction Services for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Road Construction Services category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

“Differing Site Conditions” means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

“Final Acceptance” means the completion of the Project as prescribed in Article 10.

“Float” means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

“Legal Requirements” means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

“Liquidated Damages” means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments’ (MAG) Uniform Standard Specifications and Details for Public Works Construction.

“Materials” means goods, items, or supplies utilized in the completion of the Work.

“Notice to Proceed” or “NTP” means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

“Payment Application” means the City form used by the Contractor to request payment for Work performed.

“Product Data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

“Project” means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

“Project Schedule” means a schedule as prescribed in this Contract or subsequent Job Orders.

“Project Record Documents” means the documents created pursuant to Article 12.

“Samples” means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

“Schedule of Construction” means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to the City for inspection and copying upon the City's request at any time. Additionally, such records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, audio or video recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: Haydon Companies, LLC
Katie Haydon, President and CEO
4640 E. Cotton Gin Loop
Phoenix, Arizona 85040
Phone: 602.296.1496
Email: khaydon@haydonbc.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

HAYDON COMPANIES, LLC,
an Arizona limited liability company

Matt Carpenter
_____
Matt Carpenter, Chief Operating Officer

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

William Kauppi
_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
ROAD CONSTRUCTION SERVICES
BETWEEN
CITY OF BUCKEYE
AND
HAYDON COMPANIES, LLC

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
J. BANICKI CONSTRUCTION, INC.

CONTRACT NO. 2025091

This JOB ORDER CONTRACT FOR Category 3: Road Construction Services (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and J. Banicki Construction, Inc., an Arizona corporation (the "Contractor"). This Contract is for Road Construction Services, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – General for "Category 3: Road Construction Services (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Road Construction Services.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Road Construction Services for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Road Construction Services category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

"Differing Site Conditions" means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

"Final Acceptance" means the completion of the Project as prescribed in Article 10.

"Float" means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

"Legal Requirements" means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

"Liquidated Damages" means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Details for Public Works Construction.

"Materials" means goods, items, or supplies utilized in the completion of the Work.

"Notice to Proceed" or "NTP" means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

"Payment Application" means the City form used by the Contractor to request payment for Work performed.

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

"Project" means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

"Project Schedule" means a schedule as prescribed in this Contract or subsequent Job Orders.

"Project Record Documents" means the documents created pursuant to Article 12.

"Samples" means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

"Schedule of Construction" means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to the City for inspection and copying upon the City's request at any time. Additionally, such records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, audio or video recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: J. Banicki Construction, Inc.
Mike Abraham, President
4720 E. Cotton Gin Loop, Ste. 240
Phoenix, Arizona 85040
Phone: 602.390.1243
Email: mabraham@banicki.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

J. BANICKI CONSTRUCTION, INC.,
an Arizona corporation

_____
Mike Abraham, President

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
ROAD CONSTRUCTION SERVICES
BETWEEN
CITY OF BUCKEYE
AND
J. BANICKI CONSTRUCTION, INC.

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
COMBS CONSTRUCTION COMPANY, INC.

CONTRACT NO. 2025092

This JOB ORDER CONTRACT FOR Category 3: Road Construction Services (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and Combs Construction Company, Inc., an Arizona corporation (the "Contractor"). This Contract is for Road Construction Services, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – General for "Category 3: Road Construction Services (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Road Construction Services.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Road Construction Services for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Road Construction Services category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

“Differing Site Conditions” means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

“Final Acceptance” means the completion of the Project as prescribed in Article 10.

“Float” means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

“Legal Requirements” means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

“Liquidated Damages” means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments’ (MAG) Uniform Standard Specifications and Details for Public Works Construction.

“Materials” means goods, items, or supplies utilized in the completion of the Work.

“Notice to Proceed” or “NTP” means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

“Payment Application” means the City form used by the Contractor to request payment for Work performed.

“Product Data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

“Project” means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

“Project Schedule” means a schedule as prescribed in this Contract or subsequent Job Orders.

“Project Record Documents” means the documents created pursuant to Article 12.

“Samples” means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

“Schedule of Construction” means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to the City for inspection and copying upon the City's request at any time. Additionally, such records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, audio or video recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: Combs Construction Company, Inc.
Michael Sullivan, Vice President/Project Manager
1903 W. Parkside Ln, Suite 100
Phoenix, Arizona 85027
Phone: 623.308.7368
Email: msullivan@combsaz.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

COMBS CONSTRUCTION COMPANY, INC.,
an Arizona corporation

Michael Sullivan
_____
Michael Sullivan, Vice President /
Project Manager

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

William Kauppi
_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
ROAD CONSTRUCTION SERVICES
BETWEEN
CITY OF BUCKEYE
AND
COMBS CONSTRUCTION COMPANY, INC.

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
SUNLAND ASPHALT & CONSTRUCTION, LLC

CONTRACT NO. 2025093

This JOB ORDER CONTRACT FOR Category 3: Road Construction Services (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and Sunland Asphalt & Construction, LLC, a Delaware limited liability company (the "Contractor"). This Contract is for Road Construction Services, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – General for "Category 3: Road Construction Services (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Road Construction Services.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Road Construction Services for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Road Construction Services category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

"Differing Site Conditions" means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

"Final Acceptance" means the completion of the Project as prescribed in Article 10.

"Float" means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

"Legal Requirements" means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

"Liquidated Damages" means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Details for Public Works Construction.

"Materials" means goods, items, or supplies utilized in the completion of the Work.

"Notice to Proceed" or "NTP" means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

"Payment Application" means the City form used by the Contractor to request payment for Work performed.

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

"Project" means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

"Project Schedule" means a schedule as prescribed in this Contract or subsequent Job Orders.

"Project Record Documents" means the documents created pursuant to Article 12.

"Samples" means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

"Schedule of Construction" means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to the City for inspection and copying upon the City's request at any time. Additionally, such records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, audio or video recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: Sunland Asphalt & Construction, LLC
Rick Risner, Project Manager
3030 S. 7th St.
Phoenix, Arizona 85040
Phone: 602.705.1041
Email: rrisner@sunlandasphalt.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____

Dan Cotterman, City Manager

CONTRACTOR:

SUNLAND ASPHALT & CONSTRUCTION, LLC,
a Delaware limited liability company

_____

Immanuel Martinez, Division Manager
Public Works

ATTEST:

_____

Lucinda Aja, City Clerk

RECOMMENDED:

_____

William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____

K. Scott McCoy, City Attorney

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
ROAD CONSTRUCTION SERVICES
BETWEEN
CITY OF BUCKEYE
AND
SUNLAND ASPHALT & CONSTRUCTION, LLC

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
M. R. TANNER DEVELOPMENT AND CONSTRUCTION, LLC

CONTRACT NO. 2025094

This JOB ORDER CONTRACT FOR Category 3: Road Construction Services (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and M. R. Tanner Development and Construction, LLC, an Arizona limited liability company (the "Contractor"). This Contract is for Road Construction Services, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – General for "Category 3: Road Construction Services (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Road Construction Services.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Road Construction Services for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Road Construction Services category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

"Differing Site Conditions" means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

"Final Acceptance" means the completion of the Project as prescribed in Article 10.

"Float" means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

"Legal Requirements" means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

"Liquidated Damages" means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Details for Public Works Construction.

"Materials" means goods, items, or supplies utilized in the completion of the Work.

"Notice to Proceed" or "NTP" means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

"Payment Application" means the City form used by the Contractor to request payment for Work performed.

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

"Project" means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

"Project Schedule" means a schedule as prescribed in this Contract or subsequent Job Orders.

"Project Record Documents" means the documents created pursuant to Article 12.

"Samples" means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

"Schedule of Construction" means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to the City for inspection and copying upon the City's request at any time. Additionally, such records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, audio or video recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: M. R. Tanner Development and Construction, LLC
Josh Skinner, JOC Account Manager
1327 W. San Pedro Street
Gilbert, Arizona 85233
Phone: 480.633.8500
Email: jskinner@mrtanner.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

M. R. TANNER DEVELOPMENT AND CONSTRUCTION, LLC, an Arizona limited liability company

Chad Montoya
_____
Chad Montoya, Vice President

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

William Kauppi
_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

Adobe Acrobat Sign Transaction Number: CBJCHBCAABAAFTARlGsNgCyO-EPULRCHM10KwC

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
ROAD CONSTRUCTION SERVICES
BETWEEN
CITY OF BUCKEYE
AND
M. R. TANNER DEVELOPMENT AND CONSTRUCTION, LLC

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
S.D. CRANE BUILDERS, INC.

CONTRACT NO. 2025095

This JOB ORDER CONTRACT FOR Category 4: Steel Building/Structure Construction Services (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and S.D. Crane Builders, Inc., an Arizona corporation (the "Contractor"). This Contract is for Steel Building/Structure Construction Services, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – General for "Category 4: Steel Building/Structure Construction Services (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Steel Building/Structure Construction Services.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Steel Building/Structure Construction Services for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Steel Building/Structure Construction Services category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

"Differing Site Conditions" means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

"Final Acceptance" means the completion of the Project as prescribed in Article 10.

"Float" means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

"Legal Requirements" means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

"Liquidated Damages" means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Details for Public Works Construction.

"Materials" means goods, items, or supplies utilized in the completion of the Work.

"Notice to Proceed" or "NTP" means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

"Payment Application" means the City form used by the Contractor to request payment for Work performed.

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

"Project" means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

"Project Schedule" means a schedule as prescribed in this Contract or subsequent Job Orders.

"Project Record Documents" means the documents created pursuant to Article 12.

"Samples" means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

"Schedule of Construction" means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: S.D. Crane Builders, Inc.
Keith Burns, Director of Construction
1215 W. Rio Salado Pkwy., Suite 109
Tempe, Arizona 85281
Phone: 480.832.1777
Email: kburns@sdcranebuilders.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

S.D. CRANE BUILDERS, INC.,
an Arizona corporation

_____
Steven D. Crane, President/CEO

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

Adobe Acrobat Sign Transaction Number: CBJCHBCAABAAoiDyt80fjCl9gMxMSfXRNT I4INamH

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
STEEL BUILDING/STRUCTURE CONSTRUCTION SERVICES
BETWEEN
CITY OF BUCKEYE
AND
S.D. CRANE BUILDERS, INC.

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
BWC ENTERPRISES, INC. DBA WOODRUFF CONSTRUCTION

CONTRACT NO. 2025097

This JOB ORDER CONTRACT FOR Category 4: Steel Building/Structure Construction Services (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and BWC Enterprises, Inc. dba Woodruff Construction, an Arizona corporation (the "Contractor"). This Contract is for Steel Building/Structure Construction Services, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – General for "Category 4: Steel Building/Structure Construction Services (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Steel Building/Structure Construction Services.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Steel Building/Structure Construction Services for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Steel Building/Structure Construction Services category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

"Differing Site Conditions" means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

"Final Acceptance" means the completion of the Project as prescribed in Article 10.

"Float" means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

"Legal Requirements" means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

"Liquidated Damages" means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Details for Public Works Construction.

"Materials" means goods, items, or supplies utilized in the completion of the Work.

"Notice to Proceed" or "NTP" means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

"Payment Application" means the City form used by the Contractor to request payment for Work performed.

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

"Project" means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

"Project Schedule" means a schedule as prescribed in this Contract or subsequent Job Orders.

"Project Record Documents" means the documents created pursuant to Article 12.

"Samples" means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

"Schedule of Construction" means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to the City for inspection and copying upon the City's request at any time. Additionally, such records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, audio or video recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: BWC Enterprises, Inc. dba Woodruff Construction
Wade Woodruff, President
9401 N. 7th Avenue
Phoenix, Arizona 85282
Phone: 480.921.1925
Email: wade.woodruff@woodruffaz.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

BWC ENTERPRISES, INC. DBA WOODRUFF CONSTRUCTION, an Arizona corporation

wade woodruff
_____
Wade Woodruff, President

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

William Kauppi
_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

Adobe Acrobat Sign Transaction Number: CBJCHBCAABAAmB4xz8aIsNQrvW[illegible]mguu

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
ROAD CONSTRUCTION SERVICES
BETWEEN
CITY OF BUCKEYE
AND
BWC ENTERPRISES, INC. DBA WOODRUFF CONSTRUCTION

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
ACHEN-GARDNER CONSTRUCTION, LLC

CONTRACT NO. 2025100

This JOB ORDER CONTRACT FOR Category 1: Water/Wastewater Pipeline Utility & Infrastructure (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and Achen-Gardner Construction, LLC, an Arizona limited liability company (the "Contractor"). This Contract is for Water/Wastewater Pipeline Utility & Infrastructure, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – Water/Wastewater for "Category 1: Water/Wastewater Pipeline Utility & Infrastructure (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Water/Wastewater Pipeline Utility & Infrastructure.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Water/Wastewater Pipeline Utility & Infrastructure for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Water/Wastewater Pipeline Utility & Infrastructure category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

"Differing Site Conditions" means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

"Final Acceptance" means the completion of the Project as prescribed in Article 10.

"Float" means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

"Legal Requirements" means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

"Liquidated Damages" means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Details for Public Works Construction.

"Materials" means goods, items, or supplies utilized in the completion of the Work.

"Notice to Proceed" or "NTP" means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

"Payment Application" means the City form used by the Contractor to request payment for Work performed.

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

"Project" means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

"Project Schedule" means a schedule as prescribed in this Contract or subsequent Job Orders.

"Project Record Documents" means the documents created pursuant to Article 12.

"Samples" means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

"Schedule of Construction" means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to the City for inspection and copying upon the City's request at any time. Additionally, such records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, audio or video recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: Achen-Gardner Construction, LLC
Dan Spitza, President
2195 W. Chandler Blvd, Suite 200
Chandler, Arizona 85224
Phone: 480.403.9432
Email: dspitza@achen.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

ACHEN-GARDNER CONSTRUCTION, LLC,
an Arizona limited liability company

_____
Dan Spitza, President

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

Adobe Acrobat Sign Transaction Number: CBJCHBCAABAAdVVDrfqFMPs1X0r

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
WATER/WASTEWATER PIPELINE UTILITY & INFRASTRUCTURE
BETWEEN
CITY OF BUCKEYE
AND
ACHEN-GARDNER CONSTRUCTION, LLC

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
B & F CONTRACTING, INC.

CONTRACT NO. 2025101

This JOB ORDER CONTRACT FOR Category 1: Water/Wastewater Pipeline Utility & Infrastructure (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and B & F Contracting, Inc., an Arizona corporation (the "Contractor"). This Contract is for Water/Wastewater Pipeline Utility & Infrastructure, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – Water/Wastewater for "Category 1: Water/Wastewater Pipeline Utility & Infrastructure (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Water/Wastewater Pipeline Utility & Infrastructure.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Water/Wastewater Pipeline Utility & Infrastructure for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Water/Wastewater Pipeline Utility & Infrastructure category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

"Differing Site Conditions" means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

"Final Acceptance" means the completion of the Project as prescribed in Article 10.

"Float" means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

"Legal Requirements" means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

"Liquidated Damages" means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments' (MAG) Uniform Standard Specifications and Details for Public Works Construction.

"Materials" means goods, items, or supplies utilized in the completion of the Work.

"Notice to Proceed" or "NTP" means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

"Payment Application" means the City form used by the Contractor to request payment for Work performed.

"Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

"Project" means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

"Project Schedule" means a schedule as prescribed in this Contract or subsequent Job Orders.

"Project Record Documents" means the documents created pursuant to Article 12.

"Samples" means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

"Schedule of Construction" means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to the City for inspection and copying upon the City's request at any time. Additionally, such records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, audio or video recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6225

If intended for Contractor, to: B & F Contracting, Inc.
Josh Onstott, Executive Director
11011 N. 23rd Avenue
Phoenix, Arizona 85029
Phone: 480.403.9432
Email: jonstott@bfcontracting.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

B & F CONTRACTING, INC.,
an Arizona corporation

_____
Josh Onstott, Executive Director

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

Adobe Acrobat Sign Transaction Number: CBJCHBCAABAA9Gbbgq5Zy7e60cSr

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
WATER/WASTEWATER PIPELINE UTILITY & INFRASTRUCTURE
BETWEEN
CITY OF BUCKEYE
AND
B & F CONTRACTING, INC.

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

JOB ORDER CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
HAYDON COMPANIES, LLC

CONTRACT NO. 2025102

This JOB ORDER CONTRACT FOR Category 1: Water/Wastewater Pipeline Utility & Infrastructure (the "Contract") is made and entered into, by and between the City of Buckeye, an Arizona municipal corporation (the "City") and Haydon Companies, LLC, an Arizona limited liability company (the "Contractor"). This Contract is for Water/Wastewater Pipeline Utility & Infrastructure, and issued as required by award of individual Job Orders (the "Project").

RECITALS

A. The City issued a Request for Qualifications entitled "Job Order Contracting – Water/Wastewater for "Category 1: Water/Wastewater Pipeline Utility & Infrastructure (the "RFQ") incorporated herein by reference, seeking proposals from vendors interested in providing Water/Wastewater Pipeline Utility & Infrastructure.

B. The Contractor submitted a statement of qualifications (the "SOQ"), attached hereto as Exhibit A, in response to the RFQ, attached hereto as Exhibit B, and both Exhibits are incorporated herein by reference, and the City desires to enter into an Agreement with the Contractor for indefinite quantity and indefinite delivery for various projects related to Water/Wastewater Pipeline Utility & Infrastructure for the City. The Projects may include Design Services, preconstruction services, permitting regulatory requirements and as-built/close-out documents (collectively the "Services").

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements stated herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and the Contractor agree as follows:

ARTICLE 1
CONTRACT TERM

1. This Contract has a base period of one (1) year and four (4) option periods of one (1) year each that may be exercised in the sole discretion of the City. Any exercise of any option to renew this Contract beyond the base period will only be effective upon written notice from the City. The time period during which this Contract is in effect is the "Term".

2. The Contract Time for each Job Order shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth below. The NTP will not be issued until prior approval and acceptance by the City of the Job Order.

3. The Contract Time is identified in the Job Order as the Contract Duration in terms of calendar days. Contractor agrees that it will commence performance of the Work after receiving an official NTP letter and complete the Project through both Substantial Completion (if applicable) and Final Completion within the Contract Time.

4. Time is of the essence of this Contract, and each Job Order issued hereunder, for each Project, and for each phase and/or designed milestone thereof.

5. Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of a specific Job Order and/or this Contract by the City. The City will assess liquidated damages as described in each Job Order for each calendar day of delay beyond the Final Completion date.

ARTICLE 2
OVERVIEW OF JOB ORDER CONTRACTING UNDER THIS CONTRACT

1. This Contract establishes an indefinite delivery, indefinite quantity, Job Order Contract for such Services within the scope of this Contract as the City may request from time to time by issuance of an individual Job Order for each Project. Unless otherwise specified in a specific Job Order, Job Orders generally will not include Design Services and that where Design Services are necessary, the City will provide them under separate contract. There will be a separate Job Order for each Project that will describe the Work to be provided by Contractor for that Project. There may be multiple projects and therefore multiple Job Orders under this Contract.

2. The amount to be paid by the City for the Project under each Job Order is the Contract Price for that Job Order. The Job Order price will include a total amount for each Job Order priced for the Work described for that Job Order. The Contract Price for any Job Order will be established as a Firm Fixed Price, subject to the following:

   (a) Estimated values for individual projects are estimated at $100,000.00 to $1,000,000.00. Most projects will be completed within the same fiscal year they are initiated in or within three hundred sixty-five (365) days from the Notice to Proceed. Projects may extend into the next fiscal year and beyond, but in no instance will any one project under this Contract exceed $2,000,000.00. The total Job Orders for a single contractor issued during a single fiscal year will not exceed $6,000,000.00.

   (b) There is no limit on the number of Job Orders that the City may issue to the Contractor during the term of this Contract. Likewise, there is no requirement that the City issue any Job Orders to the Contractor during the Term of this Contract.

3. This Contract is non-exclusive. The City shall have the right to engage other contractors to perform the Services or to self-perform the Services.

4. No Contract in relation to any specific Work is in effect until a Job Order has been fully executed by the City and Contractor.

5. During the Term of this Contract, the City will issue an individual Job Order request for proposal to the Contractors under the JOC Water/Wastewater Pipeline Utility & Infrastructure category for each Project or negotiate directly with a contractor. Each Job Order will have specific instructions concerning that Job Order. The Contractor will follow these specific instructions when preparing a response in the form of a Job Order Proposal.

6. The general steps for development of a Job Order are:

   (a) When the City identifies a need for performance of a Project under a Job Order; the City will issue an RFP to the Contractor and also advise the Contractor of the nature of the Work to be done. This is done either by a delivery order request for proposal or through direct negotiations utilizing the rankings from the RFQ evaluation process as specified in the RFQ. At the same time, the City will advise the Contractor if Design Services are required and how those services will be provided. Within seven (7) working days of receipt of this notification, the Contractor will:

      (i) Visit the proposed Project Site with City designated representatives; and
      (ii) Arrange with the City to further define the scope of the Project.

   The Contractor shall thoroughly acquaint itself with all available information concerning the conditions of the Work under each Job Order and is responsible for correctly and fully estimating the difficulty of performing the Work, the actions required to perform the Work and the cost of successfully performing the Work under each Job Order.

   (b) The City may arrange for any needed Design Services to produce the Drawings and Specifications. Design Services will not begin until the scope of Design Services is approved by the City. The Drawings and Specifications developed by the Design Services are subject to approval by the City. If there are no Design Services, the City will develop Drawings and Specifications consisting of a line drawing and a written description of the contemplated Work.

   (c) Upon establishment of the scope of work, the Contractor will prepare its proposal for accomplishment of the Project. The proposal will include pricing and schedule for completion of the Project.

7. Upon award of a Job Order, a signed copy of the Job Order will be mailed or electronically forwarded to the Contractor. Failure by the Contractor to pick up or receive the mailed or

electronic orders shall not relieve the Contractor from the obligation to complete the Work under the Job Order in accordance with the terms of this Contract or the terms of each Job Order.

8. The City may provide a verbal NTP for the Work in advance of issuing the formal NTP letter (which will be followed up with a written NTP). Normally, NTP will be issued under separate cover from the Job Order. The Contract duration starts with the date on the NTP letter.

ARTICLE 3
DEFINITIONS

"Addenda" means written or graphic instruments issued prior to the submittal of the Proposal(s), which clarify, correct or change the Proposal(s) requirements.

"Agreement" or "Contract" means the executed agreement between the City and Contractor, including any amendments to the executed Agreement.

"Certificate for Payment" means the City form issued by the City to certify amount due and payable by the City to the Contractor.

"Certificate of Final Completion" means the City form issued by the City to the Contractor stating the Work required under the Contract has been completed.

"Certificate of Substantial Completion" means the City form issued by the City to the Contractor certifying that the Work under the Contract is considered sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Change Order" means a written instrument issued after execution of a Job Order or this Contract signed by the City and the Contractor, stating their agreement upon all of the following: the scope of the change in the Work; the amount of the adjustment to the Contract Price; and the extent of the adjustment to the Contract Time(s). A Change Order is an amendment to the Agreement.

"City" means the City of Buckeye, a municipal corporation, with whom Contractor has entered into this Contract and for whom the Services is to be provided pursuant to said Contract.

"City's Project Criteria" means information developed by or for the City to describe the City's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Contractor's performance of the Work. The City's Project Criteria may include conceptual documents, design criteria, performance requirements and other Project-specific technical materials and requirements.

"City's Representative" means the person designated within this Contract.

"Commissioning" means the process for achieving, validating and documenting the performance of the Project including any works and its systems to meet the design needs and requirements of the City.

"Construction Documents" means the plans, specifications and drawings prepared by the Contractor or a Consultant.

"Construction Drawings" means the detailed drawings approved as part of the approved Construction Documents.

"Construction Work" means the construction component of the Project.

"Contract Documents" means the following items and documents in descending order of precedence: (i) all written modifications, amendments and Change Orders to this Contract; (ii) this Contract, including all exhibits and attachments, executed by the City and Contractor to include each Job Order; (iii) written supplementary conditions; (iv) Construction Documents prepared and approved; (v) Contractor's approved Variations of the City's Project Criteria, as contained in Exhibit A.; (vi) City's Project Criteria; (vii) Contractor's Proposal(s), except for accepted Variations of the City's Project Criteria, submitted in response to City's Project Criteria.

"Contract Price" means the amount or amounts set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Contract Time" means the Days set forth in each awarded Job Order subject to adjustment in accordance with this Contract.

"Job Order" means a specific written agreement between the City and the Contractor for Work to be performed under this Contract for an individual, mutually agreed upon scope of work, schedule and price.

"Day(s)" means calendar days unless otherwise specifically noted in the Contract Documents.

"Deliverables" means the work products prepared by the Contractor in performing the scope of work described in each Job Order.

"Design Services" means all professional services to be performed or procured by the Contractor or by the City to provide required Project design under this Contract and any subsequent amendments.

"Job Order Contractor" means the firm, corporation, or other approved legal entity with whom the City has entered into this Contract to provide services as detailed in this Contract. The term Contractor may be used to identify the Job Order Contractor.

“Differing Site Conditions” means concealed or latent physical conditions or subsurface conditions at the Site that, (i) materially differ from the conditions indicated in the Scope of Work issued with each Job Order or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

“Final Acceptance” means the completion of the Project as prescribed in Article 10.

“Float” means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

“Legal Requirements” means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

“Liquidated Damages” means a specified amount due by the Contractor when in breach of the Contract. The amount is determined based off of the Contract Price and predetermined amounts from the Maricopa Association of Governments’ (MAG) Uniform Standard Specifications and Details for Public Works Construction.

“Materials” means goods, items, or supplies utilized in the completion of the Work.

“Notice to Proceed” or “NTP” means the directive issued by the City, authorizing the Contractor to start Work or a portion of the work.

“Payment Application” means the City form used by the Contractor to request payment for Work performed.

“Product Data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

“Project” means the Work to be completed in the execution of any awarded Job Order and as amended and as prescribed as any Scope of Work in identified in each awarded Job Order. Project means the Work associated with each awarded Job Order issued under this Contract.

“Project Schedule” means a schedule as prescribed in this Contract or subsequent Job Orders.

“Project Record Documents” means the documents created pursuant to Article 12.

“Samples” means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

“Schedule of Construction” means the timeline submitted by the Contractor for the completion of the Work.

"Schedule of Values (SOV)", means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the awarded Job Order Price for the Work, or for any portion of the Work having a separate specified Contract Price.

"Shop Drawings" mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

"Scheduled Substantial Completion Date" means the calendar date equal to the Notice to Proceed date established plus the number of Days established in each Job Order.

"Site" means the land or locations on which the Project is located, as more particularly described in the Job Order.

"Subcontractor" or "Sub consultant*"* means any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include material, men and suppliers.

"Substantial Completion" means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete so that the City can occupy and use the Project or a portion thereof for its intended purposes.

"Technical Consultant" means an agent of the City who furnishes project management assistance (if applicable to a Job Order).

"Variations of the City's Project Criteria" means agreed changes to the City's Project Criteria by both Parties.

"Work" means as defined in Article 5, Paragraph 2.

ARTICLE 4
DESIGN PHASE AND DESIGN SERVICES

1. Costs for Preconstruction services will be included in Contractor's firm fixed price cost proposal.

2. Normally the City will obtain Design Services from a consultant or prepare design documents using City Staff. However, Contractor may also be required to provide incidental Design Services for all or a portion of the Work to be constructed under a specific Job Order. If consulting services for design and the preparation of Plans and Specifications are required; they will be paid for as a separate line item in the Contractor's price proposal.

ARTICLE 5
CONSTRUCTION SERVICES

1. Contractor shall perform all Work necessary to construct the Project in accordance with all applicable Legal Requirements, this Contract and the specifications outlined in each Job Order, and render the Project and all its components operational and functionally and legally usable for their intended purpose.

2. The term "Work" shall mean whatever is done by or required of Contractor to perform and complete its duties relating to the construction of each Job Order under the Contract, including, without limitation, the following:

   A. Construction of the whole and all parts of the Project in full and strict conformity with each Job Order;

   B. The provision and furnishing, and prompt payment therefore, of all labor, supervision, services, materials, supplies, equipment, fixtures, appliances, facilities, tools, transportation, storage, power, fuel, heat, light, cooling, other utilities and things required for the construction of each Job Order;

   C. The procurement and furnishing of all necessary permits and other permits required for the construction of each Job Order;

   D. The creation and submission to the City of detailed as-built drawings depicting all as-built construction;

   E. The furnishing of any required surety bonds and insurance as may be required by each Job Order;

   F. The furnishing of all equipment and product warranties, manuals, test results and user guides required by each Job Order or otherwise reasonably available to Contractor;

   G. The furnishing of all other services and things required or reasonably inferable from the Contract Documents, including the provisions of Article 6 below.

ARTICLE 6
TIME FOR CONSTRUCTION: THE CONTRACT TIME

1. After the City has awarded each Job Order, the City shall issue a NTP directing Contractor to proceed with the Work on the date indicated in the notice (the "Commencement Date"). Work shall commence within ten (10) days of the Commencement Date.

2. Contractor shall commence the Work within ten (10) days of the Commencement Date, and the Work shall be carried out regularly and without interruption. Contractor shall substantially complete the Work no later than the date established in each Job Order or such other date as may be issued by a Change Order (the "Scheduled Completion Date"). The number of calendar days between the effective date of the Contract and the Scheduled Completion Date is the "Contract Time". Contractor shall achieve Final Completion of the Work no later than thirty (30) calendar days after achieving Substantial Completion.

3. Contractor understands that if Substantial Completion for entire project is not attained by the Scheduled Substantial Completion date, the City will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Contractor shall pay the City the amount established in each Job Order as liquidated damages for each day that Substantial completion extends beyond the Scheduled Substantial Completion Date.

4. All limitations of time set forth in each Job Order are material and time is of the essence of each Job Order.

ARTICLE 7
ADDITIONAL DUTIES AND RESPONSIBILITIES OF CONTRACTOR

1. The intent of this Contract is to require complete, correct and timely execution of all Job Orders awarded for the Construction Work. Any and all Construction Work that may be required reasonably implied or reasonably inferred by each Job Order as necessary to produce the intended result shall be provided by Contractor for the Construction Price as provided in each awarded Job Order.

2. All Work performed by Contractor shall be in strict compliance with each Job Order. "Substantial Compliance" is not strict compliance. Any Construction Work not in strict compliance with each Job Order is defective.

3. The Construction Work shall be strictly supervised and directed using Contractors best and highest skill and effort. Contractor shall bear full responsibility for any and all acts or omissions of those engaged in the Construction Work on behalf of the Contractor.

4. Contractor warrants and guarantees to the City that all labor furnished to perform the Construction Work under each Job Order will be competent to perform the tasks undertaken and is the best quality obtainable, that the product of such labor will yield only superior results in strict compliance with the requirements of each Job Order, that materials and equipment furnished will be of high quality and new unless otherwise permitted by the Job Order, and that the Construction Work will be of high quality, free

from faults and defects and in strict conformance with the requirements found in each Job Order. Any and all Construction Work not strictly conforming to these requirements shall be considered defective and shall constitute a breach of Contractor's warranty.

5. Special or specific guarantees and warranties which are required by each Job Order to run for a fixed period of time shall commence running on the date of Substantial Completion of all Construction Work. In general, Contractor warrants all work, including labor and materials, for a period of two (2) years from the date of Substantial Completion, unless otherwise specified in the Job Order.

6. Contractor, within fifteen (15) days after the Commencement Date, shall submit to the Manager of Construction and Contracting for his information, and shall comply with, Contractor's Schedule of Construction for each Job Order awarded. The Schedule of Construction shall reflect the performance of all Construction Work on weekdays and non-holidays. The Schedule of Construction shall be a detailed critical path (CPM) schedule in a form acceptable to the City. The Schedule of Construction shall be revised at least monthly and shall be revised to reflect conditions encountered from time to time and shall be related to the entire Project awarded as a Job Order. Each such revision shall be furnished to the City. Strict compliance with the requirements of this Paragraph shall be a condition precedent for payment to Contractor, and failure to strictly comply with this requirement shall constitute a material breach of the Contract. No claim for an increase in the Construction Price shall be allowed as a result of Contractor basing the Construction Price upon an early completion schedule, or as a result of delays and costs attributable to completion later than the planned early completion date.

7. Contractor shall continuously maintain at the Site, for the benefit of the City, an updated copy of the awarded Job Order, including one record copy of the Job Order Documents marked to record on a current basis changes, selections and modifications made during construction. Additionally, Contractor shall maintain at the Site, for the benefit of the City, a copy of all Shop Drawings, Product Data, Samples, and other Submittals, if any, that are specified in the awarded Job Order. Upon Final Completion of the Construction Work, or upon the City's request, all of the documents described in this Paragraph shall be finalized and delivered to the City and shall become the property of the City.

8. Contractor shall review, study, and approve, or take other necessary action upon all Shop Drawings, Product Data, Samples, and other Submittals to ensure that each Job Order will be constructed in a timely fashion in strict compliance with the requirements of the Contract and Job Order. No deviation from, substitution for or other modification from the Documents shall be allowed by Contractor in a shop drawing or submittal without written approval, in the form of a Change Order from the City, and signed by the parties hereto. Contractor shall engage in prompt and adequate review of Shop Drawing and other Submittals to maintain the Construction Schedule; Contractor also warrants it will

use its best independent professional judgment in its review to determine compliance with the Contract Documents.

9. The City shall also, in its discretion, have the right to review and approve Submittals. In the event that the City exercises the foregoing right to review, Contractor shall not perform any portion of the Construction Work unless and until the City approves in writing such Submittal. Any such approval shall not be evidence that Construction Work installed pursuant to the City's approval conforms to the requirements of the Contract nor shall such approvals relieve Contractor of any of its responsibilities or warranties under the Contract. If the City elects to review Submittals, Contractor shall maintain a Submittal log which shall include, at a minimum, the date of each Submittal, the date of any resubmittal, the date of any approval or rejection, and the reason for any approval or rejection. Contractor shall have the duty to carefully review, inspect and examine any and all Submittals before submission of same to the City. Shop Drawings and other Submittals from Contractor do not constitute a part of this Contract.

10. Contractor shall procure from all Subcontractors and Suppliers and shall transmit to the City, all warranties required by the Contract. Contractor shall review all such warranties and shall certify to the City that the warranties are in strict compliance with the requirements of the Contract.

11. Contractor shall prepare or procure and shall transmit to the City all documentation required by this Contract regarding the operation and recommended maintenance programs relating to the various elements of the Construction Work.

12. If required in the Job Order, Contractor shall prepare and provide to the City a complete set of all as-built drawings which shall be complete and, except as specifically noted, shall reflect performance of the Construction Work in strict compliance with the requirements of this Contract.

13. Contractor shall assume all labor responsibility for all personnel assigned to or contracted for the performance of the Construction Work and agrees to strictly comply with all its obligations as employer with respect to said personnel under all applicable labor laws.

14. Contractor shall be responsible for procuring all tests and inspections required by sound professional practices and by governmental authorities having jurisdiction over the Project. Contractor shall submit certified results of such tests to the City. If the laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any Construction Work to be specifically inspected, tested, or approved, Contractor shall assume full responsibility therefore, pay all costs in connection therewith and furnish to the City the required certificates of inspection, testing or approval.

15. Contractor shall, during the course of the Construction Work, comply with any regulations or guidelines prescribed by the City. Contractor warrants that it will comply with all public laws, ordinances, rules and regulations applicable to the services to be performed under the Contract, including without limitation, those relating to the terms and conditions of the employment of any person by Contractor in connection with the Construction Work to be performed under the Contract.

16. Contractor shall perform the Construction Work in accordance with all construction codes, laws, ordinances or regulations applicable to the design and execution of the Construction Work. Any fine or penalty which may be imposed as consequence of any violation of this provision shall be paid by Contractor, and Contractor, to the fullest extent permitted by the law, shall fully defend, indemnify and hold the City harmless for, from and against all loss, damage, and expense, including attorney's fees, resulting from any such violation or alleged violation of codes, laws, ordinances, or regulations, regardless of a concurrent contribution by the City, through negligence or other wrongful act, to such loss, damage, or expense, except that such indemnity shall not apply if the violation is solely and directly caused by a negligent or willful act or omission of the City, its officers, agents, or employees.

17. All construction and building permits, licenses and authorizations necessary for the construction of the Project shall be secured and paid for by Contractor. Contractor shall notify the City when it has received said permits, licenses, and authorizations, and upon receipt shall supply the City with copies of same. The originals of permits, licenses and authorizations shall be delivered to the City upon completion of the Construction Work, and receipt of these documents by the City shall be a condition precedent to final payment. Contractor shall also give and maintain any and all notices required by applicable laws pertaining to the construction of the Construction Work.

18. While on the City's property, all Contractor's employees and Subcontractors shall confine themselves to areas designated by the City and will be subject to the City's badge and pass requirements, if any, in effect at the Site of the Construction Work.

19. Contractor shall take all reasonable steps and legally required measures at the site to comply with applicable safety regulations and standards and to adequately protect the Construction Work, stored materials, and temporary structures located on the premises, and to prevent unauthorized persons from entering upon the site. Contractor shall at all times safeguard the City's property and employees from injury or loss in connection with the performance of the Contract. Contractor shall at all times safeguard and protect its own partially or completely finished Construction Work and that of the adjacent property and all adjacent construction Work from damage. Contractor shall protect the City's equipment, apparatus, machinery, and other property and all adjacent construction Work with boarding and other safeguards so as to keep the premises free

from dampness, dirt, dust, or other damage and shall remove all such temporary protection upon completion of the Construction Work.

20. Unless otherwise instructed by the City, Contractor shall repair and return to original condition all buildings, streets, curbs, sidewalks, utilities or other facilities affected by Contractor's performance of the Construction Work.

21. Contractor shall keep the site reasonably clean during performance of the Construction Work. Upon Final Completion of the Construction Work, Contractor shall thoroughly clean the site and the Project and remove all waste, debris, trash and excess materials or equipment, together with Contractor's property therefrom.

22. At all times relevant to the Contract, Contractor shall provide access to the Construction Work to the City and its designees without formality or other procedure.

23. The City's decisions in matters relating to aesthetic standards and effect shall be final.

24. In performing both Design Services and Construction Work under this Contract, the relationship between the City and Contractor is that of independent contractor, and the execution of this Contract does not change the independent status of Contractor. Contractor shall exercise independent judgment in performing its duties under this Contract and is solely responsible for setting working hours, scheduling or prioritizing the Contract work flow and determining how all Contract work is to be performed. No term or provision of this Contract or act of Contractor in the performance of this Contract shall be construed as making Contractor the agent, servant or employee of the City, or making Contractor or any of its employees eligible for the fringe benefits, such as retirement, insurance and worker's compensation, which the City provides its employees.

ARTICLE 8
CONTRACT PRICE

1. The City shall pay, and Contractor shall accept, as full and complete payment for all Work associated with each Job Order the amount approved and awarded to the Contractor as a Job Order. Each Job Order will be a separate contract under this Contract. The general terms and conditions will be established by this Contract and special contract provisions will be established within each Job Order.

2. Job Order Construction Price, unless changed by Change Order, represents the absolute limit of obligation or liability that the City may ever have insofar as the cost for full and final completion of the Work, and the total of all payments to Contractor or its Subcontractors are concerned. Should additional amounts be required to be expended, over and above a Job Order Construction Price, to achieve completion of the Construction Work, including Project construction, and payment to Contractor, in accordance with this

Contract and any Special Provisions included in each awarded Job Order, liability for and payment of such additional amounts shall be the sole responsibility of Contractor and its Contract Surety herein, and the City shall never be liable for same.

3. In addition to the Construction Work Contractor will perform, it will also provide all the usual and necessary traditional construction management services incident to construction projects of the nature and scope of this Project, for which the Contract Price described in this Contract is paid. Such construction management services are not intended in any manner to diminish the overall responsibility of Contractor for the full and final completion of the Construction Work within the time and cost constraints specified in this Contract.

4. The City agrees to pay Contractor for the Cost of the Construction Work as defined in each Job Order, subject to submission by Contractor of all backup substantiation as may be reasonably required by the City. In no event shall the sum of payments for the Cost of the Construction Work and any other Contractor compensation exceed the Construction Price, as adjusted by Change Order. The term "Cost of the Construction Work" shall be defined in each Job Order and be established as a Firm-Fixed Price Contract.

ARTICLE 9
PAYMENT OF THE CONTRACT PRICE

1. Payments of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

2. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

3. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

4. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Payment Application, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

5. Payment may be withheld in whole or in part to protect the City on account of:

    a. Unsatisfactory job progress as determined by the City.
    b. Defective Work or materials not remedied.
    c. Disputed Work or materials.
    d. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.
    e. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
    f. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
    g. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
    h. Deficiencies or claims asserted by the City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate for Payment, the City shall pay to the Contractor 90% of the value of the Work in place and materials suitably stored at the Site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

6. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

a. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from subcontractors and major suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.
b. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

ARTICLE 10
SUBSTANTIAL AND FINAL COMPLETION

1. "Substantial Completion" means that stage in the progression of the Construction Work, as approved by the City in writing, when the Project is sufficiently complete in accordance with the Contract that the City can enjoy beneficial use or occupancy of the entire Project and can utilize it for all of its intended purposes. A condition precedent to Substantial Completion is the receipt by the City of all necessary authorizations for the use of the Project required by any governmental or regulatory authority. The City reserves the right to use any part, phase or system of the Project when such part, phase or system is substantially completed, but such partial use of the Project shall not result in the Project being deemed substantially complete, and such partial use shall not be evidence of Substantial Completion.

2. When Contractor believes that the Construction Work is substantially complete, Contractor shall notify the City in writing and shall submit to the City a list of items remaining to be completed or corrected. The City, the City's designee, (or an independent consultant hired by the City) will perform an inspection. If the Construction Work is substantially complete, in the sole opinion of the City, the City will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion. The Certificate of Substantial Completion shall state the responsibilities of the City and Contractor for Project security, maintenance, damage to the Construction Work, and insurance, and shall fix the date, not more than 30 days after the established date of Substantial Completion, within which Contractor shall complete any items of incomplete or defective Construction Work. The Certificate of Substantial Completion shall be submitted to Contractor for its written acceptance of the responsibilities assigned to it in such certificate.

3. Within thirty (30) days following (a) Substantial Completion of the Construction Work, and (b) the parties' execution of the Certificate of Substantial Completion the City will remit payment of all sums due Contractor, including such amount of retainage based upon the value of remaining performance, less the reasonable costs for completing all incomplete Construction Work and/or any Design Services, correcting and bringing into strict conformance all defective and nonconforming Construction Work, and

handling all outstanding or threatened claims. Such payment less reasonable costs shall be determined by the City in its sole and absolute discretion.

4. "Final Completion" means the completion of all Work required by, and in strict compliance with, this Contract, the Job Order, including Contractor's provision to the City of all documents and deliverables required to be provided by the Contract.

5. When Contractor believes that all of the Construction Work is finally complete, and Contractor is ready for a final inspection, Contractor shall so notify the City in writing. The City (or an independent consultant hired by the City) will then make final inspection of the Construction Work and, if the Construction Work is complete in strict accordance with the Contract, and the Contract has been fully performed, then the City will issue a Certificate for Final Payment, providing for payment of the remainder of the Contract Price, less any amount withheld pursuant to the Contract.

6. The City shall make final payment of all remaining sums due to Contractor within thirty (30) days after Final Completion as reflected by the City's Certificate for Final Payment, provided that all documents and deliverables required to be delivered to the City under this Contract have been delivered as required, and provided that all other conditions precedent to payment have been satisfied.

7. Prior to being entitled to receive final payment, and as a condition precedent thereto, Contractor shall furnish the City, in the form and manner required by the City, the following:

    (a) a signed and notarized statement of final payment and release, in particular certifying that all Subcontractors and Suppliers have been paid all sums lawfully due to them, and releasing the City from all claims that Contractor had or might have asserted during the performance of this Contract;
    (b) if required by the City, separate releases of lien or lien waivers from each Subcontractor, lower tier subcontractor, laborer, Supplier or other person or entity who has, or might assert a claim against the City or the City's property;
    (c) consent of surety to final payment;
    (d) a complete set of the as-built drawings to include AutoCAD disks and the record set of Contract Documents; and
    (e) All product warranties, operating manuals, instruction manuals and other record documents, drawings and things customarily required of a Contractor, or expressly required herein, as a part of or prior to Project closeout.

8. Acceptance by Contractor of final payment shall constitute a waiver and release of all claims against the City by Contractor except for those claims previously made in writing against the City by Contractor, pending at the time of final payment and specifically identified on Contractor's pay request for final payment as unsettled at the time it submits its pay request.

ARTICLE 11
CITY'S DUTIES, OBLIGATIONS, AND RESPONSIBILITIES

In addition to payment, the City shall undertake to perform the following:

1. The City shall provide Contractor with information regarding the City's requirements for the Project including any desired or required design or construction schedule.

2. The City shall review any documents submitted by Contractor requiring the City's decision, and shall render any required decisions pertaining thereto.

3. In the event the City has actual knowledge of (a) any material fault or defect in the Construction Work, (b) nonconformance with the Contract, or (c) errors, omissions or inconsistencies in the Design Documents, the City shall give prompt written notice thereof to Contractor.

4. The City shall provide Contractor access to the Site and to the Construction Work, and shall provide Contractor with such information, existing and reasonably available, necessary to Contractor's performance of the Contract as Contractor may request.

5. The City shall cooperate with Contractor in securing any necessary licenses, permits, approvals or other necessary authorizations for the design, construction and certification of the Project.

6. The City shall perform the duties set forth in this Article 11 in a reasonably timely manner so as to permit the orderly and timely progress of Contractor's Design Services and of the Construction Work.

7. The City's review, inspection, or approval of any Construction Work, Design Documents, Submittals, or pay requests by Contractor shall be solely for the purpose of determining whether such Construction Work and such documents are generally consistent with the City's construction program and requirements. No review, inspection, or approval by the City of the Construction Work or documents shall relieve Contractor of its responsibility for the performance of its obligations under the Contract or the accuracy, adequacy, fitness, suitability, or coordination of its Design Services or the Construction Work. Approval by any governmental or other regulatory agency or other governing body of any Construction Work, Design Documents, or

Contract Documents shall not relieve Contractor of responsibility for the strict performance of its obligations under the Contract. Payment by the City pursuant to the Contract shall not constitute a waiver of any of the City's rights under the Contract or at law, and Contractor expressly accepts the risk that defects in its performance, if any, may not be discovered until after payment, including final payment, is made by the City.

8. The City's agreement not to exercise, or its delay or failure to exercise, any right under the Contract or to require strict compliance with any obligation of Contractor under the Contract shall not be a waiver of the right to exercise such right or to insist on such compliance at any other time or on any other occasion.

9. The City shall furnish to Contractor, prior to the execution of each Job Order, any and all written and tangible material knowingly in its possession concerning conditions below ground at the site of the Project. Such written and tangible material is furnished to Contractor only in order to make complete disclosure of such material and for no other purpose. By furnishing such material, the City does not represent, warrant, or guarantee its accuracy or completeness either in whole or in part, and shall have no liability therefore. If Contractor requests in writing, the City shall also furnish surveys, legal limitations, and utility locations (if known), and a legal description of the Project site.

10. The City shall obtain all easements required for construction, and shall pay for necessary assessments and charges required for use and occupancy of the Construction Work. Contractor shall render such assistance as the City may request in obtaining such easements, certificates of occupancy, and the like.

11. In the event Contractor fails or refuses to perform the Construction Work in strict accordance with the Contract, or is otherwise in breach of this Contract in any way, the City may, at its option, instruct Contractor to cease and desist from performing further Construction Work, or any part thereof. Upon receipt of such instruction from the City in writing, Contractor shall immediately cease and desist as instructed by the City and shall not proceed further until the cause for the City's instructions has been corrected, no longer exists, or the City instructs that the Construction Work may resume.

12. In the event the City issues such instructions to stop Construction Work, and in the further event that Contractor fails and refuses within seven (7) days of receipt of same to provide adequate assurance to the City that the cause of such instructions will be eliminated or corrected, then the City shall have the right to carry out the Construction Work with its own forces, or with the forces of other contractors, and Contractor shall be fully responsible for the costs incurred in correcting any defective or deficient Construction Work. The rights set forth in Article 11, Paragraph 11 and

this Article 11, Paragraph 12 are in addition to, and without prejudice to, any other rights or remedies the City may have against Contractor, including the rights to terminate or withhold payment as provided herein.

ARTICLE 12
JOB ORDER (PROJECT) DOCUMENTATION

1. Contractor shall maintain and protect all records relating in any manner whatsoever to the Project (the "Project Records") for no less than four (4) years after Final Completion of the Project, and for any longer period of time as may be required by law or good management practice.

2. All Project Records which are in the possession of Contractor or Contractors Subcontractors shall be made available to the City for inspection and copying upon the City's request at any time. Additionally, such records shall be made available upon request by the City to any state, federal or other regulatory authorities and any such authority may review, inspect and copy such records. The Project Records include, without limitation, all drawings, plans, specifications, Submittals, correspondence, logs, minutes, memoranda, photographs, audio or video recordings, or other writings or things which document the Project, its design, or its construction. Said records include those documents reflecting the cost of design and construction to Contractor.

ARTICLE 13
PERSONNEL, SUBCONTRACTORS AND SUPPLIERS

1. A "Subcontractor" means an entity which has a direct contract with Contractor to perform a portion of the Construction Work or the Design Services. For purposes of the Contract, Subcontractors shall also include those furnishing any equipment and materials for the Project.

2. A "Supplier" means an entity providing only equipment or materials for the performance of the Construction Work.

3. Upon execution of this Contract, and at such later times as may be applicable, Contractor shall furnish the City, in writing, the names of persons or entities proposed by Contractor to act as Subcontractors on the Project. Contractor shall provide such information regarding such proposed Subcontractors as the City deems necessary. The City shall promptly reply to Contractor, in writing, stating any objections the City may have to such proposed Subcontractors (“disapproved Subcontractor”). With respect to this Contract and the subject matter hereto, Contractor shall not engage the services of or otherwise enter into a contract with a disapproved Subcontractor. Notwithstanding the foregoing, any consent or failure to reject a subcontractor by the City shall in no way relieve Contractor of any of its duties or warranties under this Contract.

4. All subcontracts and purchase orders with Subcontractors shall afford Contractor rights against the Subcontractor which correspond to those rights afforded to the City against Contractor under this Contract, including those rights of Contract suspension, termination, and stop Construction Work orders as set forth in this Contract. It is expressly agreed that no relationship of agency, employment, contract, obligation or otherwise shall be created between the City and any Subcontractor of Contractor, and a provision to this effect shall be incorporated into all agreements between Contractor and its Subcontractors.

5. Should Contractor subcontract all or any part of the Construction Work, such subcontracting of the Construction Work shall not relieve Contractor from any liability or obligation under the Contract or under any applicable policy, law or regulation, and Contractor shall be responsible for all and any acts, defaults, omissions or negligence of Contractor's subcontractors, suppliers, and contractors.

6. In accordance with Article 7, Paragraph 4 above, Contractor shall employ and assign only qualified and competent personnel to perform any service or task concerning the Project. Contractor shall designate one such person as the Project Contractor. Absent written instruction from Contractor to the contrary, the Project Contractor shall be deemed to be Contractor's authorized representative and shall be authorized to receive and accept any and all communications from the City. Key design and supervisory personnel assigned by Contractor to each Job Order will be provided at the time the contractor submits the RFP pricing package. The contractor shall conform to all requirements established in each Job Order RFP issued by the City.

7. If, at any time during the course of the Project, the City reasonably determines that the performance of any Subcontractor or any member of Contractor's staff construction working on the Project is unsatisfactory, the City's Representative may require Contractor to remove such Subcontractor or staff member from the Project immediately and replace the staff member at no cost or penalty to the City for delays or inefficiencies the change may cause.

ARTICLE 14
CHANGES AND EXTENSIONS OF TIME

1. Changes in the Design Services (if required) or the Construction Work under this Contract, consisting of additions, deletions, revisions or any combination thereof, may be ordered unilaterally by the City without invalidating the Contract. Such changes shall be communicated by Change Order as applicable. Contractor shall proceed diligently with any changes, and same shall be accomplished in strict accordance with the terms and conditions as set forth in this Contract/Job Order.

2. All change orders, changes requested by Contractor, or extensions of Contract Time occurring during construction of the Project related to actual Construction Work shall be governed by the applicable provisions of this Contract/Job Order. All requests for additional compensation due to a change in the scope, and all requests for an extension of time to the Schedule, shall include sufficient backup documentation to reasonably understand the request and the amount of time or compensation requested and determines the merits of the request.

3. Upon the occurrence of a change order for Construction Work which increases the Cost of the Construction Work, the Construction Price will thereafter include such Cost of the Construction Work and Services attributable to such change to the extent allowed.

4. In the event the parties are unable to agree on the terms of a Change Order or Supplemental Agreement, then Contractor shall continue to diligently perform the Work, including any change directed by the City by Change Order or Supplemental Agreement, and shall keep thorough records of the cost of performance of such Change Order or Supplemental Agreement.

5. Contractor recognizes and accepts a fiduciary relationship of trust and confidence hereby established between Contractor and the City and agrees that it shall at all times in good faith use its best efforts to advance the City's interests and agrees to perform the Work in the highest professional manner.

ARTICLE 15
CLAIMS BY CONTRACTOR

1. Claims by Contractor against the City are subject to the terms and conditions of this Article 15, and strict compliance herewith shall be a condition precedent to any liability of the City therefore.

2. All claims for additional compensation or additional time, regardless of their nature, when they occur, or whether they occur during the design or construction phase, shall be governed by the City of Buckeye Procurement Code.

3. Contractor shall provide, and continue to provide, to the City all such documentation, including cost and time records, as and when the City may request so that the City may evaluate Contractor's claim.

4. Contractor shall continue its performance under this Contract regardless of the existence of any claims submitted by Contractor against the City.

5. In the event Contractor seeks to make a claim for an increase in the Construction Price, as a condition precedent to any liability of the City for any claim, Contractor shall strictly comply with the requirements of Paragraph 2 above and such notice shall be given by Contractor before proceeding to execute any alleged additional or changed Construction Work. Failure of the condition precedent to occur shall constitute a waiver by Contractor of any claim.

6. In connection with any claim by Contractor against the City for compensation in excess of the Construction Price, any liability of the City shall be strictly limited to the Cost of the Construction Work and Design Services if required as defined and allowed in this Contract and subsequent Job Orders and shall in no event include, indirect, consequential, impact or other costs, expenses or damages of Contractor or its Subcontractors. The City shall not be liable to Contractor for claims of third parties, including Subcontractors, for acts, omissions, events, or conditions for which the City would not be liable to Contractor under the terms of the Contract. As a condition precedent to the City's liability to Contractor for any loss or damage resulting from claims of third parties, including Subcontractors, such third parties must have complied with all conditions contained in their agreements with Contractor and such claims must have been submitted to the City by Contractor in strict compliance with all the requirements of this Article. The City shall not be liable to Contractor for claims of third parties including Subcontractors, unless and until the liability of Contractor has been established in a court of competent jurisdiction.

7. The resolution of any claim under this Article shall be reflected by a Change Order or Supplemental Agreement executed by the City and Contractor.

ARTICLE 16
UNCOVERING AND CORRECTING CONSTRUCTION WORK

1. If any of the Construction Work is covered, concealed or obscured contrary to the written request of the City, or contrary to any provision of the Contract, said Construction Work shall, if required by the City, be uncovered for inspection and shall be properly replaced at Contractor's expense without change in the Contract Time.

2. If any of the Construction Work is covered, concealed or obscured in a manner not inconsistent with Paragraph 1 above, it shall, if required by the City, be uncovered for inspection. If such Construction Work conforms strictly to the Contract, the cost of uncovering and proper replacement shall be charged to the City. If such Construction Work does not strictly conform to the Contract, Contractor shall pay the cost of uncovering and proper replacement.

3. Contractor shall immediately proceed to correct Construction Work rejected by the City as defective or failing to conform to the Contract. Contractor shall pay all costs

and expenses associated with correcting such rejected Construction Work, including any additional testing and inspections made necessary thereby.

4. In addition to its warranty obligations set forth elsewhere herein, Contractor shall be specifically obligated to correct at its cost and expense any and all defective or nonconforming Construction Work for a period of twelve (12) months following Final Completion upon written direction from the City. This obligation shall survive final payment by the City and termination of the Contract.

5. Nothing contained in Paragraph 4 shall establish any period of limitation with respect to other obligations which Contractor has under the Contract. Establishment of the one-year time period in Paragraph 4 above relates only to the duty to Contractor to specifically correct the Construction Work.

6. The City may, but shall in no event be required to, choose to accept defective or nonconforming Construction Work. In such event, the Contract Price shall be reduced by the reasonable costs of removing and correcting the defective or nonconforming Construction Work. The City shall be entitled to a reduction in the Construction Price regardless of whether the City has, in fact, removed and corrected such defective Construction Work. If the unpaid balance of the Construction Price, if any, is insufficient to compensate the City for the acceptance of defective or nonconforming Construction Work, Contractor shall, upon written demand from the City, pay the City such additional compensation for accepting defective or nonconforming Construction Work.

ARTICLE 17
SUSPENSION AND TERMINATION

1. The City may for any reason whatsoever suspend performance under the Contract. The City shall give written notice of such suspension to Contractor specifying when such suspension is to become effective.

2. From and upon the effective date of any Suspension ordered by the City, Contractor shall incur no further expense or obligations in connection with this Contract and Contractor shall cease its performance. Contractor shall also, at the City's direction, either suspend or assign to the City any of its open or outstanding subcontracts or purchase orders.

3. In the event the City directs a suspension of performance under this Article 17, through no fault of Contractor, and provided Contractor submits a proper claim as provided in this Contract, the City shall pay Contractor as full compensation for such suspension Contractor's reasonable costs, actually incurred and paid, of:

(a) Demobilization and remobilization, including such costs paid to Subcontractors
(b) Preserving and protecting Construction Work in place;
(c) Storage of materials or equipment purchased for the Project, including Insurance.
(d) Performing in a later, or during a longer, time frame than that contemplated by this contract.

4. If the City lifts the suspension it shall do so in writing and Contractor shall promptly resume performance of the Contract unless, prior to receiving the notice to resume, Contractor has exercised its right of termination as provided herein.

5. The City reserves the right, for any reason whatsoever (including, but not limited to, the City's failure to appropriate funding for this Contract), or without reason, terminate performance under the Contract by Contractor for convenience. The City shall give thirty (30) calendar days advance written notice of termination for convenience to Contractor. Contractor shall incur no further obligations in connection with the Contract and Contractor shall stop Work when such termination becomes effective. Contractor shall also, at the City's direction, either terminate or assign to the City outstanding orders and subcontracts. Contractor shall settle the liabilities and claims arising out of any terminated subcontracts and orders. The City may direct Contractor to assign Contractor's right, title and interest under terminated orders or subcontracts to the City or its designee. Contractor shall transfer title and deliver to the City such completed or partially completed Design Documents (if any), Construction Work and materials, equipment, parts, fixtures, information and Contract rights as Contractor has.

6. When terminated for convenience, Contractor shall be compensated as follows:

(a) Contractor shall submit a termination claim to the City specifying the amounts believed to be due because of the termination for convenience together with costs, pricing or other data required by the City. If Contractor fails to file a termination claim within three (3) months from the effective date of termination, the City shall pay Contractor an amount derived in accordance with Subparagraph (c) below;
(b) The City and Contractor may agree to the compensation, if any, due to Contractor under this paragraph;
(c) Absent agreement to the amount due to Contractor, the City shall pay Contractor, as full compensation for termination for convenience, the following amounts:

(i) the Cost of the Construction Work and Services, as defined and allowed by to the extent incurred or paid prior to receipt by Contractor of the notice of termination;
(ii) such portion of Work which is completed and unpaid as of the date of receipt by Contractor of the notice of termination; and

(iii) Reasonable costs of settling and paying claims arising out of the termination of subcontracts or orders hereinabove. These costs shall not include amounts paid in accordance with other provisions of this Contract. In no event shall Contractor be entitled to recover lost profits or other incidental or consequential damages from the City on account of a termination for convenience, or an erroneous termination for cause as described below.

7. If Contractor does not perform the Construction Work, or any part thereof, in a timely manner, supply adequate labor, supervisory personnel or proper equipment or materials, or if it fails to timely discharge its obligations for labor, equipment and materials, or proceeds to disobey applicable laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or otherwise commits a violation of a material provision of the Contract, then the City may by written notice to Contractor, without prejudice to any other right or remedy against Contractor or others, terminate the performance of Contractor and take possession of the Project site and of all materials and equipment at the site and may finish the Construction Work by whatever methods it may deem expedient. In such cases, Contractor shall not be entitled to receive any further payment until the Construction Work is finished.

8. In the event the employment of Contractor is terminated by the City for cause and it is subsequently determinedly a court or other tribunal of competent jurisdiction that such termination was without cause, such termination shall thereupon be deemed a Termination for Convenience under this Paragraph and the provisions of this Paragraph regarding compensation shall apply.

ARTICLE 18
INDEMNITY

1. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold the City, its elected officials, officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its elected officials, officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 19
INSURANCE AND BONDS

See *Exhibit C.*

ARTICLE 20
CANCELLATION UNDER A.R.S. § 38-511

1. This Contract may be cancelled pursuant to the terms of Arizona Revised Statutes Section 38-511 as amended.

ARTICLE 21
GIFT TO PUBLIC SERVANT

1. The City may terminate this Contract immediately if Contractor has offered, conferred, or agreed to confer any benefit upon a City of Buckeye employee or official that the City of Buckeye employee or official is prohibited by law from accepting.

2. For purposes of this section, "benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct or substantial interest, but does not include a contribution or expenditure made and reported in accordance with law.

3. Notwithstanding any other legal remedies, the City may require Contractor to remove any employee of Contractor from the Project who has violated the restrictions of this section or any similar state or federal law, and obtain reimbursement for any expenditures made to Contractor as a result of the improper offer, agreement to confer, or conferring of a benefit to a City employee or official.

ARTICLE 22
NONDISCRIMINATION

1. As a condition of this Contract, Contractor covenants that Contractor will take all necessary actions to insure that, in connection with any work under this Contract, Contractor, his associates and subcontractors, will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex, or handicap unrelated to job performance, either directly, indirectly or through contractual or other arrangements. Contractor shall also comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C.A. §§12101-12213, as amended. In this regard, Contractor shall keep, retain and safeguard all records relating to this Contract or work performed hereunder for a minimum period of three (3) years from final Contract completion, with full access allowed to authorized representatives of the City, upon request, for purposes of evaluating compliance with this and other provisions of the Contract.

2. Subject to existing law, and regulations, illegal or undocumented persons will not be employed by the Contractor for any work or services to be performed pursuant to this contract. The Contractor will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this contract. Contractor shall notify the City upon the selection and agreement with any sub-contractor, and shall notify the City prior to any subcontractor being on site doing work. Contractor agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act ("INA") (8 U.S.C.1324a(a)(1)(A), 1324a(a)(2)) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented persons. Under the terms of this agreement, the Contractor shall not knowingly hire or employ for any work performed pursuant to this contract any workers or employees not lawfully authorized to work in the United States under the provisions of the INA or any other applicable federal or state laws. Violation of the provisions of this Article 22 shall be deemed a material breach of this Contract.

ARTICLE 23
MISCELLANEOUS PROVISIONS

1. This Contract shall be governed by the laws and court decisions of the State of Arizona. This Contract is performed in Maricopa County, Arizona, and exclusive venue for the enforcement of rights or legal obligations under this Contract shall be in Maricopa County, Arizona.

2. This Contract shall be binding upon and inure to the benefit of the parties to this Contract and their respective successors and, except as otherwise provided in this Contract, their assigns.

3. Contractor shall not assign this Contract, or any part of this Contract, without prior written consent of the City.

4. All notices, communications, and reports required or permitted under this Contract shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, at the addresses shown below, unless and until either party is otherwise notified in writing by the other party, at the following addresses. Mailed notices shall be deemed communicated as of five days after mailing.

If intended for the City, to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 E. Monroe Ave.
Buckeye, Arizona 85326
Phone: 623.349.6161

If intended for Contractor, to: Haydon Companies, LLC
Katie Haydon, President and CEO
4640 E. Cotton Gin Loop
Phoenix, Arizona 85040
Phone: 602.296.1496
Email: khaydon@haydonbc.com

5. No information relative to the existence or the details of the Design Services or the Construction Work shall be released by Contractor, either before or after completion of the Project, for publication, advertising or any commercial purposes without the City's prior written consent.

6. In the event that any portion or any portions of this Contract are held to be unenforceable by a court of competent jurisdiction, then the remainder of this Contract shall be enforced as though such portions had not been included, unless to do so would cause this Contract to fail of its essential purposes.

7. This Contract, with all Exhibits and incorporated or referenced attachments, and any Job Order, together with Contractor's and Surety's performance and payment bonds for the Project, constitute the entire and exclusive agreement between the City and Contractor with reference to the Project. This Contract supersedes any and all prior documents, discussions, communications, representations, understandings, negotiations or agreements by and between the parties.

8. If the City Council does not appropriate funds to continue this Contract or any Job Order into a subsequent fiscal year, and pay for charges hereunder or under any current Job Order for a Project that extends into a new fiscal year, the City may terminate this Contract at the end of the current fiscal period, or at the time that funds are no longer available to meet the City's payment obligations hereunder. The City agrees to give written notice of termination to the Contractor at least thirty (30) days prior to any termination for a lack of funds and will pay to the Contractor all approved charges incurred prior to Contractor's receipt of such notice, subject to the availability of funds therefore.

9. Cooperative Purchasing- Specific eligible political subdivisions and nonprofit educational or health institutions ("Eligible Procurement Unit(s)") are permitted to utilize procurement agreements developed by the City, at their discretion and with the agreement of the awarded Consultant. Consultant may, at its sole discretion, accept orders from Eligible Procurement Unit(s) for the purchase of the Materials and/or Services at the prices and under the terms and conditions of this Agreement, in such quantities and configurations as may be agreed upon between the parties. All cooperative procurements under this Agreement shall be transacted solely between the requesting Eligible Procurement Unit and Consultant. Payment for such purchases will be

the sole responsibility of the Eligible Procurement Unit. The exercise of any rights, responsibilities or remedies by the Eligible Procurement Unit shall be the exclusive obligation of such unit. The City assumes no responsibility for payment, performance or any liability or obligation associated with any cooperative procurement under this Agreement. The City shall not be responsible for any disputes arising out of transactions made by others.

ARTICLE 24
E-VERIFY

1. E-Verify Requirements. To the extent applicable under Ariz. Rev. Stat. §41-4401, Contractor and its subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under Ariz. Rev. Stat. §23-214(A). The Contractor or its subcontractor's failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

2. The Contractor and its subcontractors warrant to keep the papers and records open for random inspection during normal business hours by the City. The Contractor and its subcontractors shall cooperate with the City's random inspections including granting the City's entry rights onto its property to perform the random inspections and waiving their respective rights to keep such papers and records confidential.

ARTICLE 25
ISRAEL

1. To the extent required by applicable law, pursuant to Arizona Revised Statute § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

[SIGNATURE PAGE TO FOLLOW]

THEREFORE, the City of Buckeye by its Mayor and City Clerk have hereunto subscribed their names this _____.

CITY:

THE CITY OF BUCKEYE,
an Arizona municipal corporation

_____
Dan Cotterman, City Manager

CONTRACTOR:

HAYDON COMPANIES, LLC,
an Arizona limited liability company

Matt Carpenter
_____
Matt Carpenter, Chief Operating Officer

ATTEST:

_____
Lucinda Aja, City Clerk

RECOMMENDED:

William Kauppi
_____
William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

_____
K. Scott McCoy, City Attorney

Adobe Acrobat Sign Transaction Number: CBJCHBCAABAAexX-zCbcx4kLxamIUKk7niIRvTWIG_zJ

EXHIBIT A
TO
JOB ORDER CONTRACT FOR
WATER/WASTEWATER PIPELINE UTILITY & INFRASTRUCTURE
BETWEEN
CITY OF BUCKEYE
AND
HAYDON COMPANIES, LLC

[CONTRACTOR'S STATEMENT OF QUALIFICATIONS (SOQ)]
SEE FOLLOWING PAGES

ALL EXHIBITS ARE ON FILE IN THE OFFICE OF THE CITY CLERK

CITY OF BUCKEYE
Regular Council Meeting
COUNCIL ACTION REPORT

MEETING DATE: 09/03/24	**AGENDA ITEM:** 4.Q. FIN - Federal Emergency Management Agency (FEMA) Hazard Mitigation Grant Program (HMGP) Post-Fire - Arizona Department of Emergency and Military Affairs (AZDEMA)
DATE PREPARED: 08/29/24	**DISTRICT NO.:** All
STAFF LIAISON: Rob Roach, Grant Program Manager, rroach@buckeyeaz.gov, (623) 349-6165	
DEPARTMENT: Financial Services	**AGENDA ITEM TYPE:** Consent Agenda Items / New Business

ACTION/MOTION: (This language identifies the formal motion to be made by the Council)
Council to take action on the submission of a $670,000 Federal Emergency Management Agency (FEMA) Hazard Mitigation Grant Program (HMGP) Post-Fire Grant application through the Arizona Department of Emergency and Military Affairs (AZDEMA) for the removal of fire fuel to mitigate the risk of wildfire in the White Tank Mountain Range which borders the master-planned community of Verrado.

SUMMARY

PROJECT DESCRIPTION:
The City of Buckeye seeks to address the current community wildfire risk by submitting a grant application that supports the removal of fire fuel to mitigate the risk of wildfire to the White Tank Mountains and the communities that abut the White Tank Mountain Range. The grant funds the removal effort over a three-year period.

BENEFITS:
The fire fuel removal will improve firefighter and public safety, reduce wildfire risk to humans and property, and improve fire prevention and suppression. This project will also help protect Skyline Regional Park and its users.

FUTURE ACTION:
After all grant funds have been expended, any future maintenance for this wildfire mitigation will become a part of the Community Services Department's budget, unless future grant opportunities arise, in which the City will pursue.

FINANCIAL IMPACT STATEMENT:
The federal grant portion is $502,500, with a $167,500 match from the City of Buckeye. The total project cost is $670,000.

CURRENT FISCAL YEAR TOTAL COST:
None

BUDGETED:
Yes

FISCAL YEAR:
2025-2028

FUND/DEPARTMENT:
Community Services

Items related to a project or facility location must include an attached vicinity map for Council Review.
ATTACHMENTS:
15C- Cost Estimate Narrative.docx
BCA Narrative Under 1M.docx
13D - SOW.docx
CAR_Recap_Summary_White_Tank_Mountain_Range_Fire_Hazard_Mitigation_-_App.docx

Budget Narrative

Subapplicant: City of Buckeye

Grant Program: HMGP Post Fire

Project Title: Buckeye White Tank Mountain Skyline Wildfire Mitigation

Summary

Category	Estimate Cost
Category #1 Personnel	$300,000
Category #2 Equipment	$153,000
Category #3 Materials	$67,000
Category #4 Monitoring and Evaluations	$150,000
Total	$670,000

Cost Estimate Breakdown Category #1 Personnel

Personnel costs are estimated as follows: It is anticipated that the contractor will utilize a project manager at $120 per hour for 300 hours for a cost of $36,000. Two field supervisors at $85 per hour for 300 hours will cost $51,000. Eight field workers at $800 per hour for 300 hours will cost $192,000. One administrative staff at $70 per hour for 300 hours will cost $21,000. Total personnel costs are $300,000.

Cost Estimate Breakdown Category #2 Equipment

Equipment rental costs are estimated at $153,000. Equipment needed is anticipated to be: Four brush cutters at $50 per hour for 300 hours is $60,000. Six chainsaws at $30 per hour for 300 hours is $54,000. Ten sets of safety gear at $300 per set is $3,000. Transportation and miscellaneous equipment rental is $36,000. Total equipment rental cost is $153,000.

Cost Estimate Breakdown Category #3 Materials

Supplies in the form of herbicides, PPE, and treated area markers will cost $67,000.

Cost Estimate Breakdown Category #4 Monitoring and Evaluations

Monitoring and evaluation of the effectiveness of the mitigation efforts is estimated to cost $150,000.

Benefit Cost Analysis (BCA) Narrative for a Project under $1 Million

Subapplicant: City of Buckeye

Project Title: Buckeye White Tank Mountain Skyline Wildfire Mitigation

Project Configuration

Project Location: 12B-Latitude and Longitude Coordinates Project Location

Northwest corner

Latitude 33.508895

Longitude -112.560833

Northeast corner

Latitude 33.50911

Longitude -112.527187

Southeast corner

Latitude 33.471745

Longitude -112.529676

Southwest corner

Latitude 33.47604

Longitude -112.561777

Project Structure: Multi-structure residential community

12C-Latitudes and Longitudes of Protected Structures

Northwest corner

Latitude 33.50911

Longitude -112.527187

Northeast corner

Latitude 33.522778

Longitude -112.496288

Southeast corner

Latitude 33.472246

Longitude -112.496974

Southwest corner

Latitude 33.471745

Longitude -112.529676

Hazard Type: Wildfire

Mitigation Action: Fire fuel removal

(a) Removal of fire fuel sufficient distance from residential structures to abate the wildfire risk.

(b) The benefitted area is the residential area within the protected structure area identified in 12C.

Total Project Cost: Total cost of the project is $670,000, of which the Federal share is $502,500 (75%) and the Non-Federal share is $167,500 (25%).

Annual Maintenance Cost: The committed annual maintenance cost is estimated to be $200,000

Hazard Properties

How often does the hazard being mitigated occur?

The last recorded wildfire hazard occurred at this project area in May, 2020 according to the following:

(https://www.wtmconservancy.org/after-the-white-tank-fire-collecting-data-in-the-

sonoran-desert/).

Standard Benefits

Population: How many people benefit from the proposed mitigation project, and how was this number determined?

The proposed mitigation project of removing fire fuel will benefit an estimated 14,000 households living next to the White Tank Mountain. This information was obtained through the BuckeyeGIS tool and the Verrado | Genuine Smalltown Charm website. This project will also benefit hikers, campers, and wildlife within the White Tank Mountain Range.

Structure/Infrastructure/Building Contents: What structures, infrastructure, and/or building contents, if any, will be damaged if the project is not implemented?

If the proposed mitigation project is not implemented, the White Tank Mountain and abutting residential properties will be at risk of burning from wildfire. Wildfire may damage homes and other structures in this area.

Critical Services: What public services (including public safety, transportation, and utilities) and/or businesses, if any, would lose function during future hazard events if the project is not implemented?

If fires spread beyond the residential area, numerous adjacent businesses could be damaged. Additionally, smoke from the fires could impact Interstate 10, a major cross-country highway that is immediately south of the impact area.

Additional Benefits

Are there any additional benefits directly attributable to the proposed project that are not captured elsewhere in the cost-effectiveness narrative?

The project could prevent injuries or deaths to residents, hikers, and campers. The project also protects wildlife and the recreational value of White Tank Mountain and Skyline Regional Park.

Scope of Work

Buckeye proposes to remove fire fuel from the eastern slopes of the White Tank Mountain Range abutting the Verrado community of residences in Buckeye, Arizona. Buckeye will retain the services of an outside contractor to execute the project. The contractor will manually remove the fire fuel.

Step one - Treat the area with herbicide. The timeframe is estimated at 12 months.

Step two – Use chainsaws to remove larger vegetation. The timeframe is estimated at 6 months.

Step three – Remove smaller vegetation with hand tools. The timeframe is estimated at 15 months.

Based upon the available budget, it is anticipated that the budget may allow for up to 300 hours of fire fuel removal. Buckeye and the contractor will assess the area to determine the best use of the 300 hours of fire fuel removal.

Design Plan -

During the project area assessment, Buckeye will identify the appropriate areas for removal of fire fuel within the project area that abuts the protected area.

Advanced Transportation Technology and Innovation (ATTAIN) Grant Application Summary Recap

Project Description:



The City of Buckeye seeks to address the current community wildfire risk by submitting a grant application that supports the removal of fire fuel to mitigate the risk of wildfire to the communities that abut the White Tank Mountain Range. The grant funds the removal effort for three years.

Project Cost



- $ 670,000

Required Match



- $ 167,500

Grant Amount



- $ 502,500

Plans Once Grant Expires:



- After all grant funds have been expended, any future maintenance for this wildfire mitigation will become a part of the Community Services Department's budget, unless future grant opportunities arise, of which the City will pursue.

Objectives and Expected Outcomes



- The fire fuel removal will improve firefighter and public safety, reduce wildfire risk to humans and property, and improve fire prevention and suppression.
- The expected outcome is increased protection of Skyline Regional Park and its users.

Time Period for the Grant



- FY 2025 and FY 2027

CITY OF BUCKEYE
Regular Council Meeting
COUNCIL ACTION REPORT

MEETING DATE: 09/03/24	**AGENDA ITEM:** 4.R. CIP - No. 109260 Verrado North Fire Station Land Acquisition - DMB
DATE PREPARED: 08/29/24	**DISTRICT NO.:** 6
STAFF LIAISON: James Zwerg, CIP Project Manager, jzwerg@buckeyeaz.gov, (602) 558-2076	
DEPARTMENT: Engineering	**AGENDA ITEM TYPE:** Consent Agenda Items / New Business

ACTION/MOTION: (This language identifies the formal motion to be made by the Council)
Council to take action on the Memorandum of Understanding (MOU) between the City of Buckeye, an Arizona municipal corporation, and DMB White Tank, LLC, an Arizona limited liability company (DMB), related to the dedication of real property located West of Verrado High School and North of Indian School Road for the proposed future site for Victory Fire Station #708, related to CIP No. 109260 Verrado North Fire Station Land Acquisition, and authorize the City Manager to execute and deliver the MOU on behalf of the City of Buckeye.

SUMMARY

PROJECT DESCRIPTION:
The dedication of this site fulfills original PADA obligations to provide land for the future Victory Fire Station #708, as specified in CIP No. 109260 Verrado North Fire Station Land Acquisition. The newly proposed site, encompassing approximately 1.5 acres west of Verrado High School and North of Indian School Road, offers a more strategic and suitable location for the design and construction of a fully functional fire station. This site will significantly enhance response times and provide improved access to Indian School Road, thereby ensuring more efficient emergency services for residents in the surrounding area. The strategic location underscores our commitment to public safety and aligns with long-term urban planning objectives.

BENEFITS:
The site’s strategic positioning ensures enhanced response times and improved access to Indian School Road, thereby optimizing emergency service delivery for residents. This proposal aligns with urban planning objectives, reinforces our commitment to public safety, and provides a more suitable area for the design and construction of a fully functional fire station, ensuring long-term benefits for the community.

FUTURE ACTION:
Dedication of property will be received for the future planning, design, and construction of Victory Fire Station #708.

FINANCIAL IMPACT STATEMENT:
N/A

CURRENT FISCAL YEAR TOTAL COST:
N/A

BUDGETED:
Yes

FISCAL YEAR:
FY25

FUND/DEPARTMENT:
CIP No. 109260

Items related to a project or facility location must include an attached vicinity map for Council Review.
ATTACHMENTS:
DA, G-6-3, DMB_Part5.pdf
2024m03d04-ex-Fire Station Site Context Map.pdf
2023m09d29-ex-Fire Station-ISP A-email.pdf
2024-0730 - PE - City-DMB Memorandum of Understanding w-Exh (smf 07_30_2024).pdf

When recorded return to:

Gallagher & Kennedy, P.A.
Attn: Steven A. Betts or Dana Stagg Belknap
2600 N. Central Avenue
Phoenix, AZ 85004-3020

OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
99-1071208 11/26/99 02:22
YEZENIA 2 OF 2

PRE-ANNEXATION AND DEVELOPMENT AGREEMENT

THIS PRE-ANNEXATION AND DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the TOWN OF BUCKEYE, an Arizona municipal corporation (the "Town") and DMB WHITE TANK, LLC, an Arizona limited liability company (the "Developer").

RECITALS

A. The property is located within Maricopa County, Arizona and the Town and consists of approximately 8,800 acres as legally described and depicted on Exhibit A attached hereto and incorporated herein by this reference (the "Property"). The owners of the Property are Developer and Caterpillar Foundation, an Illinois not-for-profit corporation ("Caterpillar"). Caterpillar has consented to Developer entering into this Agreement.

B. Developer and the Town desire that the portions of the Property not already within the corporate limits of the Town be annexed into the corporate limits of the Town and be developed as an integral part of the Town. The annexation and development of the Property pursuant to this Agreement and the Community Master Plan ("CMP"), which is attached as Exhibit B, is acknowledged by the parties hereto to be consistent with the Town's General Plan, as may be amended concurrently with this Agreement, and to operate to the benefit of the Town, the Developer and the general public. The annexation of the Property would allow the Town to provide for high-quality development in the area and ensure orderly, controlled and quality growth in the Town.

C. Developer and the Town are entering into this Agreement pursuant to the provisions of Arizona Revised Statutes ("A.R.S.") § 9-500.05 in order to facilitate the annexation, proper municipal zoning designation and development of the Property by providing for, among other things: (i) conditions, terms, restrictions and requirements for the annexation of the unincorporated portions of the Property by the Town; (ii) conditions, terms, restrictions and requirements for the construction and installation of public services/infrastructure improvements; (iii) the permitted uses for the Property; (iv) the density and intensity of such uses; and (v) other matters related to the development of the Property.

D. A blank annexation petition has been filed with Maricopa County and meetings and hearings have been held in connection with the annexation of the Property in to the Town. The Town agrees that the Planned Community District zoning designation is an appropriate designation for this Property and that the CMP is designed to establish proper and beneficial land

use designations and regulations, densities, provisions for public facilities, design regulations, procedures for administration and implementation and other matters related to the development of the Property in accordance with the Planned Community District zoning designation. Prior to its execution of this Agreement, the Town has held public hearings and received public comment and has otherwise duly considered all such matters.

E. Developer and the Town acknowledge that the ultimate development of the Property within the Town is a project of such magnitude that Developer requires assurances from the Town that Developer has the right to complete the development of the Property pursuant to the CMP before it will expend substantial efforts and costs in the development of the Property, and the Town requires assurances from Developer that development of the Property will be in accordance with the CMP and the terms and conditions of this Agreement.

F. Without limiting the foregoing, the Town and Developer acknowledge that the development of the Property pursuant to this Agreement will result in significant planning and economic benefits to the Town by: (i) encouraging investment in and commitment to comprehensive planning, which will result in efficient utilization of municipal and other public resources; (ii) requiring development of the Property to be consistent with the Town's General Plan and the approved CMP: (iii) providing for the planning, design, engineering, construction, acquisition, and/or installation of public infrastructure in order to support anticipated development of the Property and the larger land area that includes the Property; (iv) increasing tax and other revenues to the Town based on improvements to be constructed on the Property; (v) creating employment through development of the Property consistent with this Agreement; and (vi) creating quality housing and other uses for citizens of the Town. The Town and Developer acknowledge that the development of the Property pursuant to this Agreement will result in significant benefits to Developer by providing certainty in order to avoid the waste of resources, including present and future assurances to Developer that it will have the ability to develop the Property in accordance with this Agreement and the CMP.

G. Among other things, development of the Property in accordance with this Agreement and the CMP will result in the planning, design, engineering, construction, acquisition, installation, and/or provision of public services/infrastructure improvements that will support development of the Property.

H. The public services/infrastructure improvements to be provided by Developer, while necessary to serve development within the Property, also are needed in certain instances to facilitate and support the ultimate development of a larger land area that includes the Property. Given the regional significance of such public services/infrastructure improvements and development of the Property, the Town is willing to use good faith efforts to facilitate the utilization of various public and/or quasi-public financing methods as provided in this Agreement.

I. The Town acknowledges that portions of such public services/infrastructure improvements will be provided as part of the early phases of development of the Property, prior to the time when such public services/infrastructure improvements would otherwise be required to serve completed phases of the development within the Property, and therefore prior to the time Developer might otherwise be required to provide or contribute to the cost of same and prior to

the time that the expense of such public services/infrastructure improvements otherwise would be justified by the phasing of development of the Property. Developer is willing to provide such public services/infrastructure improvements earlier than otherwise required for its private development of the Property only with the assurances that it will be able to complete development of the Property as provided in this Agreement. In this respect, the public services/infrastructure improvements and dedications provided for herein, together with the development contemplated by this Agreement, are interdependent and together comprise an indivisible project.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, the parties hereto state, confirm and agree as follows:

AGREEMENT

I. ANNEXATION AND DEVELOPMENT PLANS.

1.1 Annexation Petition. The Town, having held public meetings thereon, has, concurrently with its approval of this Agreement, duly considered and approved the annexation of the portions of the Property not already in the Town to the Town. As soon as reasonably possible after execution of this Agreement by the Town and Developer, Developer shall deliver to the Town an appropriate Petition for Annexation duly executed by all necessary property owners (the "Annexation Petition"). Upon receipt of the Annexation Petition, the Town agrees to comply with the provisions of A.R.S. § 9-471 *et seq.* and, if determined to be in the best interest of the Town, adopt the final ordinance annexing the Property into the corporate limits of the Town, which ordinance shall contain a provision providing for the immediate rescission of the annexation ordinance by the Town if: (a) any party files a verified petition with the Town challenging the validity of the annexation; (b) the Town does not approve the Planned Community District zoning designation and the CMP immediately following the annexation of the Property by the Town; (c) any party files a verified referendum petition with the Town challenging the Planned Community District zoning designation or the CMP; or (d) any party files a verified referendum petition with the Town challenging the validity of this Agreement. The Town expressly acknowledges and agrees that the Annexation Petition and this Agreement will have been executed and delivered to the Town contingent on the Town's adoption of the ordinance described in the preceding sentence, including the rescission provisions. The Town also expressly acknowledges and agrees that it shall take all appropriate action to rescind this Agreement immediately if the Town does not adopt the final ordinance annexing the Property into the corporate limits of the Town immediately following approval of this Agreement.

1.2 Community Master Plan.

(a) General. Concurrently with the approval and execution of this Agreement and upon the Town's review and due consideration with all required reviews and public hearing, the Town hereby approves the densities, intensities, land uses, public services/infrastructure improvements, and other matters set forth in the CMP for the development of the Property. Development of the Property shall be in accordance with the CMP, as may be amended from time to time in accordance with Paragraph (b) below, including all improvements, facilities and

structures contemplated in this Agreement. Such improvements, facilities, and structures may include (without limitation) the planning, design, engineering, construction, acquisition, installation, and/or provision of improvements of any sort or nature, including public infrastructure and other public facilities and services related to development of the Property, whether located within or outside the Property. The CMP, if determined to be in the best interest of the Town, will be adopted by the Town as part of the Planned Community District zoning designation, which will be considered for approval concurrently with the approval and execution of this Agreement. This Agreement satisfies Section 7-3-3 of the Town of Buckeye's Development Code, which requires that a CMP be adopted with a development agreement. Upon the approval of the Planned Community District zoning designation and the CMP, Developer shall be authorized to implement the types of uses, densities and intensities of uses, as set forth in the CMP, and will be accorded all approvals necessary to permit Developer to implement the CMP, subject to the Town's review and approvals of site plans, subdivision plats and other similar items in accordance with the Town's zoning, subdivision and other, applicable ordinances as established in Paragraph 1.4. As more particularly set forth in the CMP, the Town hereby authorizes Developer to include types of uses that are the same as or similar to (as determined by the Town's Planning Director), and densities and intensities of uses equal to or less than, those set forth in the CMP. The Town, having exercised its discretion in approving the CMP, agrees to cooperate reasonably in processing the approval or issuance of such permits, plans, specifications, plats and/or other development approvals of or for the Property as may be requested by Developer in order to implement, and which are reasonably consistent with the CMP; provided that Developer complies with all applicable requirements, as established in Paragraph 1.4, pays all applicable fees, including without limitation, grading permit fees, building permit fees, engineering inspection fees, and fees set forth at Exhibit C and subject to the Town's review and approval thereof, in accordance with its zoning, subdivision, and other applicable ordinances, as established in Paragraph 1.4. The Town and Developer agree that in addition to the types of uses and the densities and intensities of uses, the Town's General Plan and the CMP provide for, among other things, the establishment of golf courses, resorts and recreational facilities, sanitation and treatment facilities, residential, office and commercial activity centers, educational, worship and municipal facilities, and other facilities typically found in mixed-use master planned communities. The Town hereby acknowledges and agrees that the CMP may hereafter be amended to include alternative plans and land use designations that shall become applicable if Developer elects to include the Additional Property referenced in Paragraph 1.6.

(b) CMP Amendment. The Town and the Developer acknowledge that amendments to the CMP may be necessary from time to time. When the parties agree that changes or adjustments are necessary or appropriate from time to time they shall, unless otherwise required by applicable law as established in Paragraph 1.4 or by state or federal statute, effectuate minor changes or adjustments through administrative amendments approved by the Town's Planning Director, which, after execution, shall be attached to the CMP as an addendum and become a part thereof. If, in the future, the Town amends one or more of its zoning designations and/or districts, Developer shall have the option to convert the zoning designation(s) under the CMP to the equivalent zoning designations under such amended development ordinance(s), subject to notice and hearing requirements of applicable law. The exercise by Developer of such option and any approval by the Town shall not be deemed to constitute or to necessitate an amendment of this Agreement, and, unless otherwise required by

law, no such minor amendments shall require prior notice or hearing. All major changes or amendments shall be reviewed by the Community Planning and Development Board and approved by the Town Council. The following are major changes:

(1) Any substantial alteration to the list of permitted uses of the Property set forth in the CMP, as deemed to be substantial by the Planning Director;

(2) An overall increase in either residential units or commercial/mixed-use square footage for the Property, except as otherwise allowed by the CMP;

(3) The reallocation of residential dwelling units within Planning Units and from one Planning Unit to another in a manner that results in any of the following, as measured against the original Land Use Budget set forth in the CMP: (a) an increase in the number of residential dwelling units for any one particular Planning Unit of greater than twenty percent (20%) of the total number allocated to such Planning Unit in the CMP; (b) an increase in the number of residential dwelling units for any combination of three (3) Planning Units of greater than fifteen percent (15%) of the total number allocated to the aggregate of such combination in the CMP; and (c) a decrease in the number of residential dwelling units of any Planning Unit that would leave less than twenty percent (20%) of the total number allocated to such Planning Unit in the CMP;

(4) Any reallocation of commerical/mixed use square footage (excluding resort and related uses) between or among any of Planning Units 4, 5, 6, and 7; and

(5) The allocation of residential dwelling units to Planning Unit 1.

The following are minor changes:

(1) Any reallocation of residential dwelling units that does not meet the parameters set forth in subparagraph (3) immediately above;

(2) Any reallocation of commerical/mixed use square footage between or among any of Planning Units 1, 2, and 3; and

(3) Any minor alteration to the list of permitted uses of the Property set forth in the CMP, as deemed to be minor by the Planning Director.

The parties shall cooperate in good faith to agree upon and use reasonable best efforts to process any minor or major amendments to the CMP.

1.3 Density. The Town and Developer hereby acknowledge and agree that the CMP provides for a maximum number of residential units and commercial/mixed use square footage and resort use for the Property (the "Maximum Density") and the CMP and this Agreement provide parameters for reallocation of residential dwelling units and commercial/mixed use

square footage and resort use. Regardless of any reallocation, Developer shall not exceed the Maximum Density for the Property without prior amendment of the CMP, which amendments shall be reviewed by the Community Planning and Development Board and approved by the Town Council. Except as otherwise provided in the CMP, neither the Community Planning and Development Board nor the Town Council shall be required or obligated to approve an increase in the Maximum Density, although they may elect, in their discretion, to do so.

1.4 Regulation of Development.

(a) The Applicable Rules. Whenever reference is made in this Agreement to the ordinances, rules, regulations, permit requirements, development fees, other requirements, and/or official policies of the Town that apply to the development of the Property in accordance with the CMP, this Paragraph 1.4(a) shall define said applicable ordinances, rules, regulations, permit requirements, development fees, other requirements, and/or official policies. Except as otherwise expressly provided in this Agreement and the CMP, the ordinances, rules, regulations, permit requirements, development fees (as defined in A.R.S. § 9-463.05), other infrastructure fees, however denominated, exactions, other requirements, and/or official policies of the Town applicable to and governing the development of the Property shall be those ordinances, rules, regulations, permit requirements, development fees, other exactions and requirements, and/or official policies that are existing and in force for the Town as of the execution of this Agreement or, in the case of development and other fees, as contained in this Agreement. Except as otherwise expressly provided in this Agreement, and in consideration of the premises stated in the recitals to this Agreement and hereinafter detailed, the Town shall not impose or enact any additional conditions, zoning or other exactions, requirements, dedications, development or other fees, rules or regulations applicable to or governing the development of the Property, including any requirement for the dedication of land or property, or the payment of fees or money for the planning, design, engineering, construction, acquisition, improvement, or provision of public services or infrastructure improvements to lessen, offset, mitigate, or compensate for the burdens of the development of the Property on the Town, the Town having acknowledged that all such burdens have been considered and are adequately accounted for by the conditions to development of the Property set forth in the CMP and this Agreement. The Town hereby agrees that it shall take all actions legally available to it to include the Property within any growth boundary, urban boundary, urban service boundary or other similar purpose land use regulatory device that may be established by the Town or local or state law, referendum, or initiative in the future (collectively, "Growth Boundary"). The Town also shall support the defense of the Property's inclusion in any Growth Boundary, and shall not institute any action challenging or give any affirmative defense against the Property's inclusion in any such Growth Boundary. To the extent that the Town incurs costs in its support of the Property's inclusion in the Growth Boundary, Developer shall reimburse such reasonable attorneys' fees and out-of-pocket costs to the Town. Except as required by law, the Town shall not take any affirmative action or position that would have the effect of subjecting the timing or development of the Property to procedures and limitations that may be a part of any Growth Boundary.

(b) The Permissible Additions to the Applicable Rules. Notwithstanding the provisions of subparagraph (a) above and the provisions of Paragraph 1.5 below, the Town may enact the following provisions, and take the following actions, which shall be applicable to and

binding on the development of the Property, provided however, that with respect to subparagraphs (i), (iii), and (iv) through (vi) below, the Town shall use its best efforts to alleviate any adverse material impacts to development of the Property associated with such actions and enactments and provide Developer with an opportunity to suggest methods of enacting and implementing such provisions to the Property:

(i) future land use ordinances, rules, regulations, permit requirements, other requirements and official policies of the Town that are consistent with the express provisions of this Agreement, such as the adoption of Planned Community District zoning designation to provide for implementation of this Agreement and the CMP, and not contrary to the existing land use regulations applicable to and governing the development of the Property, as established in subparagraph (a) above, provided that such land use ordinances, rules, regulations, permit requirements, other requirements, and official policies shall, to the extent applicable, not involve the modification of any factual determinations of the Town memorialized in this Agreement and shall not materially impair the Developer's ability to develop the Property in the manner provided in the CMP and this Agreement;

(ii) other future land use ordinances, rules, regulations, permit requirements, development fees, other requirements, and/or official policies that the Developer may agree in writing apply to the development of the Property;

(iii) future land use ordinances, rules, regulations, permit requirements, other requirements, and official policies of the Town enacted as necessary to comply with mandatory requirements imposed on the Town by county, state or federal laws and regulations, court decisions, and other similar superior external authorities beyond the control of the Town, provided that in the event any such mandatory requirement prevents or precludes compliance with this Agreement, if permitted by law, such affected provisions of this Agreement shall be modified as may be necessary to achieve the minimum permissible variance from the terms of this Agreement in order to achieve compliance with such mandatory requirement. To the extent such compliance requires any discretionary factual determination by the Town, such determinations shall be consistent with the Town's findings memorialized in this Agreement. This subparagraph shall not permit the Town to exclude the Property from any Growth Boundary or subject the timing of development of the Property to any procedures and limitations that may be a part of such Growth Boundary, except as provided in Paragraph 1.4(a) above;

(iv) future land use and other ordinances, rules, regulations, permit requirements, other requirements and official policies of the Town of uniform application and reasonably necessary to alleviate legitimate threats to public health and safety, provided that such land use ordinances, rules, regulations, permit requirements, other requirements, and official policies shall, to the extent applicable, not involve the modification of any material factual determinations of the Town memorialized in this Agreement;

(v) future updates of, and amendments to, existing building, plumbing, mechanical, electrical, dangerous buildings, drainage, and similar construction and safety related codes, such as the Uniform Building Code, which updates and amendments are generated by a nationally recognized construction/safety organization, such as the International Conference of

Building Officials, or by the county, state or federal governments or by the Maricopa County Association of Governments; and

(vi) Amendments to such construction and safety codes generated by the Town for the purpose of conforming such codes to conditions generally existing in the Town, such as the absence of snowfall within the Town.

Nothing in this Agreement, however, shall be interpreted as relieving Developer of any obligation that it may have either currently or in the future, to comply with all governmental rules and regulations, enacted by entities other than the Town, that apply to the Property, provided that, to the extent such compliance involves factual findings or discretionary determinations by the Town, all such findings and/or discretionary determinations shall be consistent with the Town's findings and determinations memorialized in this Agreement..

1.5 Anti-Moratorium. The parties hereby acknowledge and agree that the CMP contemplates and provides for the phasing of the development of the Property and that for the term of this Agreement, no moratorium, or future ordinance, resolution or other land use rule or regulation imposing a limitation on the conditioning, rate, timing or sequencing of the development of property within the Town and affecting the Property or any portion thereof shall apply to or govern the development of the Property during the term hereof, including any Growth Boundary, whether affecting parcel or subdivision maps, building permits, occupancy permits or other entitlements to use issued or granted by the Town, except as otherwise provided in Paragraph 1.4, other provisions of this Agreement, or as specifically required by any Growth Boundary, in which case the Town shall support the defense of the Property's inclusion in any Growth Boundary or any Growth Boundary's inapplicability to the Property, and shall not institute any action challenging or give any affirmative defense against the Property's inclusion in or governance under any such Growth Boundary. To the extent that the Town incurs costs in its support of the Property's inclusion in the Growth Boundary, Developer shall reimburse such reasonable attorneys' fees and out-of-pocket costs to the Town. Nothing in this Paragraph 1.5 shall prohibit the Town from withholding the issuance of Certificates of Occupancy for a structure to be occupied if the Infrastructure/Services set forth in the CMP, Planning Unit Plans, and any plats or site plans as required to serve the applicable portion of the Property on which the structure to be occupied is located will not be in place prior to occupation of such structure.

1.6 Additional Property. The Town hereby agrees to consider, and, if in the best interest of the Town, amend this Agreement from time to time solely at the request of Developer to incorporate into this Agreement the whole or any portion of additional properties adjacent to or proximate to the Property (the "Additional Property") if and when Developer acquires such Additional Property. The Town and the Developer agree that if Developer elects to incorporate such Additional Property or portions thereof: (1) thereafter, such Additional Property shall be included in the Property and shall be subject to and shall benefit from all provisions of this Agreement applicable thereto and any reference herein to the Property shall include such Additional Property, which may increase the Maximum Density of the Property; (2) the Town and Developer shall cooperate in order for the Additional Property to receive the necessary land use approvals, including any necessary amendment to the CMP; and (3) the plans and land use

designations approved for any Additional Property shall thereafter apply to the Property and the applicable Additional Property

1.7 **Phasing**.

(a) Phasing Plan. The development planned for the Property, including the infrastructure, is intended by Developer to be carried out in phases over a number of years. Development of the Property is contemplated to progress in phases that may be non-contiguous until all of the Property is developed. The exact boundaries of each phase shall be established in the Planning Unit Plan process set forth in the CMP.

(b) Modification of Phasing and Schedules. The phasing plan, as and when determined, shall be subject to modification by Developer based upon changing residential real estate market conditions, industry factors, and/or business considerations. Any such modification shall not necessitate an amendment to this Agreement, but shall be retained in the Town's official file for the Property.

1.8 Changes to Zoning. For the duration of this Agreement, the Town shall not initiate any changes or modifications to the Planned Community District zoning designation as applicable to the Property, except at the request of the owner of the portion of the Property for which such change is sought. Any such request for change shall be processed in the manner then set forth in the Town's zoning ordinance for amendments. Any changes or modifications to the Planned Community District zoning designation as applicable to any part of the Property in which Developer has an interest in fee or beneficial title initiated by the Town shall become effective only upon Developer's consent. Nothing set forth in this Paragraph shall be deemed to require Town approval of changes to the Planned Community District zoning designation as applicable to this Property after the effective date of this Agreement.

1.9 Vested Rights. The Town agrees that, for the term of this Agreement, Developer shall have a vested right to develop the Property in accordance with this Agreement, the CMP, and the Planned Community District zoning designation. This paragraph shall survive termination of this Agreement pursuant to Paragraph 7.6(c) of this Agreement. The determinations of the Town memorialized in this Agreement, together with the assurances provided to Developer in this Agreement, including this Section I, are provided pursuant to and as contemplated by A.R.S. § 9-500.05 and other applicable law, bargained for and in consideration for the undertakings of Developer set forth herein and contemplated by the CMP, and are intended to be and have been relied upon by Developer to its detriment in undertaking the obligations of Developer under this Agreement and the CMP generally and in expending monies and undertaking to purchase the Property and conduct the planning, design, engineering, construction, acquisition, installation, and/or provision of public services/infrastructure improvements within and benefiting the Property and a larger land area in which the Property is located.

II. INFRASTRUCTURE.

2.1 Public Benefits. The parties acknowledge that a primary purpose of this Agreement is to provide for the coordinated planning, design, engineering, construction, acquisition, installation, and/or provision of public services/infrastructure improvements as set forth in the CMP and as contemplated by the Planning Unit Plan process described therein (the "Infrastructure Plan"). The Infrastructure Plan specifically includes, but is not limited to, the Master Drainage Plan, the Master Street and Circulation Plan, the Master Potable Water Plan, the Master Wastewater Plan and the Master Public Facilities Plan, all of which are included in the CMP. The Town acknowledges and agrees with Developer's conclusions that the Infrastructure Plan contemplates the necessary public services/infrastructure improvements of the type described therein for the planned development of the Property.

2.2 Infrastructure Plan. Concurrently with the approval and execution of this Agreement and having reviewed and considered the anticipated public health, safety, and welfare needs of future residents of the Property, the Town approves the Infrastructure Plan and acknowledges and agrees that refinements to the Infrastructure Plan will be made in the Planning Unit Plan process. Except as otherwise specifically provided in this Agreement, the Infrastructure Plan shall entitle Developer, so long as Developer proceeds with the development of the Property, to implement the public services/infrastructure improvements, including but not limited to acquisition of underlying land, in conformance with the Infrastructure Plan (the "Services/Infrastructure"), and the Town shall not require any additional Services/Infrastructure of the nature and type provided for in the Infrastructure Plan, as the same may be refined from time to time in the Planning Unit Plan process. Notwithstanding the previous sentence, if assumptions in the CMP are incorrect or change (for example, if the freeway interchange at Interstate 10 and Airport Road is not constructed for whatever reason), Developer shall revise the applicable portion of the Infrastructure Plan to take into account the changed or incorrect assumptions. The Town shall not be responsible for any additional Services/Infrastructure not contemplated in the Infrastructure Plan that the parties mutually determine is necessary due to changed or incorrect assumptions.

2.3 Construction. The parties hereto acknowledge and agree that, to the extent the Developer develop the Property, they shall have the right and the obligation, at any time after the execution of this Agreement, to dedicate land, subject to the Town's or other applicable jurisdiction's acceptance, and/or construct or cause to be constructed and installed any or all portions of the Services/Infrastructure that relate to the segments of the Property developed by Developer. All such construction performed by Developer shall be performed in compliance with all applicable requirements, standards, codes, rules, or regulations of the Town as established in paragraph 1.4 and in compliance with all permit requirements, standards, codes, rules or regulations of (i) Maricopa County and the Maricopa Association of Governments that have been incorporated by the Town into the Town standards, codes, rules, or regulations, (ii)the State of Arizona, and (iii) the United States of America, as applicable, in effect at the time of such construction. Developer, its agents, and employees, shall have the additional right, upon receipt from the Town of an appropriate encroachment permit, to enter and remain upon and

cross over any Town easements or rights-of-way to the extent reasonably necessary to facilitate such construction, or to perform necessary maintenance or repairs of such Services/Infrastructure, provided that Developer's use of such easements and rights-of-way shall not impede or adversely affect the Town's use and enjoyment thereof and provided that the Developer shall restore such easements and rights-of-way to their condition prior to Developer's entry upon completion of such construction, repairs or maintenance. To the extent permitted by law and subject to obtaining an encroachment permit from the Town, the prior dedication of any easements or rights-of-way shall not affect or proscribe Developer's right to construct, install, and/or provide Services/Infrastructure thereon or thereover. The parties hereto acknowledge and agree that the Town, as necessary to implement the Infrastructure Plan, shall cooperate reasonably with and assist in: a) at the sole cost of Developer, the abandonment of any unnecessary public rights-of-way or easements currently located on the Property and not otherwise used or required by other members of the public; (b) at the cost of Developer, the acquisition and/or condemnation of any necessary public rights-of-way or easements not currently located on the Property and required to be consistent with the Master Street and Circulation Plan and Planning Unit plans or provide access to the Property pursuant to the Master Street and Circulation Plan and Planning Unit plans; and (c) submitting requests or filing applications, or entering into appropriate intergovernmental agreements with Maricopa County or other appropriate governmental entities regarding the abandonment or acquisition of public rights-of-way or easements necessary to develop the Property.

2.4 Infrastructure Assurance. The parties hereto acknowledge and agree that it shall be condition to the issuance of a building permit or permits that the Town shall have been provided with the types of assurances as contained in Section 4.08.A of the CMP or a letter of credit or such other security acceptable to the Town to assure that the installation of Services/Infrastructure directly related to such building permit or permits will be completed ("Infrastructure Assurance"). The Town agrees that within twenty (20) days from the Town's approval of the particular completed Services/Infrastructure for which the Town has required and Developer has provided Infrastructure Assurance, the Town shall release (or, in the case of a letter of credit, accept a substitute letter of credit) such Infrastructure Assurance, in whole or in part as may be appropriate under the circumstances.

2.5 Dedication/Acceptance of Services/Infrastructure. The parties hereto acknowledge and agree that the CMP provides that the Town will own certain completed segments of the Services/Infrastructure, including but not limited to the underlying land (the "Public Services/Infrastructure").

(a) Dedication. Ownership of all completed segments of the Public Services /Infrastructure shall be dedicated without cost (other than subsequent operational and maintenance costs) by Developer to the Town within sixty (60) days after completion of any segment of the Public Services/Infrastructure in accordance with the Infrastructure Plan, the final map of dedication therefor and the CMP's Planning Unit Plans, or within such other time period as may be agreed to by Developer and the Town, and subject to acceptance by the Town as hereinafter set forth. Developer agrees to warrant the construction of all Public

Services/Infrastructure against defective workmanship and for materials for a period of one (1) year from the dedication of such Public Services/Infrastructure.

(b) Acceptance, Operation, and Maintenance. So long as such Public Services/Infrastructure are constructed in accordance with the approved plans and the requirements of Paragraph 2.3, as verified by the inspection of the completed improvements by the Town Engineer, and all punch list items have been completed, the Town shall immediately thereafter accept such dedication(s) of Public Services/Infrastructure, and shall, at its own cost and expense, maintain, repair and operate such Public Services/Infrastructure, including areas of landscaping, in accordance with its customary standards, subject to subparagraph (c) of this Paragraph. Notwithstanding the foregoing, if Developer desires that the Town accept the production component of the Water System and the treatment components of the Water and Wastewater Systems or other Public Services/Infrastructure, such as a regional park (but specifically excluding the Temporary and Permanent Facilities, as defined in Paragraph 2.12), that requires operational and maintenance expenditures in excess of revenues to the Town generated by the Property, Developer and the Town shall negotiate an acceptance agreement that addresses operational and maintenance deficits prior to the Town's acceptance of such Public Services/Infrastructure.

(c) Landscape Maintenance. Developer and Town shall enter into a landscape maintenance agreement that provides for Developer's maintenance (or contracting for the maintenance) of the landscaping located in the public rights-of-way ("Landscaping"). The Town currently does not have standards for maintaining the Landscaping. If the Town establishes Landscaping standards, then Developer will maintain the Landscaping to the Town's Landscaping standards, and such maintenance costs, if the maintenance services are publicly bid, will be reimbursed to Developer from the Town. The maintenance agreement also shall permit Developer to maintain, or cause to be maintained, the Landscaping at a level higher than the Town's Landscaping standards, in which case Developer shall receive reimbursement from the Town only for that portion of the maintenance costs attributable to maintenance at the Town's Landscaping standards unless the Town has received or will receive funds earmarked for such enhanced maintenance from other sources as provided for in Section 3 hereof. Developer may assign its rights and obligations to either a master property owners' association or a CFD (as defined in Paragraph 3.2).

(d) Fiber Easement. Developer may reserve prior to dedication to the Town, in any public street on the Property, an easement for the installation, operation, and maintenance of any public or private fiber optics or telecommunications facilities ("Fiber Easement"). Developer and Town shall enter into an agreement that establishes the procedures for coordinating the location of facilities in the Fiber Easement and nearby public easements and the procedures and standards for maintenance and repair of facilities located in the Fiber Easement. Any construction or maintenance activities conducted within the Fiber Easement shall be subject to obtaining any necessary encroachment permit from the Town. Developer agrees that, although the Fiber Easement will be established prior to dedication of the public right-of-way, each party shall be required to restore to substantially original condition any facilities damaged by the other in exercising their respective rights to use, in Developer's case, the Fiber Easement, and, in the Town's case, the public rights-of-way. The Town agrees that it will not take any action that may frustrate Developer's ability to utilize the Fiber Easement for the installation,

operation, and maintenance of any public or private fiber optics or telecommunications facilities located in the Fiber Easement, and agrees that such facilities may connect to facilities external to the Property. Developer shall have the exclusive right to select providers of fiber optics and telecommunications services for the Property. To the extent that the Town, pursuant to statute and applicable law, adopts any franchise fees, sales taxes or other rates, taxes, assessments or charges ("Town Fees"), which the Town imposes on an operator or franchisee providing fiber optics and telecommunications services on a Town-wide basis including the Property, this subparagraph shall not operate to prohibit the Town from collecting such Town Fees from such franchisee or operator relating to such operations and services on the Property; provided, however, that nothing contained herein shall constitute contractual authority for imposition of such Town Fees.

2.6 **Transportation.** Developer will construct or arrange for the construction of, in phases, and in accordance with the Master Street and Circulation Plan and the Planning Unit Plans, streets, roadways, and parking facilities to be used for motorized vehicular travel, ingress, egress, and parking and pedestrian, bicycle or other facilities to be used for non-motor vehicular travel, ingress, egress, and parking to, through, within, and from the Property, including street lighting with underground electric service distribution, and all striping, traffic signals, street sign posts, street name signs, stop signs, speed limit signs, and all other directional/warning/advisory signage as required. Developer acknowledges and agrees that, except for those roads on which the final layer of paving has not been constructed, it will use its best reasonable efforts to avoid open cut trenching in streets dedicated to the Town for a period of five (5) years following the Town's acceptance of any dedicated street. The Town will permit, however, directional boring during such five (5) year period. Developer may dedicate, and the Town shall accept, collector and arterial roads that are fully constructed except for the final layer of paving material; provided, however, that the Developer shall complete construction of such collector and arterial roads with the final layer of paving material at the time agreed to by the Developer and the Town in the conveyance documents.

2.7 **Drainage Improvements.** Developer will construct or arrange for the construction of in phases and in accordance with the Master Drainage Plan and Planning Unit Drainage Plans and after consultation with the Maricopa County Flood Control District, drainage and flood control systems and facilities for collection, diversion, detention, retention, dispersal, use, and discharge.

2.8 **Water**.

(a) **Water Service.** Developer, at its expense, from funding sources identified in Section 3 hereof, or through a private water provider(s), will arrange for the design, engineering, construction, acquisition installation, and/or permitting of, in phases, and in accordance with the Master Potable Water Plan and Planning Unit Potable Water Plans, a water production, storage, treatment, and delivery system ("Water System") that meets all applicable federal, state and local standards. Developer has explored several options for the provision of water service to the Property, including the primary option identified in the CMP, which requires treatment of

groundwater with a high level of dissolved solids, and ultimate ownership of the Water System by the Town. The second option identified in the CMP is the provision of water service from a private water provider. Developer and the Town recognize that the cost of implementing the primary option identified in the CMP may render the primary option practically infeasible; therefore, the parties currently are considering whether an alternative option may be more cost-effective for Developer. The parties, for a period of nine (9) months after the effective date of this Agreement, shall in good faith explore such alternative options to determine whether an alternative option would permit the Town to own and operate the Water System without a material difference to Developer in either the cost of or timing to design, engineer, construct, acquire, install and/or operate the Water System as compared to the costs of and timing associated with the provision of water service by a private water provider(s). If such alternative exists, the parties shall in good faith implement such alternative; if such alternative does not exist, then Developer shall have the right, at its option, to seek and enter into one or more agreements for water service in the future from other private water companies who are subject to regulation by the Arizona Corporation Commission as water providers, and the Town (i) will not veto or object to the expansion of the certificate of convenience and necessity of such other private water company(ies) to include the Property and (ii) will take the steps necessary to permit such other private water company(ies) to locate facilities in the public rights-of-way either by license, agreement, or, if necessary, by franchise election, which election shall be held at no cost to the Town and which shall take place as soon as is reasonably practicable after request by Developer to the Town.

(b) Funding/Town Service. If Developer forms a water improvement district as permitted under applicable State law, the Town will cooperate and, at no cost to the Town, give its approval. Alternatively, Developer may request, and the Town shall cooperate to undertake the actions and procedures required to form a CFD, as defined in Paragraph 3.2, in order to provide for the design, engineering, construction, acquisition, installation, permitting, and/or operation of the Water System, as provided in Paragraph 3.2 hereof. If the parties agree to implement an alternative that contemplates the Town acquiring ownership of the Water System, then Developer shall offer and the Town agrees to accept ownership of and operational responsibility for any complete phase of, or the entirety of the Water System so long as the transfer is at no cost to the Town (other than subsequent operational and maintenance costs) to acquire the Water System, except new public service and infrastructure funding sources as provided for in Section 3 hereof. Notwithstanding any provision herein to the contrary, acceptance of any phase or all of the treatment component of the Water System may be subject to an agreement by Developer to subsidize operational and maintenance costs for the phase of the treatment component to be accepted for that time period that such phase of the treatment component of the Water System does not generate sufficient revenues to cover operating and maintenance costs. Upon transfer to the Town of such ownership and operational responsibility, the Town hereby agrees to serve water to the Property in quantity and quality sufficient to satisfy the contemplated normal present and future domestic, municipal and commercial demands for potable water at the Property as and when required in connection with the development of the Property, subject to any cause of water disruption or degradation of water quality that is outside the control of the Town and further subject to the Town's reasonably enacted and imposed standard terms and conditions of delivery. Upon dedication of any phase of the Water System, Developer shall provide to the Town all applicable as-built drawings, operation and maintenance manuals, operation records, and the like.

(c) **Fees.** The Town shall receive no monthly charges for water service until, and if, the Town accepts ownership of and operational responsibility for the Water System, after which time the Town shall be entitled to the monthly charges for water service as necessary to recoup the costs associated with providing such water services.

(d) **Non-Potable Water**. Developer also retains the right at its option to develop a non-potable water system that utilizes effluent and other non-potable water sources to serve various needs of the Property, including supplying water for golf course irrigation.

(e) **Assured Water Supply**. The Town agrees to cooperate with Developer, at no cost to the Town, to assist the Developer and its respective successors and assigns in obtaining a Certificate of Assured Water Supply from DWR for the Property, or portions thereof, as the Property is developed in accordance with this Agreement. Developer or any successor owner or owners and assigns of all or a portion of the Property, may elect from time to time to qualify the Property (or any portion thereof) as member land in the Central Arizona Groundwater Replenishment District (the "District") pursuant to then applicable law. If the Town is the water provider for the Property, the Town agrees to cooperate with Developer and its successor owner or owners in qualifying the Property or portions thereof as member land in the District by, among other things, recording an instrument or instruments relative to the Property or portions thereof and reasonably acceptable to Developer (or successor owner) and the District, which instrument(s) will satisfy the requirements of A.R.S. § 48-3774, as amended. Developer may qualify the Property as member land in the District in phases and the Town will cooperate with respect to each phase as stated herein.

2.9 Wastewater Treatment.

(a) **Wastewater Services**. Developer, at its expense, from funding sources identified in Section 3 hereof, or through a private wastewater provider, will arrange for the design, engineering, construction, acquisition, installation, and/or permitting of, in phases, and in accordance with the CMP's Master Wastewater Plan, a wastewater collection, storage, treatment, and disposal system ("Wastewater System") that will treat and dispose of wastewater generated at the Property in a manner that meets all applicable federal, state, and local standards. Developer has explored several options for the provision of wastewater service to the Property. The parties, for a period of nine (9) months after the effective date of this Agreement, shall in good faith explore such alternative options to determine whether an alternative option would permit the Town to own and operate the Wastewater System without a material difference to Developer in either the cost of or timing to design, engineer, construct, acquire, install and/or operate the Wastewater System as compared to the costs of and timing associated with the provision of wastewater service by a private wastewater service provider(s). If such alternative exists, the parties shall in good faith implement such alternative; if such alternative does not exist, then Developer retains the right, at its option, to seek and enter into one or more agreements for wastewater service from other private wastewater service providers. The method of treatment shall be approved by the appropriate governmental health agencies.

(b) **Funding/Capacity Rights.** If Developer forms a sewer improvement district as permitted by Arizona Revised Statutes, Town will cooperate and, at no cost to the Town, give

its approval. Alternatively, Developer may request, and the Town shall cooperate to undertake the actions and procedures required to form a CFD, as defined in Paragraph 3.2, in order to provide for the design, engineering, construction, acquisition, installation, permitting, and/or operation of the Wastewater System, as provided in Paragraph 3.2 hereof. The Town further agrees that the Developer may form or contract with a private sewer service, and that the Town will not object to such private company obtaining a certificate of convenience and necessity to provide sewer services to the Property. If the parties agree to implement an alternative that contemplates the Town acquiring ownership of the Wastewater System, then the Developer shall offer and the Town agrees to accept ownership of and operational responsibility for any complete phase of or the entirety of the Wastewater System so long as the transfer is at no cost to the Town (other than subsequent operational and maintenance costs) to acquire the Wastewater System, except new public service and infrastructure funding sources as provided for in Section 3 hereof. Notwithstanding any provision herein to the contrary, acceptance of any phase or all of the treatment component of the Wastewater System may be subject to an agreement by Developer to subsidize operational and maintenance costs for the phase of the treatment component to be accepted for that time period that such phase of the treatment component of the Wastewater System does not generate sufficient revenues to cover operating and maintenance costs. Upon such transfer, Town hereby agrees to reserve and provide sufficient capacity to serve the existing and contemplated normal future needs of the Property as and when required in connection with the development of the Property. Upon dedication of any phases of the Wastewater System, Developer shall provide to the Town all applicable as-built drawings, operation and maintenance manuals, operation records, and the like.

(c) Fees. The Town shall receive no monthly charges for sewer service until, and if, the Town accepts ownership of and operational responsibility for the Wastewater System, after which time the Town shall be entitled to the monthly charges for sewer service as necessary to recoup the costs associated with providing such wastewater service.

2.10 Effluent.

(a) Service. Developer, at its expense, from funding sources identified in Section 3 hereof, or through a private provider, may elect itself or arrange for the design, engineering, construction, acquisition, installation, and/or permitting of in phases, effluent reuse/disposal facilities and a delivery system as part of the non-potable water system ("Effluent Facilities") that meets all applicable federal, state and local standards. Developer retains the right, at its option, to seek and enter into an agreement for effluent service in the future from other private companies if the Town does not provide wastewater service to the Property.

(b) Funding/Capacity Rights. If the Town provides wastewater service to the Property, the Developer shall offer and the Town agrees to accept ownership of any complete phase of, or the entirety of the Effluent Facilities so long as the transfer is at no cost to the Town (other than subsequent operational and maintenance costs) to acquire the Effluent Facilities. Upon transfer to the Town of such ownership, the Town hereby agrees to serve effluent to the Property in quantity and quality sufficient to satisfy the contemplated normal present and future demands (including supplying water for golf course irrigation) for effluent at the Property as and when required in connection with the development of the Property, subject to any cause of water

disruption or degradation of water quality that is outside the control of the Town and further subject to the Town's standard terms and conditions of delivery. Upon dedication of any phase of the Effluent System, Developer shall provide to the Town all applicable as-built drawings, operation and maintenance manuals, operation records, and the like.

(c) **Fees.** Except as provided in this paragraph, if the Town owns the Wastewater System, the treated effluent will be delivered at no cost, other than monthly charges for sewer service that are charged uniformly to all property owners receiving Town sewer service, in amounts and at times designated by Developer. If alternative disposal methods for disposing treated wastewater permit a lower level of treatment than is required for effluent reuse, Developer shall pay monthly charges for effluent that represent the direct incremental costs associated with treating the wastewater to the higher standards required for effluent reuse.

2.11 Private Streets, Continuation, and Improvements; Address Naming . The Town and Developer hereby acknowledge and agree that Developer will have the right to retain and/or acquire ownership to some interior local streets and other rights-of-way located within the Property ("Private Rights-of-Way"). In addition, some or all of the Private Rights-of-Way may be conveyed to one or more homeowners associations created by Developer and/or any successor of Developer for this and other purposes. Developer shall have the right to install access control structures within the medians of the Private Rights-of-Way at any portions of the Property. Developer shall grant to the Town an easement for police, fire, ambulance, garbage collection, water or sewer line installation and repair, and other similar public purposes, over the Private Rights-of-Way. Developer shall have the right to name private streets and any new public streets not a continuation of an already named public street. Developer shall have the right to rename the continuation of Airport Road and Camelback Road as they run through the Property. Developer is not required to connect or continue outside streets through the Property unless indicated on the Master Street and Planning Unit Plans. With the exception of the west one half of Jackrabbit Trail, Developer is not required to improve or dedicate right-of-way on the half streets contained on the perimeter of the Property. The timing of dedication and construction of any portion of the west one-half side of Jackrabbit Trail shall be determined as part of the Planning Unit Plan(s) for the portion of the Property adjacent to Jackrabbit Trail. Developer shall have the right to determine the designation of addresses for properties in the Property after consultation with the appropriate Town and U.S. Postal Service personnel.

2.12 Fire Protection. The Town and Developer hereby acknowledge and agree that the proposed development for the Property requires a full-time, professional fire service with adequate fire fighting response time capabilities. Therefore, the Town shall provide professional fire service that meets the requirements set forth below. The Town shall use its best efforts to staff the Temporary and Permanent Facilities (as defined below) as provided in this Paragraph 2.12. Developer recognizes that the Town may experience temporary staffing shortages due to termination, resignation, and the like, and agrees that, provided Town's best efforts are used to staff the Temporary and Permanent Facilities as provided below, temporary staffing shortages shall not constitute a default under this Agreement.

(a) Upon commencement of any construction activity on the Property, Developer shall provide to the Town, at Developer's expense, a brush truck, which shall be housed temporarily by the Town at the Rancho Sunora fire station.

(b) Upon commencement of vertical construction on the Property, Developer shall provide to the Town a temporary fire protection facility, at a location selected by Developer, and consisting of a modular building with a concrete base, awning to cover the equipment, and on-site utilities including water, electricity, and air conditioning ("Temporary Facility"). The Temporary Facility shall include sleeping quarters for four (4) firefighters. The Town shall move the brush truck provided by Developer pursuant to (a) above to the Temporary Facility. The Town also shall provide, at its expense, a pumper truck in good working order, which shall be housed at the Temporary Facility. The Town shall staff the Temporary Facility with at least two (2) paid firefighters and volunteer firefighters as necessary for ten (10) hours each day during construction hours. Such firefighters shall have Emergency Medical Training ("EMT") and Firefighter II certifications from the State of Arizona.

(c) Upon issuance of the first Certificate of Occupancy for a permanent residential or commercial structure on the Property, in addition to the requirements of (b) above, Town shall increase the hours for the two (2) existing paid firefighters to twenty-four (24) hours each day and add to the staff of the Temporary Facility a sufficient number of volunteer firefighters to adequately serve the Property. The paid firefighters shall have EMT and Firefighter II certifications from the State of Arizona. In addition, the Town shall pay the cost of operating and maintaining the Temporary Facility in a manner that the service provided, excluding any consideration of water service if the Town is not the water provider for the Property, meets or exceeds Insurance Service Organization ("ISO") 6 standards.

(d) Upon the later of (i) twenty-four (24) months after issuance of the first Certificate of Occupancy for a permanent residential or commercial structure on the Property, or (ii) that time that the Certificate of Occupancy for the two hundredth (200th) residential structure is issued or one hundred thousand (100,000) square feet of commercial space is occupied (or same proportionate combination thereof), Developer shall dedicate one two (2) acre site for the location of a permanent joint fire protection and police facility on the Property ("Joint Facility"). Upon such dedication, the Town shall diligently commence the design and diligently pursue the commencement and completion of construction of the Joint Facility. Prior to the Town's commencement of construction, Developer shall review and approve the design of the Joint Facility for compliance with the design standards and conditions, covenants, and restrictions applicable to the Property, which approval shall not unreasonably be withheld. Developer shall pay to the Town the Town's cost of designing and constructing the Joint Facility, up to a maximum of seven hundred and fifty thousand dollars ($750,000), which maximum shall be adjusted on an annual basis beginning one (1) year after adoption of this Agreement in an amount equal to the amount of the CPI increase (consumer price index for all urban customers, all cities – all items, 1982-1984). The Town shall pay: (i) any additional costs associated with the design and construction of the Joint Facility over and above Developer's seven hundred and fifty thousand dollar ($750,000) contribution (as adjusted); (ii) the cost of staffing the Joint Facility with at least four (4) paid firefighters for twenty-four (24) hours each day, which firefighters shall have EMT and Firefighter II certifications from the State of Arizona and (iii) the cost of operating and maintaining the Joint Facility in a manner that the service provided,

excluding any consideration of water service if the Town is not the water provider for the Property, meets or exceeds ISO 6 standards. The Town shall move the equipment (including the brush truck and the pumper truck) from the Temporary Facility to the Joint Facility.

(e) Upon the later of (i) forty-eight (48) months after issuance of the first Certificate of Occupancy for a permanent residential structure on the Property, or (ii) at that time that the Certificate of Occupancy for the one thousandth ($1,000^{th}$) permanent residential structure is issued, the Town shall, at its expense, equip the Joint Facility with an Advanced Life Support ("ALS")/paramedic apparatus and staff the Joint Facility with at least six (6) paid firefighters for twenty-four (24) hours each day. At least two (2) of the six (6) firefighters shall be ALS certified, and all firefighters shall have EMT and Firefighter II certifications from the State of Arizona. In addition, the Town shall pay the cost of operating and maintaining the Joint Facility in a manner that the service provided, excluding any consideration of water service if the Town is not the water provider for the Property, meets or exceeds ISO 6 standards.

(f) If necessary to meet ISO 6 standards, Developer shall dedicate a one and one-half (1 ½) acre site for the location of a permanent fire protection facility in addition to the Joint Facility at such time as the Town is prepared to construct, staff, operate, and maintain such additional permanent fire protection facility in a manner that meets ISO 6 standards.

2.13 Police Protection. The Town agrees to provide police services to the Property in a manner and at a level comparable to that provided to other residents of the Town. Developer shall provide dedicated office space adjacent to the sales office or commercial space for use by Town police at the time such office space is available on the Property ("Temporary Police Office"). Developer also shall pay to the Town twenty-five thousand dollars ($25,000) to set up the Temporary Police Office. The Town shall man the Temporary Police Office twenty-four (24) hours per day for the benefit of the Property as well as the surrounding areas of the Town. Upon completion of construction of the Joint Facility referenced in Paragraph 2.11(d) above, Developer shall pay to the Town an additional twenty-five thousand dollars ($25,000) to set up a permanent branch police office ("Permanent Police Facility"), and the Town shall move its operations to the Joint Facility and abandon the Temporary Police Facility. The Town shall man the Permanent Police Facility twenty-four (24) hours per day for the benefit of the Property as well as the surrounding areas of the Town.

2.14 Municipal Services Generally. The Town acknowledges that, among other things, the need for public services/infrastructure improvements other than transportation, drainage, water, and wastewater public services/infrastructure improvements, such as, for example, police, fire, schools, parks, and open space areas for public assembly and recreation, is substantially offset or accounted for by virtue of the accommodations and facilities contemplated by the Master Public Facilities Plan, the CMP, and this Agreement (such public services/infrastructure being included in the references herein to Services/Infrastructure). The Town and Developer acknowledge and agree that various public facilities and services such as, but not limited to, police, fire, schools and parks as identified in the CMP and to be identified in the Planning Unit Plans will be sited, provided, maintained and operated in accordance with this Agreement and the CMP and the public facility standards contained therein. The Town further

acknowledges that provisions in the CMP for recreation facilities, parks, view corridors and open-space areas meet or exceed the level of service standards of the Town and, if and when constructed, will offset or otherwise account for any burden that otherwise might be imposed upon the Town as the result of development of the Property. In addition, the CMP and this Agreement contemplate the provision of adequate fire and emergency medical services (it being acknowledged and agreed that the planned services and facilities, will similarly offset or account for any burden that otherwise might be imposed upon the Town). The Town agrees to provide garbage and refuse collection and other municipal services to the Property in a manner and at a level comparable to that provided to other residents of the Town. Developer shall dedicate a two (2) acre site to the Town for the construction of library facilities at such time as the Town commits to fund the design and construction of the library facilities within one (1) year of the dedication.

2.15 Schools. The Property is located in the Ruth Fisher School District, the Litchfield Park Elementary School District, the Agua Fria High School District, the Liberty Elementary School District, and the Buckeye High School District (collectively, the "Districts"). Developer will work diligently with the Districts to ensure that the educational needs of Property residents are met.

2.16 Town's Review of Plans and Construction. Whenever in this Agreement Developer is required to design a building, structure, or project that Town will own, Town shall have the right to review and approve the final plans and specifications prior to commencement of construction. In the event the Town reasonably objects to any aspect of such final plans and specifications within thirty (30) days after the Town's receipt of such plans and specifications, the Town and Developer shall use good faith efforts to resolve the Town's objections and, if no resolution is reached within thirty (30) days after Developer's receipt of the Town's objections, such matter shall be submitted for resolution to binding arbitration governed by the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501 *et seq.*, and judgment upon the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction.

2.17 Development Fees. Consistent with the provisions of A.R.S. § 9-463.05, the Town has evaluated the CMP and this Agreement and has considered the contribution made or to be made in the future on account of taxes (including sales taxes), other fees, and assessments paid by Developer and the anticipated future residents of the Property. The Town has determined that all Services/Infrastructure necessary to serve the anticipated needs of the future residents of the Property are provided for in the CMP and this Agreement, or will be provided for through the payment of such taxes, other fees, and assessments. Without limiting the foregoing, the Town acknowledges that such Services/Infrastructure will meet or exceed the level of service standards of the Town and, if and when constructed, will offset or account for the burden that would otherwise be imposed upon the Town to provide such Services/Infrastructure. The Town further acknowledges that effectuation of the Infrastructure Plan will confer a benefit on the Property and, in certain instances, the larger land area served, or potentially served, by the public services/infrastructure improvements planned, designed, engineered, constructed, acquired,

installed, and/or provided in accordance with the Infrastructure Plan in that, among other things, anticipated planning and development within such larger area necessarily will result in the need for public services, including infrastructure. In addition, the Town has reviewed the cost estimates for the Services/Infrastructure prepared by Wood Patel, Inc. dated September 17, 1999, and agrees that such cost estimates are a reasonable approximation of the costs associated with the planning, design, engineering, construction, acquisition, installation, and/or provision of such Services/Infrastructure for purposes of determining the development fees applicable to the Property. The Town acknowledges and agrees that Developer has established certain aspects of, and is in the process of further developing, a plan of finance intended to provide for the planning, design, engineering, construction, acquisition, installation, and/or provision of various components of such Services/Infrastructure as and when development, market, and other conditions indicated that proceeding with such activities is appropriate. Based on that portion of the plan of finance that has been completed as of the date of this Agreement, which the Town has reviewed and evaluated, the Town acknowledges and agrees that it is appropriate to establish the amount of such development fees applicable to the Property as set forth in Exhibit D, which is consistent with a written report provided to the Town that includes the cost estimates referenced above. The Town's agreement, however, is expressly conditioned upon Developer completing and, at the appropriate stages of development, implementing such Services/Infrastructure, including appropriate provisions for funding the cost of such Services/Infrastructure that is not funded through the payment of development fees. The Town will cooperate with Developer in effectuating the Services/Infrastructure plan of finance, including taking reasonable action, at Developer's expense, to facilitate utilization of other public services and infrastructure financing mechanisms in amounts sufficient to pay the cost of the Services/Infrastructure in conjunction with the development fees. Subject to the foregoing, the maximum total development fee for residential and commercial/industrial development is fixed by Exhibit D; however, the Town acknowledges and agrees that, upon Developer's reasonable request supported by third-party documentation, the development fee for any individual development fee category set forth in Exhibit D may be adjusted (i.e., increased or decreased) based on actual costs, as and when other elements of Developer's Services/Infrastructure plan of finance are established. This paragraph shall survive the termination of this Agreement pursuant to Paragraph 7.6(c) of this Agreement.

2.18 Development Fee Credit. The Town acknowledges and agrees that the Services/Infrastructure to be provided by Developer under the Infrastructure Plan, and certain additional Public Infrastructure Improvements that may be provided from time to time under this Agreement, will confer a benefit on the Property and, in certain instances, may confer a benefit on land areas outside the Property. In recognition of such benefits, the Town acknowledges and agrees that the Town shall take into account and credit Developer dollar for dollar against the sum total of all development fees owed by Developer or anticipated builders/residents on the Property. Such credit shall equal the sum of all costs associated with constructing, acquiring, and/or installing the Services/Infrastructure, including, but not limited to, costs for design, engineering, surveying, permits, taxes, fees, bonds, labor, materials, land, and construction administration. Any credits shall be freely assignable by Developer. Developer and the Town shall compute the credits outstanding on a quarterly basis. This paragraph shall survive the termination of this Agreement pursuant to Paragraph 7.6 (c) of this Agreement.

2.19 Development Fee Program. The Town has approved a written report based on documentation supporting the findings and determinations of the Town as described in Paragraph 2.17. Based on such written report and on any additional documentation supplied by Developer, and at Developer's request, the Town shall provide the required notice of intention to assess a new development fee and release to the public the written report, together with the documentation, in accordance with A.R.S. § 9-463.05. Thereafter, the Town shall conduct a public hearing, as required by the statute, and adopt one or more ordinances that provide for the payment of development fees to defray the costs of providing necessary Services/Infrastructure within and without the Property, as contemplated under Paragraph 2.17 and A.R.S. § 9-463.05. The ordinance shall include and be subject to the provisions contained in Exhibit E. Without limiting the foregoing, upon the adoption of such an ordinance, the development fees applicable to the Property shall be those set forth in Exhibit D, but the reimbursement procedures set forth in such ordinance may be utilized by Developer in lieu of the credit provisions set forth in Paragraph 2.18 herein. If at any time the Town determines to, or does, adopt any other ordinance or ordinances for the purpose of assessing development fees in respect of development that includes the Property, the Town acknowledges and agrees that so long as Developer has completed the applicable portions of the Services/Infrastructure and has made appropriate arrangements to pay for those components of the Services/Infrastructure required on account of actual development of portions of the Property, development fees assessed in respect of the Property shall not exceed the amount, scope, or range of development fees set forth on Exhibit D. This paragraph shall survive the termination of this Agreement pursuant to Paragraph 7.6 (c) of this Agreement.

III. ALTERNATIVES FOR FINANCING INFRASTRUCTURE IMPROVEMENTS.

3.1 Town Obtains Additional Funds. If the Town, alone or in conjunction with other public bodies, obtains State, federal or other funds specifically designated for the planning, design, engineering, construction, installation, acquisition, or provision of that certain planned freeway interchange at the juncture of Interstate 10 and the alignment of Airport Road or any other portion of the Services/Infrastructure, including Services/Infrastructure that is within the jurisdiction of the State, Maricopa County, or public bodies either together with or independent of the Town, and/or land upon which the said freeway interchange or any component of such other Services/Infrastructure is to be located is conveyed to the Town, such funds (and/or land, if applicable) shall be applied to, or made available for, the planning, design, engineering, construction, acquisition, installation, and/or provision (as applicable) of such freeway interchange or any other portion of the Services/Infrastructure and related facilities and public infrastructure.

3.2 Community Facility Districts. The Town acknowledges and agrees that the Services/Infrastructure comprise the kinds of public services and improvements that will be in the public interest and convenience of, among others, the future residents of the Property. Upon (and only upon) the written petition of Developer, and subject to the provisions of this Paragraph 3.2, the Town shall use good faith efforts to adopt a resolution of intention and conduct such procedures as are necessary to form one or more Community Facilities District ("CFD") pursuant to A.R.S. § 48-701 *et seq.*, and/or one or more other municipal special taxing districts

as are now, or hereinafter, authorized under applicable law (any such CFD, and/or special taxing districts are interchangeably referred to herein as a "District") to provide for the planning, design, financing, re-financing, construction, acquisition, installation, conversion, and/or renovation, and/or maintenance of Services/Infrastructure, whether located within or outside the Property, as may be within the permitted purposes of a District under applicable law. If Developer's application is signed by 100% of the owners of the land located and 100% of any qualified electors within the boundaries of the proposed District, and such application is accompanied by all items required as a prerequisite to the adoption of a resolution of intention to form a District, and formation of such District will not result in any out-of-pocket cost to the Town except such costs as will be paid by Developer or such other new funding sources resulting from the formation of the District and the issuance of bonds, the Town shall use good faith efforts to conduct such procedures, including adopting an appropriate resolution for the formation of the District and otherwise use its best efforts to expedite formation of the District, subject to the requirements that must be observed to validly form the District under applicable law. If Developer's application is signed by less than 100% of the owners of the land and 100% of any qualified electors located within the boundaries of the proposed District, but more than the number of landowners required, under applicable law, to permit the Town to proceed to adopt an appropriate resolution of intention and conduct such other procedures as are required to validly form a District, and Developer's application is accompanied by one or more studies or reports prepared, on an arms-length basis, by third-party consultants reasonably acceptable to the Town that demonstrate benefits to the Town and the land area proposed to be included within the boundaries of the proposed District that are proportionate to, or greater than, the anticipated costs associated with the formation of the District and the issuance of bonds, on account of, e.g., the planning, engineering, financing, re-financing, construction, acquisition, improvement, installation, and/or renovation of the Services/Infrastructure that are intended (and permitted under applicable law) to be the purpose of the proposed District, the Town shall not unreasonably withhold its consent to the formation of such District and, if the Town is able to confirm, to its reasonable satisfaction, that such benefits and costs are substantially as represented in Developer's submittals, shall conduct such procedures as are necessary to validly form such District, including adopting one or more resolutions of intention to form such District as required under applicable law. When a District is formed and all necessary legal requirements have been satisfied, the District may, in its sole and absolute discretion, take other action necessary to issue bonds in one or more series and in amounts supported by the submittals made and approved at the time of formation or in such amounts as are later determined by the District, as appropriate. Such bonds shall finance all costs of design, planning, financing, re-financing, constructing, acquiring, installing, converting, and/or renovating (as applicable) the Services/Infrastructure that are the subject of such District, including costs of issuance. The agreed-upon guidelines for CFDs are attached as Exhibit F. If the Town forms a CFD for street maintenance within the Property, the appropriate homeowners association shall be reimbursed, from the proceeds of such CFD tax levy, for some percentage, as shall be agreed to by the Town and the homeowners association, of the total cost associated with maintenance of landscaping within or immediately adjacent to the public use easement area and/or right-of-way.

3.3 Implementation Of This Agreement. Immediately upon formation and as a condition of formation of a CFD, the Town, Developer, and CFD shall enter into an intergovernmental, financing participation, and development agreement as permitted by A.R.S. §

48-709 and 11-952, and the Town and Board of Directors of the CFD ("CFD Board") shall administer the implementation of such Agreement as it relates to the CFD and the real property included therein. It shall be a condition to Developer's participation in the formation of a CFD that the CFD Board shall meet promptly following such formation and adopt a resolution that includes as a part thereof a ratification of such Agreement. Such ratification shall constitute an acknowledgment by the Town and the CFD that: (i) the portion, if any, of the Services/Infrastructure to be constructed by the CFD as provided in its general plan (which shall correlate to the applicable portion of the Infrastructure Plan) is intended to be funded by the CFD; and (ii) that it is the intention of the CFD to reimburse Developer, to the extent permitted by law, for the costs of the Services/Infrastructure, or any portion thereof, constructed by Developer prior to the availability of CFD funds to finance construction or acquisition of such Services/Infrastructure. Nothing in this paragraph shall be construed to relieve the Town of the Town's obligations under this Agreement. Nothing herein shall be construed as an approval by the Town or its representatives of any action of the CFD provided for or required by, or to be taken as a result of, this Agreement upon formation of any CFD. Moreover, the Town shall not be responsible for the compliance by the CFD with, or performance of any obligation of the CFD pursuant to, this Agreement.

3.4 Other Financing Methods. Upon the Developer's request, the Town, at its sole and absolute discretion, may take such action necessary to form one or more municipal property corporations or industrial development authorities or to implement other sources of development financing for the purpose of financing the cost of construction and maintenance of any or all portion of the Services/Infrastructure, including, without limitation, sewer, drainage, bridge, roadway, flood control and recreational improvements, and whether or not the construction of such improvements is the responsibility of the Developer or any CFD formed pursuant hereto

3.5 Over-sizing. If and to the extent the Town requires Developer to plan, design, engineer, construct, acquire, install, or otherwise provide Services/Infrastructure that exceed the capacity required to serve the development within the Property, and such Services/Infrastructure are not subject to a development fee reimbursement agreement or other similar mechanism whereby Developer will be repaid Developer's additional cost incurred directly related to the over-sizing to plan, design, engineer, construct, acquire, install or otherwise provide such Services/Infrastructure, Developer shall be entitled to be reimbursed in whole, and shall be entitled to receive satisfactory financial assurances of payment prior to the commencement of construction of such Services/Infrastructure, for all costs attributable to such oversizing, including a reasonable allowance for a proportionate share of the cost of any additional land needed to accommodate such over-sized Services/Infrastructure. Developer, at its expense, shall prepare a regional analysis that will be used to determine over-sizing requirements.

IV. COOPERATION AND ALTERNATIVE DISPUTE RESOLUTION.

4.1 Appointment of Representatives. To further the commitment of the parties to cooperate in the implementation of this Agreement, the Town and the Developer each shall designate and appoint a representative to act as a liaison between the Town and its various

departments and the Owner. The Town Council or the Developer may change their representative at any time, but each party agrees to have a current active representative appointed for discussion and review as further detailed in this Agreement. The initial representative for the Town (the "Town Representative") shall be Joseph Blanton, the initial representative for the Developer shall be John Bradley (the "Developer Representative"), and the initial representative for Caterpillar shall be Bo Mattson ("Caterpillar Representative"). The representatives shall be available at all reasonable times to discuss and review the performance of the parties to this Agreement and the development of the Property pursuant to the approved CMP. The representatives may recommend amendments to the CMP or this Agreement which may be agreed upon by the parties.

4.2 Timing. The Town acknowledges the necessity for expeditious review by the Town of all plans and other materials ("Submitted Materials") submitted by Developer to the Town hereunder or pursuant to any zoning, platting, permit, or other governmental procedure pertaining to the development of the Property and agrees to review the Submitted Materials in the timeframes set forth in Exhibit C.

4.3 Expedited Town Decisions. The implementation of the CMP shall be in accordance with the development review process of the Town. The Town and the Developer agree that the Developer must be able to proceed rapidly with the development of the Property and that, accordingly, an expedited Town review and land development and construction inspection process is necessary. Accordingly, the parties agree that if at any time Developer believes that an impasse has been reached with the Town Staff on any issue affecting the Property, the Developer shall have the right to immediately appeal to the Town Manager for an expedited decision pursuant to this paragraph. Developer recognizes that staffing changes and employee workloads may make the timeframes detailed in this Paragraph impractical. Thus, Developer and the Town agree that the timeframes set forth in this Paragraph 4.3 shall be adhered to as closely as is practical under the circumstances, but failure to adhere strictly to such timeframes shall not constitute a default under this Agreement.

If the issue on which an impasse has been reached is an issue where a final decision can be reached by the Town Staff, the Town Manager shall give Developer a final decision within fifteen (15) days after Developer's request for an expedited decision. If the issue on which an impasse has been reached is one where a final decision requires action by the Town Council, the Town Manager shall be responsible for scheduling a Town Council hearing on the issue within four (4) weeks after Developer's request for an expedited decision; provided, however, that if the issue is appropriate for review by the Town's Community Planning and Development Board, the matter shall be submitted to the Development Board first, and then to the Town Council. Both parties agree to continue to use reasonable good faith efforts to resolve any impasse pending any such expedited decision. Notwithstanding anything contained herein to the contrary, in the event the Town does not have a sufficient number of personnel to implement the expedited development review process or the expedited land development and construction inspection services, Developer may elect to pay the costs incurred by the Town for such private, independent consultants and advisors which may be retained by the Town, as necessary, to assist

the Town in the review and/or inspection process; provided, however, that such consultants shall take instructions from, be controlled by, and be responsible to, the Town and not Developer.

4.4 Default. Failure or unreasonable delay by either party to perform or otherwise act in accordance with any term or provision of this Agreement for a period of thirty (30) days (the "Cure Period") after written notice thereof from the other party, shall constitute a default under this Agreement; provided, however, that if the failure or delay is such that more than thirty (30) days would reasonably be required to perform such action or comply with any term or provision hereof, then such party shall have such additional time as may be necessary to perform or comply so long as such party commences performance or compliance within said thirty (30) day period and diligently proceeds to complete such performance or fulfill such obligation. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured, if possible. In the event such default is not cured within the Cure Period, the non-defaulting party shall have all rights and remedies that are set forth in Paragraph 4.5 of this Agreement.

4.5 Dispute Resolution/Remedies. Except as provided in Paragraph 2.16, the parties shall be limited to the remedies and the dispute resolution procedure set forth on Exhibit G and in this Paragraph. Any dispute, controversy, claim or cause of action arising out of or relating to this Agreement shall be governed by Arizona law. Developer and the Town agree that any decision rendered by the Panel (as defined in Exhibit G) pursuant to the provisions of Exhibit G shall be binding on both parties unless and until a court of competent jursidiction renders its final decision on the disputed issue, and if either party does not abide by the decision rendered by the Panel during the pendency of an action before the court of competent jurisdiction or otherwise (if no court action), the other party may institute an action for money damages on the issues that were the subject of the Panel's decision and/or any other relief as may be permitted by law.

V. NOTICES AND FILINGS.

5.1 Manner of Serving. All notices, filings, consents, approvals and other communications provided for herein or given in connection herewith shall be validly given, filed, made, delivered or served if in writing and delivered personally or sent by certified United States Mail, postage prepaid, return receipt requested, if to:

The Town:

Town Manager
Joseph Blanton
Town of Buckeye
100 North Apache Road
Buckeye, AZ 85326

with a copy to:

Scott Ruby, Esq.

Gust Rosenfeld PLC
201 N. Central Avenue, Suite 3300
Phoenix, AZ 85073

and:

David Ledyard
Faith Ledyard Nickel & DiPietro PLC
919 North Dysart, Suite F
Avondale, AZ 85323

Developer:

General Counsel
Eneas Kane, Esq.
DMB Associates, Inc.
7600 E. Doubletree Ranch Road
Suite 300
Scottsdale, AZ 85258

and:

John Bradley
General Manager
DMB Associates, Inc.
7600 E. Doubletree Ranch Road
Suite 300
Scottsdale, AZ 85258

with a copy to:

Steven A. Betts or Dana Stagg Belknap
Gallagher & Kennedy, P.A.
2600 N. Central Avenue
Phoenix, AZ 85004-3020

Caterpillar:

Bo Mattson
Vice President
Caterpillar Foundation
100 N.E. Adams Street
Peoria, IL 61629-9320

With a copy to:

Jody Pokorski, Esq.

Snell & Wilmer, LLP
One Arizona Center
400 E. Van Buren
Phoenix, AZ 85004-0001

or to such other addresses as either party hereto may from time to time designate in writing and delivery in a like manner.

5.2 Mailing Effective. Notices, filings. consents, approvals and communication given by mail shall be deemed delivered forty-eight (48) hours following deposit in the U.S. mail, postage prepaid and addressed as set forth above.

VI. MISCELLANEOUS.

6.1 Operations During Construction. The Town hereby acknowledges and agrees that mining (for purposes of on-site material usage), blasting and batch plant operations shall be allowed on-site during construction of the improvements. The location of such operations shall be subject to review and approval by the appropriate Town officials and any other agencies that have jurisdiction over such operations.

6.2 Hierarchy of Documents. There are numerous documents that affect the subject matter of this Agreement. In the event of a conflict or inconsistency between or among any or all of these documents, the documents shall take priority in the following order, unless the documents expressly provide a contrary order of priority: (a) this Agreement; (b) the CMP; and (c) the applicable ordinances, rules, regulations, permit requirements, development fees, other requirements, and/or official policies of the Town as established in Paragraph 1.4 hereof entitled "Regulation of Development."

6.3 Billboard Relocation. The property currently contains four billboard sites whose location may be impacted by future highway improvements. The Town hereby acknowledges and agrees that Developer shall be allowed to relocate the same number and size of billboards to new sites on the Property subject to appropriate Federal Highway Administration and Arizona Department of Transportation review and approval, and that Developer has a vested right to locate four billboards on the Property and oriented to Interstate 10.

6.4 Community Identification Signs. Developer shall have the right to construct and maintain up to four (4) community identification signs, provided that such signs meet the following parameters: (i) no community identification sign shall exceed sixty-five (65) feet in height; (ii) no sign face shall exceed five hundred and sixty (560) square feet; and (iii) all such signs shall be located within five hundred (500) feet of Arizona Department of Transportation right-of-way. Developer shall maintain the community identification signs in a commercially reasonable manner and shall remove the signs at such time as Developer has reached eighty

percent (80%) build-out on the Property. Developer may not lease the community identification signs to third parties or use the signs for any purpose other than community identification.

6.5 Condemnation. The Town hereby acknowledges and agrees that the development of a water/wastewater treatment campus and other infrastructure systems to be owned by Town serving the Property and potentially other properties is subject to locational factors that may require development of such campus and systems partially or wholly outside of the boundaries of the Property. Upon request by Developer, and solely at the cost of Developer, the Town agrees to acquire or condemn any necessary public rights-of-way, easements, or property outside the boundaries of the Property necessary for the water-wastewater treatment campus and any other Public Services/Infrastructure.

6.6 ADOT Sponsorship. At the request of Developer, Town agrees to provide written and verbal support to achieve approval by the Arizona Department of Transportation and the FHWA of the circulation system's interrelationship with the highway design, such as the location of highway interchanges, as reflected in the Master Street and Circulation Plan.

6.7 ADOT Surplus Property. Town agrees to initiate the acquisition process and acquire on the Developer's behalf the parcels of land as identified in Exhibit H that are classified as surplus property by ADOT and located near the southern boundary of the Property and Interstate Route 10. Developer shall pay all Town acquisition costs for such parcels.

6.8 Flood Control District Cooperation. The Town hereby agrees to cooperate reasonably with and assist Developer in amendments to any Maricopa County Flood Control District drainage reports or other applicable government reports in order to prevent or eliminate flood plain designation on any Federal Emergency Management Agency maps, so long as such amendment does not negatively impact other landowners.

VII. GENERAL.

7.1 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Town or Developer of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

7.2 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

7.3 **Headings.** The descriptive headings of the paragraphs of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

7.4 **Exhibits and Recitals.** Any exhibit attached hereto shall be deemed to have been incorporated herein by this reference with the same force and effect as if fully set forth in the body hereof. The Recitals set forth at the beginning of this agreement are hereby acknowledged and incorporated herein and the parties hereby confirm the accuracy thereof.

7.5 **Further Acts.** Each of the parties hereto shall promptly execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

7.6 **Future Effect.**

(a) **Time of Essence and Successors.** Time is of the essence in implementing the terms of this Agreement. All of the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto pursuant to A.R.S. § 9-500.05(D), except as provided below; provided, however, Developer's rights and obligations hereunder may only be assigned to a person or entity that has acquired the Property or a portion thereof and only by a written instrument, recorded in the official records of Maricopa County, Arizona, expressly assigning such rights and obligations.

Notwithstanding the foregoing, the Town agrees that the ongoing ownership, operation and maintenance obligations provided by this Agreement may be assigned to a homeowners' association to be established by Developer. Developer agrees to provide the Town with written notice of any assignment of Developer's rights or obligations within a reasonable period of time following such assignment. Except as otherwise provided in this Agreement, in the event of a complete assignment by Developer of all rights and obligations of Developer hereunder, Developer's liability hereunder shall terminate effective upon the assumption by Developer's assignee. Nothing in this Agreement shall operate to restrict Developer's ability to assign less than all of its rights and obligations under this Agreement to those entities that acquire any portion of the Property.

Notwithstanding any other provisions of this Agreement, Developer may assign all or part of its rights and duties under this Agreement to any financial institution from which Developer has borrowed funds for use in constructing the Infrastructure Improvements or otherwise developing the Property. Additionally, Developer may assign its rights and duties under this Agreement to another developer or owner.

(b) **Term.** The term of this Agreement shall commence on the date and at the time an ordinance approving and adopting this Agreement is approved by the Town Council, and shall automatically terminate on the twenty-fifth (25th) anniversary of such date. However, if any of the Property still is subject to this Agreement twenty-five (25) years after the effective date of this Agreement, this Agreement shall automatically extend without the necessity of any

notice, agreement, or recording by or between the parties an additional ten (10) years, for a total of thirty-five (35) years, at which time this Agreement shall automatically terminate as to the Property without the necessity of any notice, agreement, or recording by or between the parties.

(c) **Termination Upon Sale to Public.** Except as otherwise provided herein, the Town and Developer hereby acknowledge and agree that this Agreement is not intended to and shall not create conditions or exceptions to title or covenants running with the Property. Therefore, in order to alleviate any concern as to the effect of this Agreement on the status of title to any of the Property other than the streets contained within the Property as provided in Paragraph 2.11 so long as not prohibited by law, this Agreement shall terminate without the execution or recordation of any further document or instrument as to any lot which has been finally subdivided and individually (and not in "bulk") leased (for a period of longer than one year) or sold to the end purchasers or users thereof (a "Public Lot") and thereupon such Public Lot shall be released from and no longer be subject to or burdened by the provisions of this Agreement. This subparagraph shall not apply to Paragraphs 1.9 and 2.17-2.19 of this Agreement.

7.7 No Partnership; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Developer and the Town. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right to cause of action hereunder.

7.8 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof all prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are hereby superseded and merged herein.

7.9 Amendment. No change or addition is to be made to this Agreement except by a written amendment executed by the Town and Developer. Within ten (10) days after any approved amendment to this Agreement, such approved amendment shall be recorded in the Official Records of Maricopa County, Arizona.

7.10 Names and Plans. Developer shall be the sole owner of all names, titles, plans, drawings, specifications, ideas, programs, designs and work products of every nature at any time developed, formulated or prepared by or at the instance of Developer in connection with the Property; provided, however, that in connection with any conveyance of portions of the Property to the Town, such rights pertaining to the portions of the Property so conveyed shall be assigned to the extent that such rights are assignable, to the Town. Notwithstanding the foregoing, the Developer shall be entitled to utilize all such materials described herein to the extent required for Developer to construct, operate or maintain improvements relating to the Property.

7.11 **Good Standing; Authority.** Each of the parties represents to the other that : (i) it is duly formed and validly existing under the laws of Arizona, with respect to Developer, or is duly formed and validly existing under the laws of Illinois, with respect to Caterpillar, or is a municipal corporation within the State of Arizona, with respect to the Town; (ii) it is an Arizona limited liability company, with respect to Developer, an Illinois not-for-profit corporation, with respect to Caterpillar, or a municipal corporation duly qualified to do business in the State of Arizona, with respect to the Town, and is in good standing under applicable state laws, and (iii) that the individual(s) executing this Agreement on behalf of the respective parties are authorized and empowered to bind the party on whose behalf each such individual is signing.

7.12 **Severability.** If any provision of this Agreement or the CMP is declared void or unenforceable, such provision shall be severed from this Agreement and/or the CMP, which shall otherwise remain in full force and effect. If any applicable law or court of competent jurisdiction prohibits or excuses one party from undertaking any contract commitment to perform any act hereunder, then the other party may, at such other party's sole discretion, after giving the first party notice to cure in accordance with Paragraph 4.4 above, after the first party's failure to cause cure or legal inability to cure, terminate this Agreement or proceed with all of the Agreement not prohibited by law. The parties acknowledge and agree that, although the parties believe that the terms and conditions contained in this Agreement do not constitute an impermissible restriction of the police power of the Town, and that it is their express intention that such terms and conditions be construed and applied as provided herein, to the fullest extent possible, it is their further intention that, to the extent any such term or condition is found to constitute an impermissible restriction of the police power of the Town, such term or condition shall be construed and applied in such lesser fashion as may be necessary to reserve to the Town all such power and authority that cannot be restricted by contract.

7.13 **Governing Law.** This Agreement is entered into in Arizona and shall be construed and interpreted under the laws of Arizona. In particular, this Agreement is subject to the provisions of A.R.S. § 38-511.

7.14 **Recordation.** This Agreement shall be recorded in its entirety in the Official Records of Maricopa County, Arizona not later than ten (10) days after this Agreement is executed by the Town, Developer, and Caterpillar.

7.15 **No Developer Representations.** Nothing contained herein or in the CMP shall be deemed to obligate the Town or Developer to complete any part or all of the development of the Property in accordance with the CMP or any other plan, and the CMP shall not be deemed a representation or warranty by Developer of any kind whatsoever.

7.16 **Status Statements.** Any party to this agreement (the "requesting party") may, at any time, and from time to time, deliver written notice to any other party requesting such other party (the "providing party") to provide in writing that, to the knowledge of the providing party, (a) this Agreement is in full force and effect and a binding obligation of the parties, (b) this

Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, and (c) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults (a "Status Statement"). A party receiving a request hereunder shall execute and return such Status Statement within 10 days following the receipt thereof. The Town Manager or any Assistant Town Manager shall have the right to execute any Status Statement requested by Developer hereunder. The Town acknowledges that a Status Statement hereunder may be relied upon by transferees and mortgagees. The Town shall have no liability for monetary damages to Developer, and transferee or mortgagee, or any other person in connection with, resulting from or based upon the issuance of any Status Statement hereunder.

7.17 Mortgage Provisions

(a) Mortgagee Protection. This Agreement shall be superior and senior to any future lien placed upon the Project, or any portion thereof, including the lien of any mortgage or deed of trust (herein "Mortgage"). However, no breach hereof shall invalidate or impair the lien of any Mortgage made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Property or any portion thereof by a mortgagee (herein defined to include a beneficiary under a deed of trust), whether under or pursuant to a mortgage foreclosure, trustee's sale or deed in lieu of foreclosure or trustee's sale, or otherwise, shall be subject to all of the terms and conditions contained in this Agreement. No mortgagee shall have an obligation or duty under this Agreement to perform Developer's obligations or other affirmative covenants of Developer hereunder, or to guarantee such performance; except that to the extent that any covenant to be performed by Developer is a condition to the performance of a covenant by the Town, the performance thereof shall continue to be a condition precedent to the Town's performance hereunder.

(b) Bankruptcy. If any mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Developer, the times specified above for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition, provided that such mortgagee is proceeding expeditiously to terminate such prohibition and in no event for a period longer than two years.

7.18 Assignment.

(a) Prohibition. Developer shall not assign or encumber any of its rights and obligations hereunder without the express written consent of the Caterpillar (which consent may be withheld in its sole and absolute discretion) so long as Caterpillar holds an interest in the Property as: (i) a beneficiary under a trust; (ii) a lienholder or (iii) in any capacity. This subparagraph (a) shall not apply to Developer's assignment of all or any portion of its rights and obligations hereunder as part of a sale or transfer of all or any portion of the Property or to Developer's dedication to the Town of Public Services/Infrastructure, including the land on which such Public Services/Infrastructure is constructed.

(b) **Rights of Caterpillar**. Notwithstanding what may otherwise be provided herein, in the event Developer loses its ownership (or beneficial) interest in the Property through forfeiture, foreclosure, trustees sale or otherwise (except for sales or dedications of all or a portion of the Property in the ordinary course of Developer's business, or as otherwise provided in this Agreement) Caterpillar shall have the right, in its sole and absolute discretion, to cause the automatic assignment to a third party of any or all of the Developer's rights and benefits hereunder upon the recording of a notice of assignment (in a form acceptable to Caterpillar in its sole and absolute discretion) with the office of the Maricopa County Recorder (the "Notice of Assignment") and filing a copy of the Notice of Assignment with the Town. The Notice of Assignment shall identify the rights and benefits being assigned together with the name and address of the assignee thereunder. Such assignment shall be effective upon the recording of the Notice of Assignment.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date and at the time an ordinance approving and adopting this Agreement is approved by the Town Council of the Town of Buckeye.

TOWN:

TOWN OF BUCKEYE, ARIZONA,
a municipal corporation

By: Dustin Hull
Dustin Hull, Mayor
Date: 11-24-99

Attest:

Joseph Blanton
Joseph Blanton, Town Manager

APPROVED AS TO FORM AND AUTHORITY
The foregoing Agreement has been reviewed by the undersigned attorney, who has determined that it is in proper form and within the power and authority granted under the laws of the State of Arizona to the Town of Buckeye.

Attorney for Town of Buckeye

DEVELOPER:

DMB WHITE TANK, LLC, an Arizona limited liability company

By: DMB Realco LLC, an Arizona limited liability company, its Manager

By: DMB Associates, Inc., an Arizona corporation, its Manager

By:_____
Its:_____
Date:_____

Consented to by Caterpillar:

CATERPILLAR FOUNDATION, an Illinois not-for-profit corporation

By:_____
Its:_____
Date:_____

APPROVED AS TO FORM AND AUTHORITY
The foregoing Agreement has been reviewed by the undersigned attorney, who has determined that it is in proper form and within the power and authority granted under the laws of the State of Arizona to the Town of Buckeye.

_____
Attorney for Town of Buckeye

DEVELOPER:

DMB WHITE TANK, LLC, an Arizona limited liability company

By: DMB Realco LLC, an Arizona limited liability company, its Manager

By: DMB Associates, Inc., an Arizona corporation, its Manager

By: _____
Its: Vice President/General Counsel
Date: 11-23-99

Consented to by Caterpillar:

CATERPILLAR FOUNDATION, an Illinois not-for-profit corporation

By: _____
Its: _____
Date: _____

APPROVED AS TO FORM AND AUTHORITY
The foregoing Agreement has been reviewed by the undersigned attorney, who has determined that it is in proper form and within the power and authority granted under the laws of the State of Arizona to the Town of Buckeye.

_____
Attorney for Town of Buckeye

DEVELOPER:

DMB WHITE TANK, LLC, an Arizona limited liability company

By: DMB Realco LLC, an Arizona limited liability company, its Manager

By: DMB Associates, Inc., an Arizona corporation, its Manager

By:_____
Its:_____
Date:_____

Consented to by Caterpillar:

CATERPILLAR FOUNDATION, an Illinois not-for-profit corporation

By: Bo Mattson
Its: Vice President
Date: November 24, 1999

STATE OF ARIZONA)
)
County of Maricopa)

The foregoing instrument was acknowledged before me this 23rd day of November, 1999, by Crean A. Kane as Vice President/General Counsel of DMB Associates, Inc., an Arizona corporation, the Manager of DMB Realco LLC, an Arizona limited liability company, the Manager of DMB WHITE TANK, LLC, an Arizona limited liability company, on behalf of the company.

(Seal and Expiration Date)

CAROLYNN SNEDDON
Notary Public - Arizona
MARICOPA COUNTY
My Commission Expires
JULY 14, 2002

Carolynn Sneddon
Notary Public

STATE OF ILLINOIS)
)
County of _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 1999, by _____ as _____ of CATERPILLAR FOUNDATION, an Illinois not-for-profit corporation, on behalf of the corporation.

(Seal and Expiration Date)

_____
Notary Public

11316-0001/718835.v19

STATE OF ARIZONA)
)
County of Maricopa)

The foregoing instrument was acknowledged before me this ____ day of _____, 1999, by _____ as _____ of DMB Associates, Inc., an Arizona corporation, the Manager of DMB Realco LLC, an Arizona limited liability company, the Manager of DMB WHITE TANK, LLC, an Arizona limited liability company, on behalf of the company.

(Seal and Expiration Date)

_____
Notary Public

STATE OF ILLINOIS)
)
County of Peoria)

The foregoing instrument was acknowledged before me this 24th day of November, 1999, by Bo O. Mattson as Vice President of CATERPILLAR FOUNDATION, an Illinois not-for-profit corporation, on behalf of the corporation.

(Seal and Expiration Date)

Cheryl Diane Ivey
Notary Public

11316-0001/718835.v19

OFFICIAL SEAL
CHERYL DIANE IVEY
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 12-4-2001

STATE OF ARIZONA)
)
County of Maricopa)

The foregoing instrument was acknowledged before me this 24th day of November, 1999, by Dustin Hull, Mayor of the Town of Buckeye, Arizona, a municipal corporation.

(Seal and Expiration Date)

OFFICIAL SEAL
RUTH J. MUNDY
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Comm. Expires Mar. 23, 2002

Ruth J. Mundy

Notary Public

List of Exhibits

Exhibit A	Legal Description
Exhibit B	Community Master Plan
Exhibit C	Town Fees
Exhibit D	Development Fees
Exhibit E	Development (Impact) Fee Ordinance General Guidelines
Exhibit F	CFD Guidelines
Exhibit G	Dispute Resolution/Remedies
Exhibit H	ADOT Surplus Property

WOOD/PATEL

CIVIL ENGINEERS • HYDROLOGISTS • LAND SURVEYORS

Darrel E. Wood, P.E., R.L.S.
Ashok C. Patel, P.E., R.L.S.
James S. Campbell, P.E.
Gordon W. R. Wark, P.E.
Thomas R. Gettings, R.L.S.
Bruce Friedhoff, P.E.
Scott A. Nelson, R.L.S.
Richard L. Hiner, P.E.
Timothy A. Huval, P.E.
Michael J. Sexton, R.L.S.
Jack K. Moody, P.E.
Leslie J. Kland, P.E.
Curtis L. Brown, P.E.
R. Scott Rasmussen, P.E.
Paul M. Haas, P.E.
Shimin Zou, Ph.D., P.E.
David T. Phelps, P.E.
Michael T. Young, P.E.
Shawn D. Gustafson, P.E.

EXHIBIT "A"

PARCEL DESCRIPTION

Unofficial Document

PARCEL NO. 1:

The South half of Section 20, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 3:

Lots 1, 2, 3 and 4, the East half of the West half, and the East half of Section 7, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 4:

That portion of Section 19, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

PARCEL DESCRIPTION

BEGINNING at the Southwest corner of said Section 19, said point being a G.L.O. brass ca Unofficial Document 01 degrees 16 minutes 12 seconds East along the west line of said Section 19, a distance of 12.38 feet from the Southeast corner of Section 24, Township 2 North, Range 3 West;

THENCE North 00 degrees 05 minutes 12 seconds West, continuing along said West line, a distance of 1662.38 feet;

THENCE North 89 degrees 34 minutes 51 seconds East, a distance of 1787.58 feet;

THENCE North 49 degrees 16 minutes 47 seconds East, a distance of 1245.15 feet;

THENCE South 40 degrees 43 minutes 13 seconds East, a distance of 2304.31 feet to a point of curvature of a tangent curve concave to the West;

THENCE Southerly along the arc of said curve to the right, having a radius of 1000.00 feet, a central angle of 40 degrees 17 minutes 40 seconds, and an arc length of 703.27 feet to a point of tangency;

THENCE South 00 degrees 25 minutes 33 seconds East, a distance of 63.42 feet to a point on the South line of the Southeast quarter of said Section 19;

THENCE South 89 degrees 34 minutes 27 seconds West along said South line, a distance of 1832.76 feet to the South quarter corner of said Section 19;

THENCE South 89 degrees 34 minutes 51 seconds West along the South line of the Southwest quarter of said Section 19, a distance of 2641.88 feet to the TRUE POINT OF BEGINNING;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of

PARCEL DESCRIPTION

Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserve [illegible] land recorded June 30, 1978 in Docket 15005, page 205.

Unofficial Document

PARCEL NO. 5:

That portion of Section 19, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northwest corner of said Section 19, said point being a 1/2 inch ACP stamped LS 19324;

THENCE South 00 degrees 08 minutes 44 seconds East along the East line of Section 24, Township 2 North, Range 3 West, a distance of 856.96 feet to the TRUE POINT OF BEGINNING, said point being on the arc of a non-tangent curve concave to the Northwest, a radial line of said curve through said point having a bearing of South 22 degrees 42 minutes 19 seconds East;

THENCE Northeasterly along the arc of said curve to the left, having a radius of 1500.00 feet, a central angle of 03 degrees 02 minutes 28 seconds, and an arc length of 79.62 feet to a point of tangency;

THENCE North 64 degrees 15 minutes 13 seconds East, a distance of 1571.18 feet to a point of curvature of a tangent curve concave to the South;

THENCE Easterly along the arc of said curve to the right, having a radius of 1500.00 feet, a central angle of 25 degrees 33 minutes 20 seconds, and an arc length of 669.05 feet to a point on the North line of said Section 19;

THENCE North 89 degrees 48 minutes 33 seconds East along said North line, a distance of 150.00 feet;

PARCEL DESCRIPTION

THENCE South 04 degrees 07 minutes 50 seconds West, a distance of 1265.21 feet to a point of curvature of a tangent curve concave to the East;

Unofficial Document

THENCE Southerly along the arc of said curve to the left, having a radius of 2000.00 feet, a central angle of 44 degrees 51 minutes 03 seconds, and an arc length of 1565.59 feet to a point of tangency;

THENCE South 40 degrees 43 minutes 13 seconds East, a distance of 100.00 feet;

THENCE South 49 degrees 16 minutes 47 seconds West, a distance of 1245.15 feet;

THENCE South 89 degrees 34 minutes 51 seconds West, a distance of 1787.47 feet to a point on the West line of the Southwest quarter of said Section 19;

THENCE North 00 degrees 05 minutes 12 seconds West along said West line, a distance of 969.93 feet to the West quarter corner of said Section 19;

THENCE North 00 degrees 56 minutes 58 seconds West along said West line, a distance of 19.93 feet to the East quarter corner of Section 24, Township 2 North, Range 2 West;

THENCE North 00 degrees 08 minutes 44 seconds West along the East line of said Section 24, a distance of 1757.45 feet to the TRUE POINT OF BEGINNING;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL DESCRIPTION

PARCEL NO. 6:

Sections 18 and 19, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

Unofficial Document

EXCEPT that portion of said Section 19 described as follows:

BEGINNING at the Southwest corner of said Section 19, said point being a G.L.O. brass cap which bears South 01 degrees 16 minutes 12 seconds East along the West line of said Section 19, a distance of 12.38 feet from the Southeast corner of Section 24, Township 2 North, Range 3 West;

THENCE North 00 degrees 05 minutes 12 seconds West, continuing along said West line, a distance of 1662.38 feet;

THENCE North 89 degrees 34 minutes 51 seconds East, a distance of 1787.58 feet;

THENCE North 49 degrees 16 minutes 47 seconds East, a distance of 1245.15 feet;

THENCE South 40 degrees 43 minutes 13 seconds East, a distance of 2304.31 feet to a point of curvature of a tangent curve concave to the West;

THENCE Southerly along the arc of said curve to the right, having a radius of 1000.00 feet, a central angle of 40 degrees 17 minutes 40 seconds, and an arc length of 703.27 feet to a point of tangency;

THENCE South 00 degrees 25 minutes 33 seconds East, a distance of 63.42 feet to a point on the South line of the Southeast quarter of said Section 19;

THENCE South 89 degrees 34 minutes 27 seconds West along said South line, a distance of 1832.76 feet to the South quarter corner of said Section 19;

PARCEL DESCRIPTION

THENCE South 89 degrees 34 minutes 51 seconds West along the South line of the Southwest quarter of said Section 19, a distance of 2641.88 feet to t[illegible] TRUE POINT OF BEGINNING; and

Unofficial Document

EXCEPT that portion of said Section 19 described as follows:

COMMENCING at the Northwest corner of said Section 19, said point being a 1/2 inch ACP stamped LS 19324;

THENCE South 00 degrees 08 minutes 44 seconds East along the East line of Section 24, Township 2 North, Range 3 West, a distance of 856.96 feet to the TRUE POINT OF BEGINNING, said point being on the arc of a non-tangent curve concave to the Northwest, a radial line of said curve through said point having a bearing of South 22 degrees 42 minutes 19 seconds East;

THENCE Northeasterly along the arc of said curve to the left, having a radius of 1500.00 feet, a central angle of 03 degrees 02 minutes 28 seconds, and an arc length of 79.62 feet to a point of tangency;

THENCE North 64 degrees 15 minutes 13 seconds East, a distance of 1571.18 feet to a point of curvature of a tangent curve concave to the South;

THENCE Easterly along the arc of said curve to the right, having a radius of 1500.00 feet, a central angle of 25 degrees 33 minutes 20 seconds, and an arc length of 669.05 feet to a point on the North line of said Section 19;

THENCE North 89 degrees 48 minutes 33 seconds East along said North line, a distance of 150.00 feet;

THENCE South 04 degrees 07 minutes 50 seconds West, a distance of 1265.21 feet to a point of curvature of a tangent curve concave to the East;

THENCE Southerly along the arc of said curve to the left, having a radius of 2000.00 feet, a central angle of 44

degrees 51 minutes 03 seconds, and an arc length of 1565.59 feet to a point of tangency;

Unofficial Document

THENCE South 40 degrees 45 minutes 15 seconds East, a distance of 100.00 feet;

THENCE South 49 degrees 16 minutes 47 seconds West, a distance of 1245.15 feet;

THENCE South 89 degrees 34 minutes 51 seconds West, a distance of 1787.47 feet to a point on the West line of the Southwest quarter of said Section 19;

THENCE North 00 degrees 05 minutes 12 seconds West along said West line, a distance of 969.93 feet to the West quarter corner of said Section 19;

THENCE North 00 degrees 56 minutes 58 seconds West along said West line, a distance of 19.93 feet to the East quarter corner of Section 24, Township 2 North, Range 2 West;

THENCE North 00 degrees 08 minutes 44 seconds West along the East line of said Section 24, a distance of 1757.45 feet to the TRUE POINT OF BEGINNING;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 7:

That portion of Sections 30 and 31, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

PARCEL DESCRIPTION

BEGINNING at the Southwest corner of said Section 30, said point being a G.L.O. brass cap;

Unofficial Document

THENCE North 03 degrees 46 minutes 54 seconds East, a distance of 1315.07 feet;

THENCE South 86 degrees 13 minutes 26 seconds East, a distance of 334.04 feet to a point of curvature of a tangent curve concave to the North;

THENCE Easterly along the arc of said curve to the left, having a radius of 1500.00 feet, a central angle of 23 degrees 46 minutes 34 seconds, and an arc length of 622.46 feet to a point of tangency;

THENCE North 70 degrees 00 minutes 00 seconds East, a distance of 1795.40 feet;

THENCE South 20 degrees 00 minutes 00 seconds East, a distance of 42.78 feet to a point of curvature of a tangent curve concave to the West;

THENCE Southerly along the arc of said curve to the right, having a radius of 1000.00 feet, a central angle of 19 degrees 47 minutes 00 seconds, and an arc length of 345.28 feet to a point of tangency;

THENCE South 00 degrees 13 minutes 00 seconds East, a distance of 1584.28 feet to a point on the South line of said Section 30;

THENCE continuing South 00 degrees 13 minutes 00 seconds East, a distance of 776.75 feet;

THENCE South 78 degrees 35 minutes 03 seconds West, a distance of 2856.28 feet to a point on the West line of the Northwest quarter corner of said Section 31;

THENCE North 00 degrees 07 minutes 44 seconds West along said West line, a distance of 1313.31 feet to the Northwest corner

of said Section 31, said point also being the point of beginning;

Unofficial Document

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 8:

That portion of Sections 30 and 31, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Southeast corner of said Section 30, said point being a 3-1/2 inch aluminum cap;

THENCE South 00 degrees 13 minutes 21 seconds East along the East line of said Section 31, a distance of 300.00 feet;

THENCE South 78 degrees 35 minutes 03 seconds West, a distance of 2537.96 feet;

THENCE North 00 degrees 13 minutes 00 seconds West, a distance of 776.75 feet to a point on the North line of said Section 31;

THENCE continuing North 00 degrees 13 minutes 00 seconds West, a distance of 1584.28 feet to a point of curvature of a tangent curve concave to the West;

THENCE Northerly along the arc of said curve to the left, having a radius of 1000.00 feet, a central angle of 19 degrees 47 minutes 00 seconds, and an arc length of 345.28 feet to a point of tangency;

THENCE North 20 degrees 00 minutes 00 seconds West, a distance of 42.78 feet;

Unofficial Document

THENCE North 70 degrees 00 minutes 00 seconds East, a distance of 1728.96 feet to a point of curvature of a tangent curve concave to the South;

THENCE Easterly along the arc of said curve to the right, having a radius of 1500.00 feet, a central angle of 19 degrees 28 minutes 58 seconds, and an arc length of 510.06 feet to a point of tangency;

THENCE North 89 degrees 28 minutes 58 seconds East, a distance of 441.06 feet to the East quarter corner of said Section 30;

THENCE South 00 degrees 06 minutes 50 seconds East along the East line of said Section 30, a distance of 2622.84 feet to the point of beginning;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 9:

A parcel of land lying within Section 31, Township 2 North, Range 2 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the southeast corner of said Section 31, said point being the POINT OF BEGINNING of the herein described parcel;

THENCE along the south line of said Section 31, South 89 degrees 57 minutes 41 seconds West, a distance of 2487.65 feet, to the northwest corner of Section 6, Township 1 North, Range 2 West, said point also being the northeast corner of

PARCEL DESCRIPTION

Section 1, Township 1 North, Range 3 West;

THENCE leaving said south line, North 00 degrees 14 minutes 20 seconds West, a distance of 4485.83 feet;

Unofficial Document

THENCE North 78 degrees 35 minutes 03 seconds East, a distance of 2537.96 feet, to a point on the east line of said Section 31;

THENCE along said east line, South 00 degrees 13 minutes 21 seconds East, a distance of 2345.41 feet, to the east quarter corner of said Section 31;

THENCE continuing along said east line, South 00 degrees 12 minutes 22 seconds East, a distance of 2641.08 feet, to the POINT OF BEGINNING.

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 10:

A parcel of land lying within Section 31, Township 2 North, Range 2 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the northwest corner of said Section 31;

THENCE along the west line of said Section 31, South 00 degrees 07 minutes 44 seconds East, a distance of 1313.31 feet, to the POINT OF BEGINNING;

THENCE leaving said west line, North 78 degrees 35 minutes 03 seconds East, a distance of 2856.28 feet;

THENCE South 00 degrees 14 minutes 20 seconds East, a distance of 4485.83 feet, to a point on the south line of said Section 31, said point also being the northeast corner of Section 1, Township 1 North, Range 3 West, and the northwest corner of Section 6, Township 1 North, Range 2 West;

PARCEL DESCRIPTION

THENCE along the south line of said Section 31, South 89 degrees 16 minutes 01 seconds West, a distance of 2634.48 feet, to the north quarter of said Section 1;

Unofficial Document

THENCE continuing along said south line, South 89 degrees 35 minutes 34 seconds West, a distance of 174.95 feet, to the southwest corner of said Section 31;

THENCE along the west line of said Section 31, North 00 degrees 08 minutes 13 seconds West, a distance of 2642.08 feet, to the west quarter corner of said Section 31;

THENCE continuing along said west line, North 00 degrees 07 minutes 44 seconds West, a distance of 1313.32 feet, to the POINT OF BEGINNING.

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 11:

That portion of Section 30, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Northeast corner of said Section 30, said point being a 3-1/4 inch aluminum cap;

THENCE South 00 degrees 06 minutes 35 seconds East along said East line of said Section 30, a distance of 2622.91 feet to the East quarter corner of said Section 30;

THENCE South 89 degrees 25 minutes 58 seconds West, a distance of 441.06 feet to a point of curvature of a tangent curve concave to the South;

THENCE Westerly along the arc of said curve to the left, having a radius of 1500.00 feet, a central angle of 19

degrees 28 minutes 58 seconds, and an arc length of 510.06 feet to a point of tangency;

Unofficial Document

THENCE South 70 degrees 00 minutes 00 seconds West, a distance of 1728.96 feet;

THENCE North 20 degrees 00 minutes 00 seconds West, a distance of 50.00 feet to a point of curvature of a tangent curve concave to the East;

THENCE Northerly along the arc of said curve to the right, having a radius of 1000.00 feet, a central angle of 19 degrees 54 minutes 00 seconds, and an arc length of 347.32 feet to a point of tangency;

THENCE North 00 degrees 06 minutes 00 seconds West, a distance of 2901.73 feet to the North line of said Section 30;

THENCE North 89 degrees 34 minutes 27 seconds East along said North line of said Section 30, a distance of 2642.76 feet to the Northeast corner of said Section 30, said point also being the point of beginning;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 12:

That portion of Section 30, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Northwest corner of said Section 30, said point being a G.L.O. brass cap;

PARCEL DESCRIPTION

THENCE North 89 degrees 34 minutes 51 seconds East, a distance of 2641.88 feet along the North line of said Section 30;

Unofficial Document

THENCE South 00 degrees 06 minutes 00 seconds East, a distance of 2901.73 feet to a point of curvature of a tangent curve concave to the East;

THENCE Southerly along the arc of said curve to the left, having a radius of 1000.00 feet, a central angle of 19 degrees 54 minutes 00 seconds, and an arc length of 347.32 feet to a point of tangency;

THENCE South 20 degrees 00 minutes 00 seconds East, a distance of 50.00 feet;

THENCE South 70 degrees 00 minutes 00 seconds West, a distance of 1795.40 feet to a point of curvature of a tangent curve concave to the North;

THENCE Westerly along the arc of said curve to the right, having a radius of 1500.00 feet, a central angle of 23 degrees 46 minutes 34 seconds, and an arc length of 622.46 feet to a point of tangency;

THENCE North 86 degrees 13 minutes 26 seconds West, a distance of 334.04 feet to a point on the arc of a non-tangent curve concave to the East, a radial line of said curve through said point having a bearing of North 86 degrees 13 minutes 26 seconds West;

THENCE Northerly along the arc of said curve to the right, having a radius of 1500.00 feet, a central angle of 14 degrees 13 minutes 14 seconds, and an arc length of 372.29 feet to a point of tangency;

THENCE North 17 degrees 59 minutes 48 seconds East, a distance of 835.53 feet to a point of curvature of a tangent curve concave to the West;

THENCE Northerly along the arc of said curve to the left, having a radius of 1500.00 feet, a central angle of 37 degrees 50 minutes 47 seconds and an arc length of 990.81 feet to a point of tangency;

Unofficial Document

THENCE North 19 degrees 50 minutes 58 seconds West, a distance of 794.67 feet to a point of curvature of a tangent curve concave to the East;

THENCE Northerly along the arc of said curve to the right, having a radius of 1500.00 feet, a central angle of 15 degrees 36 minutes 40 seconds, and an arc length of 408.70 feet to a point of tangency;

THENCE North 04 degrees 14 minutes 18 seconds West, a distance of 672.77 feet to the point of beginning;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 13:

That portion of Section 25, Township 2 North, Range 3 West and Section 30, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

BEGINNING at the Southeast corner of said Section 25, said point being a G.L.O. brass cap;

THENCE North 89 degrees 52 minutes 15 seconds West along the South line of said Section 25, a distance of 2635.19 feet to the South quarter corner of said Section 25;

THENCE North 89 degrees 41 minutes 17 seconds West along said

South line, a distance of 2641.10 feet to the Southwest corner of said Section 30;

Unofficial Document

THENCE North 00 degrees 04 minutes 16 seconds West along the West line of said Section 25, a distance of 1000.00 feet;

THENCE North 75 degrees 41 minutes 52 seconds East, a distance of 5874.45 feet;

THENCE South 17 degrees 59 minutes 48 seconds West, a distance of 835.53 feet to a point of curvature of a tangent curve concave to the East;

THENCE Southerly along the arc of said curve to the left, having a radius of 1500.00 feet, a central angle of 14 degrees 13 minutes 14 seconds, and an arc length of 372.29 feet to a point of tangency;

THENCE South 03 degrees 46 minutes 34 seconds West, a distance of 1315.07 feet to the Southeast corner of Section 25, said point also being the point of beginning;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 14:

That portion of Sections 23 and 24, Township 2 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Southwest corner of said Section 23, said point being a G.L.O. brass cap;
THENCE North 00 degrees 05 minutes 59 seconds West along the West line of said Section 23, a distance of 600.00 feet;

PARCEL DESCRIPTION

THENCE North 67 degrees 14 minutes 01 seconds East, a distance of 5728.70 feet to a point on the East line of the Southeast quarter of said Section 23;

Unofficial Document

THENCE continuing North 67 degrees 14 minutes 01 seconds East, a distance of 1068.51 feet to a point on the arc of a non-tangent curve concave to the Northeast, a radial line of said curve through said point having a bearing of South 75 degrees 26 minutes 44 seconds West;

THENCE Southeasterly along the arc of said curve to the left, having a radius of 4400.00 feet, a central angle of 31 degrees 16 minutes 47 seconds, and an arc length of 2402.11 feet to a non-tangent line, a radial line of said curve through said point having a bearing of South 44 degrees 09 minutes 57 seconds West;

THENCE South 44 degrees 09 minutes 57 seconds West, a distance of 1689.79 feet to a point on the South line of the Southwest quarter corner of said Section 24;

THENCE North 89 degrees 44 minutes 36 seconds West along said South line of said Section 24, a distance of 1000.00 feet to the Southwest corner of said Section 24;

THENCE North 89 degrees 42 minutes 50 seconds West along the South line of said Section 23, a distance of 2641.62 feet to the South quarter corner of said Section 23;

THENCE North 89 degrees 40 minutes 59 seconds West along the South line of said Section 23, a distance of 2640.87 feet to the Southwest corner of said Section 23, said point also being the point of beginning;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential

to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

Unofficial Document

PARCEL NO. 15:

That portion of Section 23, Township 2 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Northwest corner of said Section 23, said point being a G.L.O. brass cap;

THENCE South 89 degrees 47 minutes 21 seconds East along the North line of said Section 23, a distance of 1857.42 feet;

THENCE South 53 degrees 00 minutes 55 seconds East, a distance of 2857.55 feet;

THENCE South 00 degrees 01 minutes 18 seconds East, a distance of 1216.34 feet;

THENCE South 67 degrees 14 minutes 01 seconds West, a distance of 4481.73 feet to a point on the West line of the Southeast quarter corner of Section 23;

THENCE North 00 degrees 05 minutes 59 seconds West along said West line, a distance of 2043.82 feet to the West quarter corner of said Section 23;

THENCE North 00 degrees 05 minutes 41 seconds West along said West line, a distance of 2632.79 feet to the Northwest corner of Section 23, said point also being the point of beginning;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of

PARCEL DESCRIPTION

commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

Unofficial Document

PARCEL NO. 16:

That portion of Sections 23 and 24, Township 2 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Northwest corner of said Section 24, said point bearing South 00 degrees 01 minutes 18 seconds East, a distance of 6.60 feet from a G.L.O. brass cap witness corner;

THENCE South 89 degrees 44 minutes 26 seconds East along the North line of said Section 24, a distance of 810.49 feet;

THENCE South 02 degrees 00 minutes 00 seconds East, a distance of 1065.56 feet to a point of curvature of a tangent curve concave to the East;

THENCE Southerly along the arc of said curve to the left, having a radius of 4400.00 feet, a central angle of 12 degrees 33 minutes 16 seconds, and an arc length of 964.11 feet to a non-tangent line, a radial line of said curve through said point having a bearing of South 75 degrees 26 minutes 44 seconds West;

THENCE South 67 degrees 14 minutes 01 seconds West, a distance of 1068.51 feet to a point on the West line of the Southwest quarter corner of said Section 24;

THENCE continuing South 67 degrees 14 minutes 01 seconds West, a distance of 1246.97 feet;

THENCE North 00 degrees 01 minutes 18 seconds West, a distance of 1216.34 feet;

THENCE North 53 degrees 00 minutes 55 seconds West, a distance of 2857.55 feet to a point on the North line of the

PARCEL DESCRIPTION

Northwest corner of said Section 23;

THENCE South 89 degrees 47 minutes 21 seconds East, a distance of 788.00 feet to the North quarter corner of said Section 23:

Unofficial Document

THENCE South 89 degrees 39 minutes 30 seconds East along the North line of said Section 23, a distance of 2644.01 feet to the Northeast corner of Section 23, said point also being the point of beginning;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 17:

That portion of Section 24, Township 2 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, lying Northerly of the following described property:

BEGINNING at the Southeast corner of said Section 24, said point being a G.L.O. brass cap;

THENCE South 01 degrees 16 minutes 12 seconds West, a distance of 12.38 feet to a point on the arc of a non-tangent curve concave to the North, a radial line of said curve through said point having a bearing of South 00 degrees 25 minutes 09 seconds East;

THENCE Westerly along the arc of said curve to the right, having a radius of 4400.00 feet, a central angle of 05 degrees 01 minutes 39 seconds, and an arc length of 386.07 feet to a point on the South line of said Section 24;

PARCEL DESCRIPTION

THENCE continuing Northwesterly along the arc of said curve to the right, having a radius 4400.00 feet, a central angle of 70 degrees 50 minutes 15 seconds, and an arc length of 5439.92 feet to a non-tangent line, a radial line of said curve through said point having a bearing of South 75 degrees 26 minutes 44 seconds West;

Unofficial Document

THENCE North 75 degrees 23 minutes 57 seconds East, a distance of 4425.12 feet to a point on the East line of the Northeast quarter of said Section 24;

THENCE South 00 degrees 08 minutes 44 seconds East along said East line, a distance of 1757.45 feet to the East quarter corner of said Section 24, which bears North 00 degrees 56 minutes 58 seconds West along the East line of the Southeast quarter of said Section 24, a distance of 19.93 feet from the West quarter corner of Section 19, Township 2 North, Range 2 West;

THENCE South 00 degrees 05 minutes 59 seconds East along said East line, a distance of 2639.86 feet to the Southeast corner of said Section 24, said point also being the point of beginning;

EXCEPT the following described property:

BEGINNING at the Northwest corner of said Section 24, said point bearing South 00 degrees 01 minutes 18 seconds East, a distance of 6.60 feet from a G.L.O. brass cap witness corner;

THENCE South 89 degrees 44 minutes 26 seconds East along the North line of said Section 24, a distance of 810.49 feet;

THENCE South 02 degrees 00 minutes 00 seconds East, a distance of 1065.56 feet to a point of curvature of a tangent curve concave to the East;

THENCE Southerly along the arc of said curve to the left, having a radius of 4400.00 feet, a central angle of 12

PARCEL DESCRIPTION

degrees 33 minutes 16 seconds, and an arc length of 964.11 feet to a non-tangent line, a radial line of said curve through said point having a bearing of South 75 degrees 26 minutes 44 seconds West;

Unofficial Document

THENCE South 67 degrees 14 minutes 01 seconds West, a distance of 1068.51 feet to a point on the West line of the Southwest quarter corner of said Section 24;

THENCE continuing South 67 degrees 14 minutes 01 seconds West, a distance of 1246.97 feet;

THENCE North 00 degrees 01 minutes 18 seconds West, a distance of 1216.34 feet;

THENCE North 53 degrees 00 minutes 55 seconds West, a distance of 2857.55 feet to a point on the North line of the Northwest corner of said Section 23;

THENCE South 89 degrees 47 minutes 21 seconds East, a distance of 788.00 feet to the North quarter corner of said Section 23;

THENCE South 89 degrees 39 minutes 30 seconds East along the North line of said Section 23, a distance of 2644.01 feet to the Northeast corner of Section 23, said point also being the point of beginning;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL DESCRIPTION

Revised June 14, 1999
June 7, 1999
WP #97678.03

PARCEL NO. 18:

That portion of Sections 24 and 25, Township 2 North, Range 3 West and Section 30, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Unofficial Document

BEGINNING at the Northwest corner of said Section 30, said point being a G.L.O. brass cap;

THENCE South 04 degrees 14 minutes 18 seconds East, a distance of 672.77 feet to a point of curvature of a tangent curve to the East;

THENCE Southerly along the arc of said curve to the left, having a radius of 1500.00 feet, a central angle of 15 degrees 36 minutes 40 seconds, and an arc length of 408.70 feet to a point of tangency;

THENCE South 19 degrees 50 minutes 58 seconds East, a distance of 794.67 feet to a point of curvature of a tangent curve concave to the West;

THENCE Southerly along the arc of said curve to the right, having a radius of 1500.00 feet, a central angle of 37 degrees 50 minutes 47 seconds, and an arc length of 990.81 feet to a non-tangent line, a radial line of said curve through said point having a bearing of South 72 degrees 00 minutes 12 seconds East;

THENCE South 75 degrees 41 minutes 52 seconds West, a distance of 5874.45 feet to a point on the West line of the Southwest quarter corner of said Section 25;

THENCE North 00 degrees 04 minutes 18 seconds West along said West line, a distance of 1639.32 feet to the West quarter corner of said Section 25;

PARCEL DESCRIPTION

THENCE North 00 degrees 01 minutes 21 seconds West along said West line, a distance of 2637.50 feet to the Northwest corner of said Section 25;

Unofficial Document

THENCE South 89 degrees 44 minutes 36 seconds East along the North line of said Section 25, a distance of 1000.00 feet;

THENCE North 44 degrees 09 minutes 57 seconds East, a distance of 1689.79 feet to a point on the arc of a non-tangent curve concave to the Northeast, a radial line of said curve through said point having a bearing of South 44 degrees 09 minutes 57 seconds West;

THENCE Southeasterly along the arc of said curve to the left, having a radius of 4400.00 feet, a central angle of 39 degrees 33 minutes 28 seconds, and an arc length of 3037.82 feet to a point of curvature of a curve concave to the North, said point being a point on the South line of the Southeast quarter of said Section 24;

THENCE continuing Southeasterly along the arc of said curve to the left, having a radius of 4400.00 feet, a central angle of 05 degrees 01 minutes 39 seconds, and an arc length of 386.07 feet to the point of beginning;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 19:

That portion of Sections 24 and 25, Township 2 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

PARCEL DESCRIPTION

BEGINNING at the Southeast corner of said Section 24, said point being a G.L.O. brass cap;

THENCE South 01 degrees 16 minutes 12 seconds West, a distance of 12.38 feet to a non-tangent curve concave to the North, a radial line of said curve through said point having a bearing of South 00 degrees 25 minutes 09 seconds East;

Unofficial Document

THENCE Westerly along the arc of said curve to the right, having a radius of 4400.00 feet, a central angle of 05 degrees 01 minutes 39 seconds, and an arc length of 386.07 feet to a point on the South line of said Section 24;

THENCE continuing Northwesterly along the arc of said curve to the right, having a radius of 4400.00 feet, a central angle of 70 degrees 50 minutes 15 seconds, and an arc length of 5439.92 feet to a non-tangent line, a radial line of said curve through said point having a bearing of South 75 degrees 26 minutes 44 seconds West;

THENCE North 75 degrees 23 minutes 57 seconds East, a distance of 4425.12 feet to a point on the East line of the Northeast quarter of said Section 24;

THENCE South 00 degrees 08 minutes 44 seconds East along said East line, a distance of 1757.45 feet to the East quarter corner of said Section 24, which bears North 00 degrees 56 minutes 58 seconds West along the East line of the Southeast quarter of said Section 24, a distance of 19.93 feet from the West quarter corner of Section 19, Township 2 North, Range 2 West;

THENCE South 00 degrees 05 minutes 59 seconds East along said East line, a distance of 2639.86 feet to the Southeast corner of said Section 24, said point also being the point of beginning;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential

PARCEL DESCRIPTION

to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 20:

Unofficial Document

Lots 1, 2, 3 and 4, the South half of the North half, and the South half of Section 3, Township 2 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 21:

Sections 10, 11, 12 and 13, Township 2 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

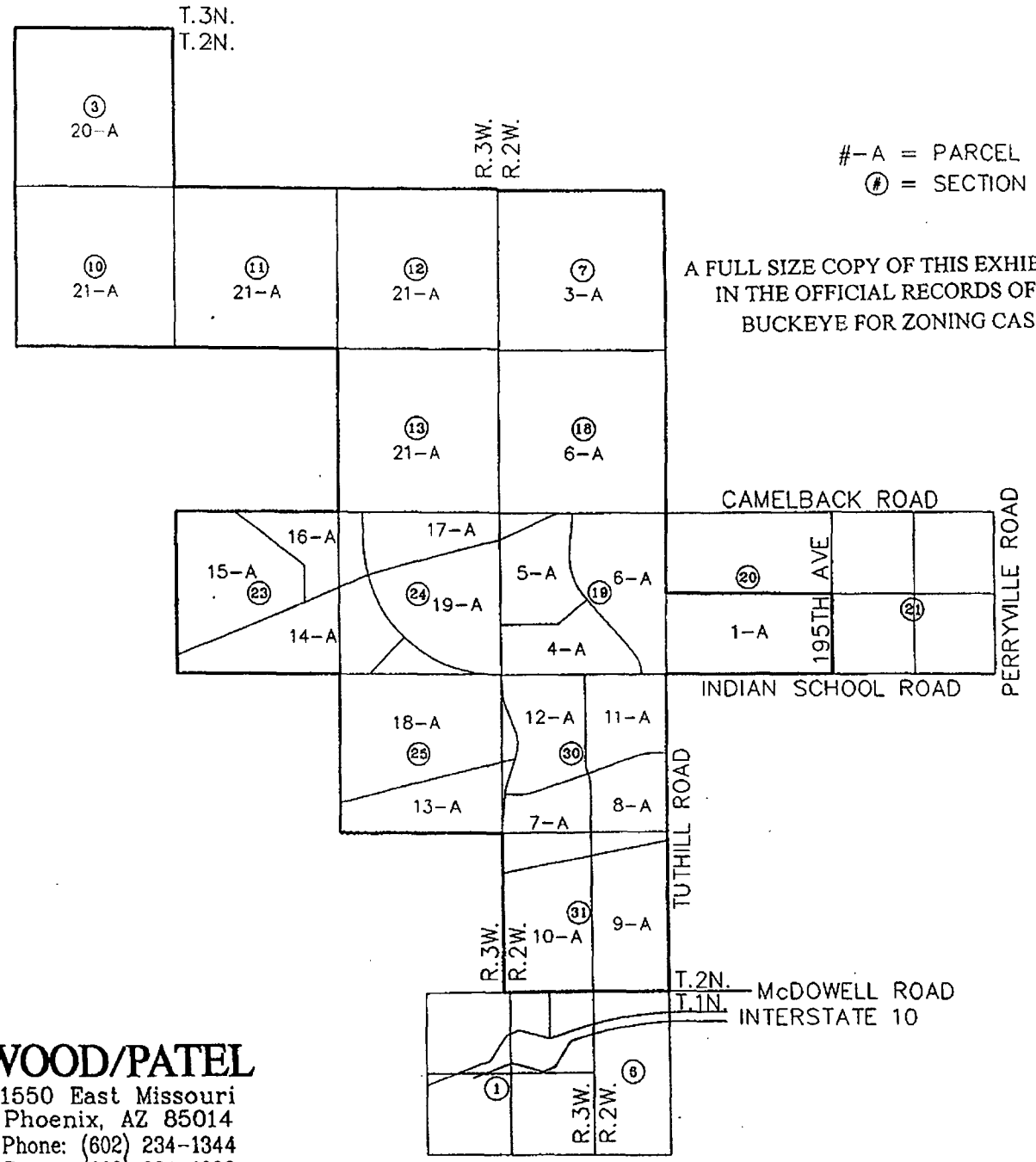
EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

Containing 8639.41 acres, or 376,332,700 square feet of land, more or less.

All parcels subject to existing rights-of-way and easements.

Y:\WP\LEGALS\97678.03.CaterpillarProvingGrounds.wpd





Unofficial Document

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27239
THOMAS R.
GETTINGS
Date Signed 6-14-99
ARIZONA, U.S.A.

WOOD/PATEL
1550 East Missouri
Phoenix, AZ 85014
Phone: (602) 234-1344
Fax: (602) 234-1322

EXHIBIT "A"
Parcel "A"
CATERPILLAR
06-14-99
97678.03
PAGE 27 OF 27
NOT TO SCALE
T:\980708\LEGAL\0708L4

19991071208

WOOD/PATEL

CIVIL ENGINEERS • HYDROLOGISTS • LAND SURVEYORS

Darrel E. Wood, P.E., R.L.S.
Ashok C. Patel, P.E., R.L.S.
James S. Campbell, P.E.
Gordon W. R. Wark, P.E.
Thomas R. Gettings, R.L.S.
Bruce Friedhoff, P.E.
Scott A. Nelson, R.L.S.
Richard L. Hiner, P.E.
Timothy A. Huval, P.E.
Michael J. Sexton, R.L.S.
Jack K. Moody, P.E.
Leslie J. Kland, P.E.
Curtis L. Brown, P.E.
R. Scott Rasmussen, P.E.
Paul M. Haas, P.E.
Shimin Zou, Ph.D., P.E.
David T. Phelps, P.E.
Michael T. Young, P.E.
Shawn D. Gustafson, P.E.

EXHIBIT "A"
PARCEL DESCRIPTION
PARCEL "B"

Unofficial Document

A parcel of land lying within Section 6, Township 1 North, Range 2 West, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the northwest corner of said Section 6, said point also being the POINT OF BEGINNING of the herein described parcel;

THENCE along the north line of Section 6 per the Results of Survey as recorded in Book 499, page 48, Maricopa County Records, North 89 degrees 57 minutes 39 seconds East, a distance of 2437.60 feet to the northwest corner of Parcel No. 3 of a Quit-Claim Deed as recorded in Docket 10822, page 9, Maricopa County Records;

THENCE leaving said north line, along the westerly line of said Parcel No. 3, South 14 degrees 06 minutes 52 seconds East, a distance of 206.19 feet, to the southeast corner of said Parcel No. 3 and to a point on the east line of Section 6 per said Results of Survey;

THENCE leaving said westerly line, along said east line, South 00 degrees 04 minutes 51 seconds East, a distance of 491.44 feet, to a point on the northerly right-of-way line of Interstate 10 and the beginning of a non-tangent curve;

THENCE leaving said east line, along said right-of-way line, westerly along said curve, having a radius of 11602.57 feet, concave southerly, whose radius bears South 02 degrees 39 minutes 27 seconds East, through a central angle of 12 degrees 26 minutes 54 seconds, a distance of 2520.84 feet, to a point on the west line of Section 6 per said Results of Survey, and a point of intersection with a non-tangent line;

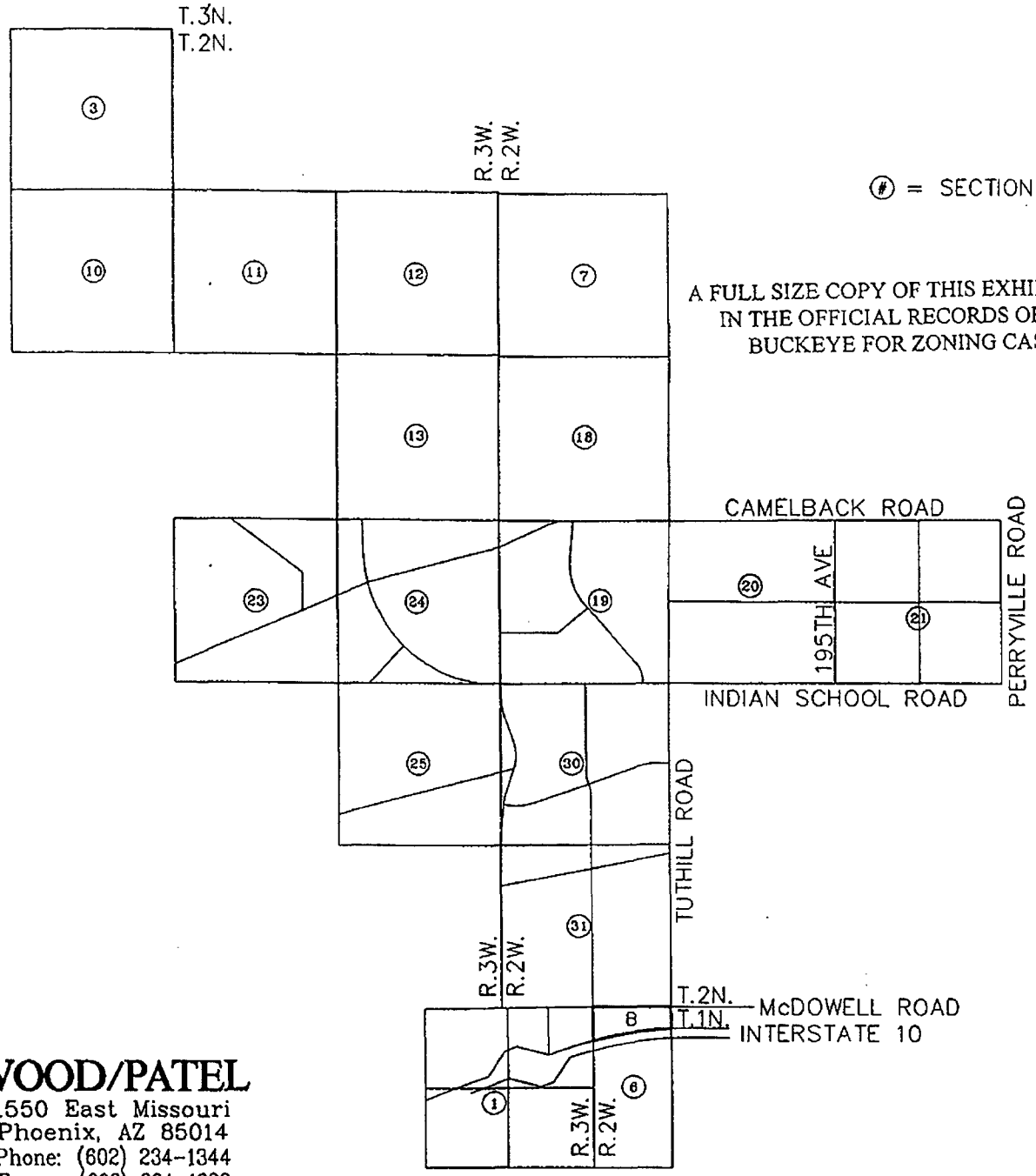
THENCE leaving said northerly right-of-way line, along said west line, North 00 degrees 09 minutes 05 seconds West, a distance of 1078.18 feet, to the POINT OF BEGINNING.

Containing 47.77 acres, or 2,080,805 square feet of land, more or less.

Subject to existing rights-of-way and easements.

Y:\WP\LEGALS\97678.03.CaterpillarParcelB.wpd

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27239
THOMAS R.
GETTINGS
Date Signed: 6-14-99
ARIZONA, U.S.A.



Unofficial Document

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27239
THOMAS R.
GETTINGS
Date Signed 6-14-99
ARIZONA, U.S.A.

WOOD/PATEL
1550 East Missouri
Phoenix, AZ 85014
Phone: (602) 234-1344
Fax: (602) 234-1322

EXHIBIT "A"
Parcel "B"
CATERPILLAR
06-14-99
97678.03
PAGE 2 OF 2
NOT TO SCALE
T:\980708\LEGAL\0708L4

19991071208

WOOD/PATEL

CIVIL ENGINEERS • HYDROLOGISTS • LAND SURVEYORS

Darrel E. Wood, P.E., R.L.S.
Ashok C. Patel, P.E., R.L.S.
James S. Campbell, P.E.
Gordon W. R. Wark, P.E.
Thomas R. Gettings, R.L.S.
Bruce Friedhoff, P.E.
Scott A. Nelson, R.L.S.
Richard L. Hiner, P.E.
Timothy A. Huval, P.E.
Michael J. Sexton, R.L.S.
Jack K. Moody, P.E.
Leslie J. Kland, P.E.
Curtis L. Brown, P.E.
R. Scott Rasmussen, P.E.
Paul M. Haas, P.E.
Shimin Zou, Ph.D., P.E.
David T. Phelps, P.E.
Michael T. Young, P.E.
Shawn D. Gustafson, P.E.

Revised June 14, 1999
June 7, 1999
WP #97678.03

See Exhibit "C"

EXHIBIT "A"
PARCEL DESCRIPTION
PARCEL "C"

Unofficial Document

PARCEL NO. 1:

The West 1240.84 feet of the following described parcel:

Lots 1 and 2, and the South half of the Northeast quarter of Section 1, Township 1 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, lying North of the land conveyed to the State of Arizona by and through the Department of Transportation in Docket 11015, page 374 and in Docket 11052, page 724.

PARCEL NO. 2:

Lots 1 and 2, and the South half of the Northeast quarter of Section 1, Township 1 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, lying North of the land conveyed to the State of Arizona by and through the Department of Transportation in Docket 11015, page 374 and in Docket 11052, page 724;

EXCEPT the West 1240.84 feet.

PARCEL NO. 3:

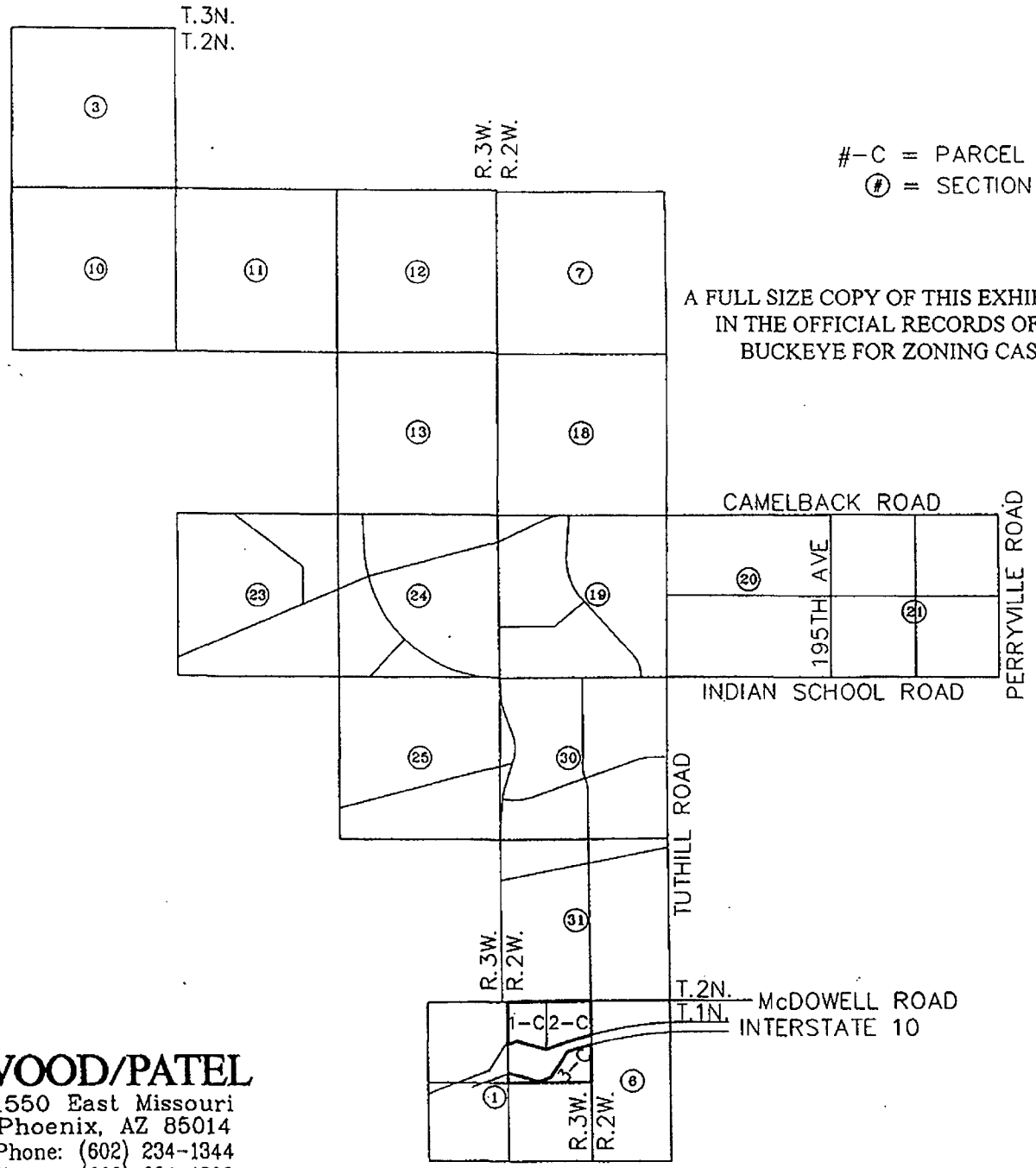
The Northeast quarter of Section 1, Township 1 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, lying South of the land conveyed to the State of Arizona by and through the Department of Transportation in Docket 11015, page 374 and in Docket 11052, page 724.

Containing 111.87 acres, or 4,872,970 square feet of land, more or less.

All parcels subject to existing rights-of-way and easements.

Y:\WP\LEGALS\97678.03 CaterpillarParcelC.wpd

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27239
THOMAS R.
GETTINGS
Date Signed 6-14-99
ARIZONA, U.S.A.



Unofficial Document

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27239
THOMAS R.
GETTINGS
Date Signed 6-14-99
ARIZONA, U.S.A.

EXHIBIT "A"
Parcel "C"
CATERPILLAR
06-14-99
97678.03
PAGE 2 OF 2
NOT TO SCALE
T:\980708\LEGAL\0708L4

WOOD/PATEL
1550 East Missouri
Phoenix, AZ 85014
Phone: (602) 234-1344
Fax: (602) 234-1322

19991071208

EXHIBIT "B"

CATERPILLAR

Unofficial Document

COMMUNITY MASTER PLAN

Approved November 17, 1999
Case No. CMP-99-22

Owners:	Caterpillar Foundation 100 N.E. Adams Street Peoria, Illinois 61629 DMB White Tank L.L.C. 7600 E. Doubletree Ranch Road Suite 300 Scottsdale, Arizona 85258
Developer:	DMB White Tank L.L.C. 7600 E. Doubletree Ranch Road Suite 300 Scottsdale, Arizona 85258
Prepared by:	Biskind, Hunt and Taylor Karrin K. Taylor, Esq. 4201 N. 24th Street, Suite 300 Phoenix, Arizona 85016

TABLE OF CONTENTS

Unofficial Document

INTRODUCTION i
PROJECT OVERVIEW i
Physical i
Applicant ii
Development Team iii
COMMUNITY VISION iv
Vision Statement iv
GOALS AND OBJECTIVES iv
Environmental Sensitivity iv
Phasing of Development v
Creation of Quality and Connected Neighborhoods v
Design and Creation of a Strong Thematic Character v
EXISTING CONDITIONS v
Overview v
Existing Conditions vi
Regional Drainage Patterns vi
Topography and Slope Analysis vi
Geology vi
Hydrogeology vii
Biology vii
Cultural Resources vii
Native Vegetation viii

Caterpillar
COMMUNITY MASTER PLAN

I. **REZONING PROCESS** 1
1.01 PLANNED COMMUNITY LAND USE DISTRICT 1
1.02 COMMUNITY MASTER PLAN 1
A. Purpose 1
B. Conformance with the General Plan 1
C. Relationship to the Land Use District Map 2
D. Relationship with the Development Code 2
E. Development Agreement 2
F. Amendments to the Community Master Plan 3
G. Appendices and Exhibits 4
1.03 Definitions 4

II. **PLANS** 8
2.01 PROJECT MASTER PLANS 8
A. Master Drainage Plan 8
B. Master Street and Circulation Plan 9
C. Master Potable Water Plan 10
D. Master Wastewater Plan 11
E. Master P[Unofficial Document] Plan 13
F. Master Public Facilities Plan 13
G. Master Phasing Plan 15
H. Master Village Center and Neighborhood Concept Plan . 15
2.02 PLANNING UNIT PLANS 15
A. Planning Unit Drainage Plan 16
B. Planning Unit Street and Circulation Plan 17
C. Planning Unit Potable Water Plan 18
D. Planning Unit Wastewater Plan 19
E. Planning Unit Environmental Design Plan 19
2.03 SITE PLAN APPROVAL
..... 23

III. **LAND USE PLAN** 24
3.01 LAND USE DESIGNATIONS 24
A. Residential 24
1. Permitted Uses 24
2. Prohibited Uses 25
3. Development Options 25
B. Commercial/Mixed Use 31
1. Permitted Uses 31
2. Prohibited Uses 32
3. Development Options 32
C. Resort Overlay 33
3.02 LAND USE BUDGET 33
A. Land Use Intensity -- Residential 33
B. Land Use Intensity -- Commercial/Mixed Use 33
C. Land Use Intensity -- Resort Overlay 34
D. Land Use Designation Locations 34
E. Land Use Intensity Transfers 34
F. Documentation of Intensity Transfer 34
G. Residential Dwelling Unit Bonus 34
3.03 GENERAL DEVELOPMENT STANDARDS 35
A. Perimeter Transition Areas 35
B. Setback and Height Exceptions 35
C. Residential Accessory Buildings 36
D. Air Quality 36

E. Building Construction 37
F. Residential Density 38
G. Flood Control 38
H. Landscaping 41
I. Lighting 43
J. Outdoor Storage 44
K. Parking 45
L. Screening 50
M. Signs 54
N. Topography 58
O. Utilities 66
P. Public Area Improvements 67

IV. LAND SUBDIVISION 71
4.01 GENERAL PROVISIONS 71
4.02 STREET NAMING 71
4.03 LAND SPLITS 71
A. Purpose 71
B. Requirements 71
C. Approval 72
4.04 PRELIMINARY PLAT 72
A. Significance of Preliminary Plat Approval 72
B. Required Information for Preliminary Plat 72
4.05 FINAL PLAT 75
A. General Requirements for Filing 75
B. Required Information for Final Plat 75
4.06 SUBDIVISION DESIGN 78
4.07 ENGINEERING AND CONSTRUCTION PLANS 78
4.08 RESPONSIBILITY FOR PUBLIC IMPROVEMENTS 79
A. Financial Guarantee 79
B. Inspection of Improvements 79

V. PROJECT GOVERNANCE 81
5.01 PROJECT GOVERNANCE 81
A. Governance Entities 81
B. Design Standards 81
C. Common Area Management 82

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT B
MASTER DRAINAGE PLAN

Unofficial Document

EXHIBIT C
MASTER STREET
AND CIRCULATION PLAN

EXHIBIT D
ROADWAY STANDARDS

Unofficial Document

EXHIBIT E
MASTER POTABLE WATER PLAN

EXHIBIT F
MASTER WASTEWATER PLAN

EXHIBIT G
MASTER PEDESTRIAN
AND TRAILS PLAN

EXHIBIT H
PLANNING UNIT MAP

EXHIBIT I
METHOD OF LOT MEASUREMENT

EXHIBIT J
LAND USE BUDGET

EXHIBIT K
RESIDENTIAL DWELLING UNIT
BONUS TABLE

EXHIBIT L
PERIMETER TRANSITION AREAS

EXHIBIT M
LANDSCAPE PLANT PALETTE

EXHIBIT N
HILLSIDE HEIGHT MEASUREMENT

EXHIBIT O
TURNAROUNDS

EXHIBIT P
CONCEPTUAL OUTLINE OF CC&Rs

EXHIBIT Q
GENERAL ELEMENTS OF
DESIGN REVIEW GUIDELINES

Unofficial Document

APPENDICES

Caterpillar
COMMUNITY MASTER PLAN

INTRODUCTION

Unofficial Document

Caterpillar is envisioned to be the finest master planned community given the time, location, and market. As such, the goal of Caterpillar is to be a sustainable community with a variety of jobs, housing, recreational, and cultural opportunities. The significant planning effort undertaken for the project will help ensure that Caterpillar will truly be a special and unique place to live, work, shop, and play.

PROJECT OVERVIEW

Physical Setting

The Caterpillar master planned community (hereinafter referred to as "Caterpillar" or the "Property") is comprised of approximately 8,800 acres located in the northeastern portion of the Town of Buckeye (the "Town") and on the eastern side of the White Tank Mountains which provide a natural western boundary for the Phoenix metropolitan area. The Property is more particularly described in **Exhibit A**. Caterpillar is bound on the west by the summit of the White Tank Mountains and on the east by Tuthill Road with a small section extending to Jackrabbit Trail. The Property's northern boundary is comprised of the Glendale Avenue and the Northern Avenue alignments. The southern boundary lies north and south of Interstate 10. Adjacent neighbors of the Property include the White Tank Mountain Regional Park and Arizona State Land Department to the north and Bureau of Land Management property to the west. The majority of the land to the east and south is privately owned.

Caterpillar benefits from exceptional views of the Phoenix metropolitan area and surrounding mountain ranges as well as the Agua Fria River and Gila River valleys. The Property rises in elevation from 1,075 feet above sea level at the southeast corner to 3,671 feet above sea level at the highest peak of the Property.

The Caterpillar development team (the "Development Team") is dedicated to maintaining significant natural features of the Property and in some cases

improving existing conditions. For example, many areas on the Property impacted by previous activity will be improved through the development of the community.

An on-site pathway and trail network is intended to provide important linkages to parks, schools, churches, commercial sites, resort sites, municipal facilities, an Unofficial Document as well as linkages to off-site locations.

The Caterpillar Community Master Plan (the "CMP") includes a variety of land uses contained within distinct "Planning Units". These Planning Units will be linked through an integrated circulation system, including a pathway and trail system, as well as an overall thematic character that will define the Caterpillar community.

Caterpillar is planned to have an overall density of 14,080 residential dwelling units on approximately 8,800 acres creating an overall gross density of approximately 1.60 dwelling units per acre. The intent of the CMP is to provide a cohesive framework that incorporates a variety of housing types and community support uses linked to form a flexible and vibrant community to grow and thrive as the Town continues to expand and mature.

Applicant

The Applicant for the CMP is DMB White Tank, LLC, an Arizona limited liability company ("DMB White Tank"). DMB White Tank shall be hereinafter referred to as the "Developer".

Caterpillar Foundation, an Illinois not-for-profit corporation ("Caterpillar Foundation") is the owner of Parcel A and DMB White Tank is the owner of Parcels B and C as more particularly described in **Exhibit A**.

DMB Associates, Inc. ("DMB"), parent of DMB White Tank, is a diversified real estate investment and development firm. Since its inception in 1984, DMB has been a major developer and owner of commercial real estate in metropolitan Phoenix. In the past ten years, community development has become a central focus of DMB's real estate endeavors. DMB has distinguished itself as one of the nation's premier master plan community developers by successfully creating communities that function and last. Special emphasis is placed on elements such as education, recreation, technology, health and wellness, and governance. Some of its communities

include DC Ranch in Scottsdale, Power Ranch in Gilbert, Superstition Springs in Mesa, Forest Highlands in Flagstaff, Ladera Ranch in Orange County, California, Lahontan in Tahoe, California, and Black Mountain Ranch in San Diego, California. DMB's vision is that its communities become "home" in the truest sense of the word and endure as meaningful places for the people that live there. DMB strives to create livable neighborhoods, not just subdivisions, beca Unofficial Document s communities to develop and mature over decades to come.

Caterpillar Foundation is a not-for-profit philanthropic company based in Peoria, Illinois. Established in 1952, the Foundation provides funds for educational, cultural, and community activities throughout the country. The Caterpillar Foundation is the owner of approximately 8,640 acres of the Property and intends to use proceeds from the sale of the Property in its continued philanthropic endeavors. The chairman of Caterpillar Inc., Glen A. Barton, is a member of the Board of Directors of the Caterpillar Foundation.

Development Team

The Development Team has been assembled with the specific charge to create a vision and plan for a world-class master planned community. The Development Team is comprised of planners, architects, archeologists, biologists, hydrologists, geologists, engineers, and legal counsel with significant experience in the planning and development of first-class master planned communities. The expertise gathered for this project will help to ensure that Caterpillar will be a true asset to the Town, its residents, and the region.

The Caterpillar design team is led by EDAW, Inc. along with Swaback Partners pllc, both internationally renowned architecture/planning firms.

EDAW Inc. is a multi-disciplinary firm that has been a guiding force in the fields of planning, urban design, and landscape architecture for over half a century. EDAW's special emphasis upon the broad and increasingly complex issues of land use planning and design both encourages appropriate use of resources and enhances the environment.

Much of EDAW's work involves large-scale master planning for new communities worldwide. Each of these projects involves a comprehensive approach to planning, one that incorporates every aspect of environmental

management and community building. Projects by EDAW include Celebration in Florida, Desert Mountain in Arizona, Ladera Ranch and Valencia Town Center in California, Las Campanas in New Mexico, and Summerlin Town Center in Nevada.

Vernon Swaback, a protégé of Frank Lloyd Wright, is known as the expert in sensitive developme Unofficial Document esert. Mr. Swaback has been involved in several significant projects in Arizona including the Arizona Biltmore in Phoenix, DC Ranch in Scottsdale, and Superstition Mountain in the East Valley.

COMMUNITY VISION

Vision Statement

Caterpillar is planned to be a sustainable community with a strong identity and vision that integrates diverse residential neighborhoods with commercial uses including employment and resort opportunities. The Caterpillar CMP provides a framework to preserve and celebrate the natural features of the Property and provide a truly special place to live, work, shop, and play.

Caterpillar is envisioned to set a new standard for development in the West Valley. It is the intent of the Development Team to define the quality of development in the region, establish the framework for responsible future development, and set new standards for future master planned communities in the region.

GOALS AND OBJECTIVES

Environmental Sensitivity

The Caterpillar CMP has been planned to embrace and enhance the varied topography and other natural features of the Property. In addition, the plant palette for Caterpillar will consist of both native and non-native desert plant material to supplement the existing flora on the Property.

Phasing of Development

The creation of a successful and sustainable master planned community requires a commitment to long range land use planning. As such, the community and all the associated infrastructure will be built in phases. The ultimate schedule of phasing will be dependent upon the market and economic conditions, aUnofficial Document construction logistics.

Creation of Quality and Connected Neighborhoods

The residents of Caterpillar will be connected via internal linkages including multi-use and pedestrian pathways to schools, parks, shopping, and other community amenities. The CMP will provide residents with a means of traveling throughout the community without relying strictly on the automobile. The CMP provides for a variety of housing types and a private governance structure which will establish quality control throughout the Property for the life of the project and beyond the last house built. Finally, the CMP will provide opportunities to accommodate ever-changing lifestyles and communication needs.

Design and Creation of a Strong Thematic Character

The Caterpillar CMP sets forth the framework to embrace the existing natural features of the Property. By integrating a cohesive theme and by designing and using appropriate materials, colors, and forms, the long-term value of the Property will be preserved. The attention to these details is critical to the long-term success of Caterpillar.

EXISTING CONDITIONS

Overview

The following Section provides an overview of the existing conditions on the Property, as well as surrounding areas. Detailed analyses of site characteristics including natural resources, cultural resources, and other environmental characteristics have been undertaken and are summarized below.

Existing Conditions

The Property was historically used by Caterpillar, Inc. for equipment testing and demonstration from 1948 until 1989. Most of the existing site improvements and access features are a result of Caterpillar, Inc. uses during this approximately forty (40) year period. The majority of the Property is undisturbed.

Unofficial Document

Regional Drainage Patterns

The majority of the property drains southeasterly through a series of washes (White Granite Wash, Diversion Dike Wash, Tractor Wash, Osborn Road Wash, and Bulldozer Wash) to a drainage corridor along the west side of the Tuthill Road alignment (Tuthill Dike Wash). This drainage corridor leads to the southeast corner of the site where it crosses under Interstate 10 before reaching the White Tanks Flood Retarding Structure ("FRS") No. 4. This structure is located along the north side of the Van Buren Street alignment, between Tuthill Road and Jackrabbit Trail, and has a total drainage area of approximately twenty (20) square miles. A portion of the north end of the Property drains easterly to the White Tanks FRS No. 3, generally located east and north of the Jackrabbit Trail and Bethany Home Road alignments.

Topography and Slope Analysis

The topography of the site varies greatly with the White Tank Mountains along the west side of the Property. The Property rises in elevation from 1,075 feet above sea level at the southeast corner of the site to 3,671 feet at the highest peak near the northwest corner of the site. From the low point of the Property, the topography rises gently in a northwesterly direction into the White Tank Mountains. Small hill forms are also present within the Property. Slopes on the site vary from approximately one (1) percent to greater than thirty (30) percent. Approximately one half (½) of the Property has less than a five (5) percent slope.

Geology

Soils Association

The Property has been extensively surveyed for soil types and conditions. No significant impacts are anticipated in developable

areas due to relatively homogeneous site soils classified as silty sand with gravel.

Seismic

Although there are potentially active faults and/or fault zones in the general vicinity c[illegible] Unofficial Document are no known or mapped faults on the site that are younger than the tertiary age. Additionally, the geologic information on the faults indicates that they have a relatively long reoccurrence interval, and the potential for large, structure-damaging earthquakes is relatively minor. Seismic activity should not have a significant impact on the design of structures located on the Property.

Hydrogeology

Groundwater which exists within the boundaries of the Property is estimated to be located at a depth of 350 to 450 feet below the ground surface. Hydrogeologic conditions surrounding the Property provide several options for water delivery to the site.

Biology

A Natural Resources Overview was prepared for the Property by SWCA, Inc. which provides a listing of common vertebrate wildlife species recorded on the Property as well as a description and mapping of vegetation association in the project area.

A detailed review of the Property together with the habitat requirements of threatened and endangered species identified by the United States Fish and Wildlife Service revealed that there are no federally-listed species on or near the project area, including the Cactus ferrugineous pygmy-owl.

Cultural Resources

The Property was extensively surveyed for cultural resources by Soil Systems, Inc. Although no human remains or burial goods have been identified, if they are encountered during construction activities,

construction will halt and the Arizona Museum will be notified in accordance with Arizona Revised Statutes §41-865.

Native Vegetation

Vegetation within the Property is characterized as the Arizona Upland and Lower ColoUnofficial Documentons of the Sonoran Desertscrub Biome.

Caterpillar
COMMUNITY MASTER PLAN

I. REZONING PROCESS

Unofficial Document

1.01 PLANNED COMMUNITY LAND USE DISTRICT

The legislative action contemplated in response to the Developer's application is a rezoning -- specifically, a rezoning of the Property to the Planned Community Land Use District and the approval of the Caterpillar Community Master Plan ("CMP"). The Planned Community Land Use District (the "PC District") was designed by the Town to accommodate land uses and development standards approved by the Town as part of a Community Master Plan.

1.02 COMMUNITY MASTER PLAN

A. Purpose

Pursuant to the Development Code of the Town (the "Development Code"), the purpose of a Community Master Plan is to provide a means of regulating large master planned developments in the PC District. A Community Master Plan establishes land use designations and regulations, intensities, provisions for public facilities, design regulations, phasing schedules, and procedures for administration and implementation.

B. Conformance with the General Plan

The CMP reflects the goals and objectives of the General Plan of the Town (the "General Plan") and is consistent with its purpose and intent. Specifically, the CMP will achieve the following goals:

- Creation of a strong sense of community.
- Identification of the unique physical setting at the base of the White Tank Mountains to clearly distinguish Caterpillar from other master planned communities.

- Creation of a sustainable community where residential, civic, cultural, educational, retail, recreational, and employment areas are located within close proximity to one another and are easily accessible.

- Provision of a hierarchy of streets for a balanced mix of pedestrians and automobiles.

Unofficial Document

- Provision of recreational amenities which are accessible to all and are appropriately placed within walking distance of residential areas, employment areas, and resorts.

- Inclusion of a mix of residential densities and subdivision designs to reflect the physical terrain and provide a broad matrix of housing opportunities necessary for a sustainable community.

C. Relationship to the Land Use District Map

Pursuant to the Development Code, the CMP establishes land use designations for the Property. Land uses for the Property shall only be permitted if in accordance with the CMP, unless specifically approved otherwise.

D. Relationship with the Development Code

The regulations and provisions for land use and property development standards contained in the CMP take precedence over regulations covering land use and property development standards in the Development Code. Administrative procedures contained in the Development Code not covered by the CMP remain applicable to development within the Property. In the event of a conflict between the provisions of the CMP and the Development Code, the provisions of the CMP shall prevail.

E. Development Agreement

The CMP shall be adopted as part of a Development Agreement between the Town and the Applicant in accordance with Section 7-8-4 of the Development Code.

F. Amendments to the Community Master Plan

Amendments to the CMP may be necessary from time to time to reflect changes in market conditions and development financing and/or to meet new requirements of one or more of the potential users or builders of any part of the Property. When changes or adjustments are necessary or appropriate from time to time, sı Unofficial Document unless otherwise required by applicable law, be effectuated as a minor change to the CMP through the administrative approval of the Town's Planning and Development Director (the "Planning Director") which, after approval, shall be attached to the CMP as an addendum and become a part hereof. No such minor change shall require prior notice or hearing. All major changes shall be reviewed by the Development Board and approved by the Town Council and shall be subject to all typically applicable notice and hearing requirements.

The following are major changes:

(1) Any substantial alteration to the list of permitted uses of the Property set forth in this CMP, as deemed to be substantial by the Planning Director;

(2) An overall increase in either residential units or commercial/mixed-use square footage for the Property, except as otherwise allowed by the CMP;

(3) The reallocation of residential dwelling units within Planning Units and from one Planning Unit to another in a manner that results in any of the following, as measured against the original Land Use Budget set forth in the CMP: (a) an increase in the number of residential dwelling units for any one particular Planning Unit of greater than twenty (20) percent of the total number allocated to such Planning Unit in the CMP; (b) an increase in the number of residential dwelling units for any combination of three (3) Planning Units of greater than fifteen (15) percent of the total number allocated to the aggregate of such combination in the CMP; and (c) a decrease in the number of residential dwelling units of any Planning Unit what would leave less than twenty (20) percent of the total number allocated to such Planning Unit in the CMP;

(4) Any reallocation of commercial/mixed use square footage (excluding resort and related uses) between or among any of Planning Units 4, 5, 6 and 7; and

(5) The allocation of residential dwelling units to Planning Unit 1.

The following are minor Unofficial Document

(1) Any reallocation of residential dwelling units that does not meet the parameters set forth in subparagraph (3) immediately above;

(2) Any reallocation of commercial/mixed use square footage between or among any of Planning Units 1, 2, and 3; and

(3) Any minor alteration to the list of permitted uses of the Property set forth in the CMP, as deemed to be minor by the Planning Director.

G. Appendices and Exhibits

Each Appendix and Exhibit referenced in the CMP is incorporated by this reference as if fully set forth herein.

1.03 Definitions

Definitions provided in the Development Code shall be utilized when interpreting the CMP unless an alternative definition is provided below or elsewhere in the CMP, in which case, the definitions contained in the CMP shall apply. In the event of a conflict between the definitions provided in the CMP and those provided in the Development Code, the definitions in the CMP shall prevail.

Adult Uses: Any establishment that offers live, transmitted, or recorded entertainment where specified anatomical areas can be seen by patrons. Such establishments may feature dancers, go-go dancers, exotic dancers, strippers, or other similar entertainers, any of whom perform topless. Adult uses are also any establishment with a principal use characterized by the sale or distribution of merchandise with a predominant emphasis on the display, depiction, description, or relation to sexual activities or specified anatomical areas. Merchandise includes, but is not limited to, motion pictures, cassettes, films, books, magazines, posters, cards, pictures, periodicals, instruments, devices, equipment, paraphernalia, or

other similar products. For the purpose of this definition, ten (10) percent or more of the merchandise constitutes a principal use.

Building Height: The vertical distance of a building as measured from finished grade to the highest point of the roof.

Common Area: Natural are Unofficial Document lways, drainageways, arroyos, paths and trails, golf courses, active and passive parks, view corridors, and other private and public recreation areas.

Cut: The land surface which is shaped through the removal of soil, rock, or other materials.

Disturbed Area: That area of natural ground that has been or is proposed to be altered through grading, cut and fill, removal of natural vegetation, placement of material, trenching, or by any means that causes a change in the undisturbed natural surface of the land or natural vegetation.

Fill: The deposit of soil, rock, or other materials placed by man.

Finished Grade: The final grade and elevation of the ground surface after grading is completed.

Grading: Any excavating, filling, or combination thereof, including the conditions resulting from any excavation or fill.

Guest House: An attached or detached building to be used for dwelling purposes situated on the same lot as a primary residence.

Health Club: A place or building where active exercise and related activities are performed utilizing weight control or muscle building equipment or apparatus for the purpose of physical fitness. It shall also mean a place or building which provides massage, exercise, and related activities with or without such equipment or apparatus.

Hotel/Motel: A residence facility designed for occupancy by transients or as a residence for periods of less than one year. A hotel/motel shall contain rooms and/or units and shall customarily provide housekeeping, bellhop, laundry, and on-site recreation services. Hotel/motel uses shall be classified within the Land Use Budget as Commercial/Mixed Use and shall not count against the resort room allocation nor the residential dwelling unit allocation for the Property. The square

footage of a hotel/motel shall be allocated toward the Commercial/Mixed Use square footage as set forth in the Land Use Budget.

Lot Coverage: The total structural coverage provided on a lot or site inclusive of all roofed areas or structures capable of supporting a roof divided by the net area of the lot or parcel. The first three feet of roof overhang or projection shall not be included in the lot coverage. Unofficial Document

Multiple Family Dwelling: A building, or portion thereof, used for occupancy by two (2) or more families living independently of each other, with the units completely separated by a common wall, floor, and/or ceiling.

Natural Grade: The grade and elevation of the ground surface in its natural, undisturbed state.

Net Area: The area included within lot or parcel lines after all right-of-way dedications have been made.

Planning Director: Person designated by the Town Manager as having the primary responsibility for administering and enforcing the CMP.

Resort: A building or a group of buildings containing guest rooms providing recreation activities such as golf, tennis, horseback riding, swimming, or spa related services for guests. A resort may provide services customarily furnished by a hotel including restaurants, bars, and convention facilities. A resort may contain dwelling units (including Timeshare Units) in conjunction with guest rooms.

Retaining Wall: A wall used solely to retain more than eighteen (18) inches of material but not to support or to provide a foundation or wall for a building.

Setback (front): Measured from property line.

Signature Architecture: Buildings of architectural significance via their purpose or location in the community such as municipal use buildings, recreational facilities, religious facilities, educational facilities, resort facilities, etc. In addition, signature architecture includes icon buildings that may be other than previously listed such as, but not limited to, residential and commercial uses that are to be focal accents due to their location at intersections or at the axial alignment of transportation corridors. Due to their prominence, these facilities may have unique architectural elements, distinctive color, or overall form that celebrate their prominence and significance in the community.

Spill: To cause or allow earth or other material to fall, flow, or run down a slope, thereby creating a change in the natural appearance and topography.

Timeshare Units: Units in which a purchaser receives the right in perpetuity, for life, or for a term of years to the recurrent, exclusive use or occupancy of a lot, parcel, unit, or segment of real property, annually or on some other periodic basis, for a period of time that has Unofficial Document ted from the use or occupancy periods into which the unit has been divided, or a unit in which a license or contractual or membership right of occupancy is not coupled with an estate in the real property; except that a unit in which such right to exclusive use or occupancy is available only for intervals of more than thirty (30) days shall not be considered a timeshare unit. Each Timeshare Unit shall count against the Commercial/Mix Used square footage as set forth in the Land Use Budget, or each Timeshare Unit may count against the residential dwelling unit allocation for the Property at a rate of .5 residential dwelling unit per Timeshare Unit. The election to count Timeshare Units against the Commercial/Mixed Use square footage allocation or the residential dwelling unit allocation shall be made by the applicant at the time of Development Site Plan submittal.

II. PLANS

Development of the magnitude contemplated by the CMP requires planning for both public and private infrastructure, as well as planning for the actual development which such infrastructure supports. It is anticipated that infrastructure planning will occur at varying times and at varying levels of detail, depending on the nature and geographic scope of the plan. The CMP identifies three levels of infrastructure planning, 1) Project Master Plans, 2) Planning Unit Plans, and 3) Development Site Plans.

Unofficial Document

2.01 PROJECT MASTER PLANS

Project Master Plans are required by the Town as part of the CMP approval and provide community-wide infrastructure plans for Caterpillar. Appendices which set forth the Master Drainage Plan, Master Street and Circulation Plan, Master Potable Water Plan, and Master Wastewater Plan are incorporated into the CMP by this reference as if set forth in full herein. Changes to and refinements of the Project Master Plans shall be submitted to the Town Manager as Planning Unit Plans required pursuant to **Section 2.02**.

A. Master Drainage Plan

The Master Drainage Plan provides a conceptual hydrologic and hydraulic analysis of the Property's existing and proposed drainage system and sets drainage requirements for development of the Property.

The drainage system has been designed to utilize the existing washes for stormwater conveyance. Wherever possible, the existing one hundred (100) year water surface elevations and one hundred (100) year floodplain limits on major washes will not be increased. Where modifications to these floodplains are necessary, processing will be required through the Federal Emergency Management Administration (FEMA) in the form of Conditional Letter of Map Revision (CLOMR) and Letter of Map Revision (LOMR) submittals. In addition, one hundred (100) year stormwater flows leaving the Property are to be maintained at or below the existing peak flow rates.

Stormwater detention/retention basins will be utilized to maintain the pre-development peak flows by implementing one, or a combination of, but not limited to, the following alternatives:

- Utilize existing detention/retention basins and, where necessary, increase or decrease the volume of the basins to accommodate the increased one hundred (100) year runoff volume due to development.

- Relocate the existing detention/retention basins by providing more advantageous locations to accommodate the existing and post-development run Unofficial Document

Exhibit B shows the conceptual locations and sizes of the major drainage structures. The Master Drainage Plan for the Property prepared by Wood, Patel & Associates, Inc., dated August 16, 1999 is set forth in **Appendix A** and is incorporated by this reference as if fully set forth herein. A detailed and refined analysis of the drainage system for each Planning Unit will be completed with submission of each Planning Unit Drainage Plan.

B. Master Street and Circulation Plan

The Master Street and Circulation Plan for the Property is set forth in **Exhibit C**. Roadway standards applicable to the Property, including roadway classifications for arterials, collectors, and local streets, are set forth in **Exhibit D**. The phased development of the internal street network will be based on actual traffic volumes recorded on arterial and collector streets within the Property and shall be in accordance with the traffic analysis prepared by Kirkham Michael, dated September 1999 set forth in **Appendix B** and incorporated by this reference as if fully set forth herein (the "Traffic Analysis").

The staged improvement of roadways will be a function of the ultimate classification of a roadway segment and of the traffic volumes recorded. The threshold volume which shall trigger the need to design an additional on-site roadway segment or improvement is eighty (80) percent of the design capacity of the existing improvement (e.g., two lane roadway = 12,000 vehicles per day, 4 lane roadway = 28,000 vehicles per day). The threshold volume which shall trigger the need to construct or improve an on-site roadway segment is ninety (90) percent of the design capacity. Once this threshold is met, either additional lanes will be added until the ultimate roadway geometry is met, or another roadway will be added to divert traffic from the existing roadway segments. The foregoing notwithstanding and subject to approval by the Town Engineer, the Developer shall not be obligated to construct or improve a roadway segment if the Developer can demonstrate that traffic expected to be generated from the remaining

development of the Property will not cause design capacity of the subject roadway segment to be exceeded.

Once a roadway segment is identified for widening, construction is anticipated to commence within one (1) year.

The traffic volumes w Unofficial Document a typical weekday (Tuesday, Wednesday, or Thursday) in March of each year until build-out of the Property. March is generally the peak month of the year for traffic volumes in the Phoenix metropolitan area.

Arterial and major collector street intersections on-site will be monitored annually until build-out of the Property to evaluate intersection delays and the potential for signalization. When an intersection reaches a Level-of-Service (LOS) D or worse, the need for auxiliary lanes will be evaluated to potentially mitigate the LOS deficiency.

Conceptual locations of major roadways within the Property are provided in the Traffic Analysis. The design and locations of street and circulation improvements shall be further defined in each Planning Unit Street and Circulation Plan required to be submitted pursuant to **Section 2.02**.

C. Master Potable Water Plan

The Master Potable Water Plan meets the Town's requirements and provides general locations and sizes of the major water infrastructure needed to provide potable water service to the Property. This infrastructure includes the development of domestic wells, a water treatment plant, water transmission lines, booster pumping stations, pressure reducing valves, and water storage tanks.

The Property may be served by a water treatment plant located south of the Property. The water treatment plant may be incorporated within the wastewater treatment facility in a "water campus" concept.

A review of groundwater quality records available in the vicinity of the Property indicates that the groundwater may have total dissolved solids (TDS) in the range of 600 to 4,000 mg/l. It is desirable to deliver potable water with TDS below approximately 700 mg/l. There are basically two proven processes that can be utilized for removal of TDS: membrane treatment with either reverse osmosis (RO) or electro-dialysis reversal

(EDR). It may not be necessary to treat all of the groundwater. Blending of treated water and groundwater to produce acceptable water quality may be utilized.

A phased potable water system has been developed based on the potential location of the water treatment plant south of the Property and based on three population threshUnofficial Document thresholds are the low, mid, and high-range development densities projected for the Property. The high range population threshold is consistent with the CMP. The sizing and conceptual locations for the major water transmission mains, booster pump stations, pressure reducing valves, and water storage tanks are shown in **Exhibit E**. Actual on-site phasing will dictate the timing of water storage tank, transmission line, and booster pump station construction. A detailed analysis of the water distribution system for each Planning Unit will be completed with submission of each Planning Unit Potable Water Plan.

The Master Potable Water Plan for the Property prepared by Wood, Patel & Associates, Inc, dated July 30, 1999, is set forth in **Appendix C** and is incorporated by this reference as if fully set forth herein. Final design and locations of water improvements shall be defined in each Planning Unit Potable Water Plan required to be submitted pursuant to **Section 2.02**.

In the event that an alternative water source or water treatment becomes available, which alternative may include, but not be limited to, higher quality groundwater available from the Town or a private water provider, such alternative shall be allowed in accordance with the terms of the Development Agreement and subject to technical review and approval by the Town Engineer, which approval shall not be unreasonably withheld. Any alternative water source or water treatment shall be identified in each Planning Unit Potable Water Plan.

D. Master Wastewater Plan

The Master Wastewater Plan has been prepared in accordance with the requirements of the Town. The Master Wastewater Plan provides general locations and sizes of the major wastewater infrastructure needed to provide service for the Property. This infrastructure includes the development of a wastewater treatment facility, major sewer lines, and wastewater pumping stations where required due to the existing topography of the site.

Caterpillar will be served by a wastewater treatment facility located south of the Property. The facility will be designed to provide preliminary, primary, secondary, and tertiary wastewater treatment, as well as disinfection. Wastewater treatment will generate residuals that require disposal. Sludge will be hauled off-site for disposal.

The wastewater treatm Unofficial Document esigned to produce an effluent suitable for irrigation of golf courses and other landscaped areas in conformance with State and Maricopa County reuse regulations. Through much of the year, the effluent will be pumped to on-site storage lakes for supply to irrigate the golf courses.

Based on the natural topography, the majority of the Property can be served by gravity sewer lines to the proposed wastewater treatment facility. Three areas on the Property cannot be served by the proposed on-site gravity sewer lines due to topographical constraints. The first area includes approximately three hundred (300) acres located between Tuthill and Jackrabbit Trails north of the Indian School Road alignment. The second area includes land at the north end of the Property between the Bethany Home Road and Glendale Avenue alignments. The third area is the north half of Planning Unit VII. These areas will need to be served by lift stations to pump the wastewater to the proposed gravity sewer.

A phased wastewater sewer system has been developed based on the preferred location of the wastewater treatment facility site and three population thresholds. The population thresholds are the low, mid, and high-range development densities projected for the Property. The high range population threshold is consistent with the CMP. The sizing and conceptual locations for the major sewer lines and lift stations are shown in **Exhibit F**. Actual on-site phasing will dictate the timing of sewer line and lift station construction. A detailed analysis of the wastewater collection system for each Planning Unit will be completed with submission of each Planning Unit Wastewater Plan.

The Master Wastewater Plan for the Property prepared by Wood, Patel & Associates, Inc., dated July 30, 1999 is set forth in **Appendix D** and is incorporated by this reference as if fully set forth herein. Final design and locations of wastewater improvements shall be defined in each Planning Unit Wastewater Plan required to be submitted pursuant to **Section 2.02**. In the event that an alternative wastewater disposal or treatment solution for the Property becomes available, such alternative shall be allowed subject to

approval by the Town Engineer, which approval shall not be unreasonably withheld. Any alternative wastewater disposal or treatment solution shall be identified in each Planning Unit Wastewater Plan.

E. Master Pedestrian and Trails Plan

A comprehensive systUnofficial Documentl trails is intended to link each neighborhood to various common areas and recreational uses. The Pedestrian and Trails Plan provides an important part of the overall circulation system for the Property by linking neighborhoods to community facilities, retail, shopping, schools, and employment uses.

The pathways and trails will be located near or adjacent to community streets and roads and, where possible, will have significant separation from vehicular traffic. Pathways and trails will also utilize wash features and natural arroyos between common areas and neighborhoods, and may be combined with the drainage system for the Property to allow joint use of underpass areas for grade separated crossings. As necessary, grade separated crossings may be utilized to facilitate continuous pathways and trails throughout the Property.

Pathway and trail surface materials may include, but not be limited to, natural soil, stabilized decomposed granite, concrete, and/or asphalt.

The Master Pedestrian and Trails Plan for the Property, including cross sections for the hierarchy for both public and private pathways and trails, is set forth in **Exhibit G**. Final path and trail locations and design criteria, including trail surface materials, shall be defined in each Planning Unit Environmental Design Plan required to be submitted pursuant to **Section 2.02**.

F. Master Public Facilities Plan

1. Schools

At the time of adoption of the CMP, portions of the Property lie within the boundaries of the Liberty Elementary School District, the Buckeye Union High School District, the Ruth Fisher School District, the Litchfield Park Elementary School District, and the Agua Fria Union High School District. The Developer shall identify sites within the Property to accommodate the needs of students generated as a result

of the development of the Property. The Developer shall consider student generation rates agreed upon after consultation with each applicable school district to determine the number of sites necessary. The number of school sites and their locations within each Planning Unit shall be identified in each Planning Unit Environmental Design Plan.

Unofficial Document

2. Police, Fire, and Emergency Services

At the time of submittal of each Planning Unit Environmental Design Plan, the Developer shall identify the need for additional fire, police, and emergency services which may be necessary to serve the Property. Caterpillar will identify at least one (1) police/fire station site to serve the Property and the surrounding area. The ultimate location of the police/fire station site will be determined as part of a coordinated effort between the Town, the Developer, and adjacent land owners to ensure the most efficient placement of the fire station.

3. Parks

Caterpillar will create a strong sense of community through a system of parks designed to meet a variety of active and passive recreational needs. Each park will be programmed individually in terms of size, amenities, landscaping, and, where appropriate, incorporation of natural features.

A hierarchy of parks is planned for the Property. This hierarchy may include regional, community, and neighborhood parks. A regional park and smaller community parks may include active and passive recreation areas, mountainous areas, arroyos, and other natural features. Neighborhood parks may include the above uses in addition to linear greenbelts, pocket parks, and more intimate green spaces provided in select locations throughout the residential areas of the Property.

4. Common Areas

Caterpillar will provide a minimum of 1,082 acres of common areas located throughout the Property which may include any of the following land uses or features: natural area open space, floodways, drainageways, arroyos, paths and trails, golf courses, active and

passive parks, view corridors, and other private and public recreation areas.

The locations of public facilities and the identification of Common Areas shall be provided in each Planning Unit Environmental Design Plan required to be submitted pursuant to **Section 2.02.**

Unofficial Document

G. Master Phasing Plan

The development of Caterpillar is anticipated to begin in the southern portions of the Property (Planning Units I, II, and III) and move to the northern portions of the Property. The infrastructure, public facilities, and other community amenities will be built in phases and in many cases will be constructed concurrently with adjacent parcels. The phasing for development infrastructure shall be identified in the various Planning Unit infrastructure reports required pursuant to **Section 2.02.**

H. Master Village Center and Neighborhood Concept Plan

The Property will include a variety of neighborhoods linked together with areas of community activity which are envisioned to include commercial, retail, resort, and recreational uses. Commercial core areas will serve the needs of the Caterpillar community and in some cases the needs of the regional population.

Neighborhood cores may include focal points such as parks, schools, libraries, and other community facilities. Surrounding these cores, multiple neighborhoods with diverse housing types will contribute to the Caterpillar goal of creating a balanced community. These neighborhood concepts will promote numerous opportunities for social interaction.

Villages and neighborhoods may also be concentrated around resort uses, which may include a destination-oriented resort with significant commercial, recreational, and cultural activities.

2.02 PLANNING UNIT PLANS

The following Planning Unit Plans shall be submitted to the Town Manager, or his/her designee, prior to the approval of any preliminary plat or Development Site Plan within each respective Planning Unit. The Town Manager, or his/her designee, shall review the Planning Unit Plans for completeness and compliance

with the requirements of this Section. The approximate location of Planning Unit boundaries is shown on the Planning Unit Map as set forth in **Exhibit H**. The numbering of the Planning Units depicted on the Planning Unit Map is for reference only and does not suggest any particular sequence of development. Planning Unit Plans shall be updated when necessary to reflect modifications thereto or to refine phasing within the respective Planning Unit. Planning Unit Plans may address a portion of a Planning Unit, a co Unofficial Document , and/or more than one Planning Unit.

A. Planning Unit Drainage Plan

Each Planning Unit Drainage Plan shall demonstrate that runoff has been managed from upper watershed reaches to outlets. Each Planning Unit Drainage Plan will address any increase or decrease in runoff from upstream Planning Units or within the current Planning Unit that may occur as development progresses and densities change. Each Planning Unit Drainage Plan shall be prepared by a registered professional engineer who is licensed to practice in the State of Arizona.

1. The Planning Unit Drainage Plan shall contain the following:

   a. Maps showing all those watersheds draining onto, or through, the Planning Unit, with estimates of peak flows for ten (10), fifty (50), and one hundred (100) year flood events.

   b. Special flood hazard areas and flood insurance zones, including depths and velocities of flows.

   c. Proposed measures necessary to comply with Town Ordinances and FEMA requirements in order to secure Letters of Map Revisions for development in Special Flood Hazard Areas.

   d. Estimated peak flows and volumes of runoff exiting the Planning Unit for both developed and undeveloped conditions.

   e. Conceptual design of stormwater management systems which mitigate the flooding potential, including peak discharge reduction and storage facilities consistent with the Town's requirements.

f. Basis of design for flood protection to all structures, in or out of Special Flood Hazard Areas.

g. Location and estimated size of all major drainage facilities, including retention/detention basins, channels, etc.

h. Proposed Unofficial Document :tion necessary to mitigate high velocity damage to the stormwater management devices and adjacent lands.

i. An implementation and phasing plan for the establishment of the necessary drainage system within each respective Planning Unit.

B. Planning Unit Street and Circulation Plan

Each Planning Unit Street and Circulation Plan shall address any increase or decrease in traffic volumes from other Planning Units and within the current Planning Unit which may occur as development progresses and densities change. The Planning Unit Street and Circulation Plan shall graphically illustrate, but not be limited to, the following components:

1. A complete plan showing the following elements (the Developer may elect to show individual elements on separate plans):

   a. Primary public and private streets and extended access ways, including street classification, required right-of-way, and improvements.

   b. The locations of auxiliary lanes as determined by a traffic impact analysis submitted by the Developer.

   c. The locations of potential bus bay pull-outs.

   d. All intersections, including intersections for which traffic signals may be required and a statement regarding responsibility for signal participation by Development Site.

2. A street and circulation phasing plan that contains the following:

   a. Proposed development sequence by Development Site.

b. Proposed roadway, drainage feature, and traffic signal construction schedule to accommodate each stage of phased development.

c. Phasing of required right-of-way dedications.

Unofficial Document

3. Major access points for commercial development, including median breaks and driveways.

4. A statement of conformance with the state air quality plan, as developed by M.A.G., for all proposed transportation improvements.

C. Planning Unit Potable Water Plan

Each Planning Unit Potable Water Plan shall address any increase or decrease in water demand from other Planning Units and the current Planning Unit which may occur as development progresses and densities change. Each Planning Unit Potable Water Plan shall include any off-site lines and shall be prepared by a registered professional engineer who is licensed to practice in the State of Arizona. Each Planning Unit Potable Water Plan shall address the following:

1. The conceptual location and size of all necessary potable water system components, including both on- and off-site lines, pump stations, and storage facilities needed to serve the development.

2. An implementation and phasing plan for the construction of the necessary potable water system.

3. A flow and pressure analysis of the proposed system which includes a simulation of the system operation for each pressure zone within the development using a computer model with average day demands, maximum day demands with estimated required fire flow peak and any requirements to meet the Insurance Service Office standards, and peak hour demands.

4. A plan showing preliminary development sites and rights-of-way, topographic contours and benchmarks, existing utilities, and fire hydrants within four hundred (400) feet of the proposed development, any features such as watercourses and drainage facilities which may

influence the location of underground utilities, and a general layout of the proposed water mains and other required water facilities.

5. Anticipated golf course water supply, necessary infrastructure requirements, reclamation sources, and construction timing and responsibilities (if applicable).

Unofficial Document

D. Planning Unit Wastewater Plan

Each Planning Unit Wastewater Plan shall address any increase or decrease in wastewater generation from upstream Planning Units and the current Planning Unit which may occur as development progresses and densities change. The Planning Unit Wastewater Plan shall include any off-site lines and shall be prepared by a registered professional engineer who is licensed to practice in the State of Arizona. The Planning Unit Wastewater Plan shall address the following:

1. The conceptual location, size, type, and capacity of the necessary wastewater collection, transmission, treatment system components and effluent re-use/disposal facilities needed to serve the Planning Unit with wastewater demand generation factors based upon land use.

2. An implementation and phasing plan for the construction of the necessary wastewater system.

3. The calculations necessary to substantiate the selection of the sizes, types, and capacities of the wastewater transmission, wastewater treatment, and effluent re-use/disposal facilities.

E. Planning Unit Environmental Design Plan

Each Planning Unit Environmental Design Plan shall address, but not be limited to, the following:

1. Site Analysis

   Location and identification of clearly visible and unique natural features, clearly visible or known historical and archaeological sites,

and proposed conceptual methods for their preservation and design within the development to minimize their disturbance.

2. Common Areas

   a. Identification of public and private Common Areas, which may include, bUnofficial Documented to natural area open space, floodways, drainageways, arroyos, pathways and trails, golf courses, active and passive parks, view corridors, and other private and public recreation areas.

   b. Conceptual golf course locations and design concepts.

3. Pathways and Trails

   a. The conceptual location, size, and type of pedestrian and trail facilities within the Planning Unit.

   b. The potential ownership and maintenance entities for pedestrian and trail facilities within the Planning Unit.

   c. The hierarchy of pedestrian improvements, pathways, and trails within the Planning Unit.

   d. Identification of at-grade and grade separated crossings, as necessary, within the Planning Unit.

   e. Identification of surface materials which may include, but not be limited to, concrete, asphalt, stabilized decomposed granite, and earthen materials, as necessary.

   f. Identification of locations where pathways and/or trails may be limited to one side of a roadway.

   g. Provisions which address access to pedestrian improvements, pathways, and trails within the Planning Unit.

   h. An implementation and phasing plan for the construction of pedestrian and trail facilities within the Planning Unit.

4. Public Facilities

The conceptual location, size, and type of any public facilities contemplated in the Master Public Facilities Plan, as well as the phasing of development of such public facilities.

5. Landscaping Unofficial Document

a. Proposed plant and landscape character, including a native plant relocation program and revegetation guidelines.

b. The conceptual plant types to be used for all land uses and Development Options within the Planning Unit, including landscaping within the public right-of-way. All landscaping shall conform with the Landscape Plant Palette set forth in **Exhibit M**.

c. The potential ownership and maintenance entities for landscaping and irrigation systems within the Planning Unit.

d. Minimum and maximum heights of landscaping within sight distance triangles and safe stopping sight distance areas in the public right-of-way.

e. The proposed theme and corresponding design standards for landscaping within the Planning Unit.

6. Signage

Signage will be coordinated throughout the entire Property, with different areas within Planning Units having their own themes. These areas may include urban, mixed-use entertainment areas, employment and commercial areas, parks and recreation areas, residential villages, residential hillsides, resort areas, pathways and trails, public and private roadways, and areas for temporary directional signage. Although there may be individual themes within different areas of the Property, continuity in appearance will be recognizable through the use of color, material, form, and character.

a. The conceptual location, size, height, and type of signage for all land uses and Development Options within the Planning Unit, including street signage.

b. The potential ownership and maintenance entities for signage within the Planning Unit.

Unofficial Document

c. The proposed theme and corresponding design standards for signage within the Planning Unit, including types of materials.

d. A statement that all traffic control signage meets the minimum Town requirements for public use.

e. A list of prohibited signs within the Planning Unit.

7. Lighting

This section of the Planning Unit Environmental Designing Plan focuses on the quantity and quality of light envisioned for each Planning Unit within the Property. The concept is that there will be areas of varying lighting standards, even within an individual Planning Unit. Areas with varying lighting standards may include urban, mixed-use entertainment areas, employment and commercial areas, parks and recreation areas, residential villages, residential hillsides, resort areas, and roadways.

a. The conceptual location, size, height, intensity, and type of lighting fixtures for all land uses and Development Options within the Planning Unit, including street lighting.

b. The potential ownership and maintenance entities for lighting within the Planning Unit.

c. The proposed theme and corresponding design standards for lighting fixtures within the Planning Unit, including types of materials.

d. Methods for shielding light from neighboring properties.

e. Identification of areas where light fixtures may be prohibited such as, but not limited to, sensitive hillside areas.

2.03 SITE PLAN APPROVAL

Site plan approval shall be required for all development within the Property with the exception of subdivision plats and single-family homes. Site plans shall be submitted to and approved by the Development Board prior to issuance of a building permit upon a showi Unofficial Document meets all of the development standards of the applicable Development Option as set forth in the CMP. The discretion of the Development Board shall be limited to site design.

Upon receipt of a request for site plan approval, the Development Board shall schedule a public meeting to take action on the request for site plan approval. Notice shall be given at least ten (10) days before the meeting in the following manner:

A. Publication at least once in a newspaper of general circulation published or circulated in the Town;

B. Posting on the subject property in a manner legible from the public right-of-way; and

C. Notice by first class mail to each real property owner, as shown on the last assessment, of all property owners within three hundred feet (300') of the proposed application.

III. LAND USE PLAN

3.01 LAND USE DESIGNATIONS

A. Residential

Unofficial Document

The Residential land use designation is intended to allow for residential development with a range of lot sizes depending on topography and site conditions, as well as market influences. This designation includes eight (8) development options which provide a range of residential lot sizes and housing products and establishes minimum property development standards ("Development Options"). Certain essential and complementary uses are also permitted under conditions and standards which ensure their compatibility with the character of residential land uses.

A key objective of the Caterpillar CMP is to create a community that emphasizes residential housing diversity. Housing types and configurations should respond to a variety of income levels, family types, and lifestyles. Opportunities for a diverse mix of housing sizes and types will create a distinct, vital, neighborhood fabric and add value to the overall Caterpillar community. These housing types range from low density, large lot home programs to high density, multi-family housing.

1. Permitted Uses

a. Single or multi-family dwelling units, including assisted living and senior housing;
b. Publicly or privately owned and maintained parks, recreation areas, pathways, trails, and recreation centers;
c. Public and private schools, including institutions of higher education;
d. Religious facilities;
e. Golf courses;
f. Guest houses, attached or detached;
g. Temporary Uses including sales/marketing facilities, model home complexes, and related accessory uses;
h. Facilities and storage, incidental to a construction project and located on the project site;
i. Public utility buildings and facilities;
j. Governmental uses;

k. Parking structures;
l. Accessory buildings;
m. Home occupations, subject to the following:
   i. The number of employees shall be limited to one non-family member or permanent resident in addition to the principal occupant;
   ii. Ac Unofficial Document :o the hours between 7 a.m. and 10 p.m;
   iii. Heavy machinery or outdoor storage shall not be permitted.
   iv. Signage shall be limited to a maximum of six (6) square feet, non-lighted, and located on-site for the purpose of business identification only.
n. Cellular communication facilities.

2. Prohibited Uses

a. Adult uses.

3. Development Options

One of the following Residential Development Options shall be selected at the point of or prior to subdivision plat submittal or Development Site Plan review and shall be subject to the development standards set forth herein for each respective Development Option. Diagrams describing the measurement of lot widths and depths are set forth in **Exhibit I**.

Large Estate and **Estate** Residential Development Options are intended to facilitate large, single-family sites (typically custom or semi-custom homes) often located in the steeper sloped areas and at the higher hillside elevations of the community. Additionally, these lot types may occur at lower elevations and flatter terrain, creating an "urban" estate character. Lots may be irregular in shape and size to conform to the varied topography and other natural features. Typically, these lots will incorporate building areas that ensure minimum impact to natural vegetation and features.

a. Large Estate

Min. Lot Size:	35,000 s.f.
Min. Lot Width and Depth:	120'
Min. Front Setback:	
Fr	
Side Garage:	10'
Living:	12'
Min. Side Setback:	10'; 30' aggregate; 5' additional setback for side abutting public street
Min. Rear Setback:	35'; 15' if adjacent to open space greater than 30'
Projections:	Maximum 3' into any required setback
Max. Bldg. Height:	30'
Max. Lot Coverage:	40%
Min. Separation of Bldgs On Same Lot:	10'
Min. Separation of Bldgs On Adjacent Lots:	20'

Unofficial Document

b. Estate

Min. Lot Size:	18,000 s.f.
Min. Lot Width and Depth:	100'
Min. Front Setback:	
Front Garage:	18'
Side Garage:	10'
Living:	12'
Min. Side Setback:	7'; 20' aggregate; 5' additional setback for side abutting public street
Min. Rear Setback:	25'; 15' if adjacent to open space greater than 30'
Projections:	Maximum 3' into any required setback
Max. Bldg. Height:	30'
Max. Lot Coverage:	60%

Min. Separation of Bldgs On Same Lot:	10'
Min. Separation of Bldgs On Adjacent Lots:	14'

Unofficial Document

Residential Ver .ow, Residential Low/Medium, and **Residential Medium** Development Options are intended for the development of detached and attached, single-family homes with a range of lot sizes depending on site characteristics and market conditions. Lot sizes and configurations may include standard, cluster, compact, alley-loaded, and semi-custom lots. Builder home types will include a variety of housing types, including zero lot line, wide-shallow, and others. The Residential Very Low, Residential Low, Residential Low/Medium, and Residential Medium Development Options allow for greater housing diversity in owner-occupied, high amenity, single-family neighborhoods.

c. Residential Very Low

Min. Lot Size:	10,000 s.f.
Min. Lot Width and Depth:	80'
Min. Front Setback:	
Front Garage:	18'
Side Garage:	10'
Living:	12'
Min. Side Setback:	0'; 13' aggregate; where a side yard setback is provided, it must be a minimum of 5'; 5' additional setback for side abutting public street
Min. Rear Setback:	20'
Projections:	Maximum 3' into any required setback
Max. Bldg. Height:	30'
Max. Lot Coverage:	60%
Min. Separation of Bldgs On Same Lot:	10'

Min. Separation of Bldgs On Adjacent Lots:	0'; 10' if setback is provided on at least one lot

d. Residential Low

Min. Lot S	)00 s.f.
Min. Lot Width and Depth:	60'
Min. Front Setback:	
Front Garage:	18'
Side Garage:	10'
Living:	12'
Min. Side Setback:	0'; 13' aggregate; where a side yard setback is provided, it must be a minimum of 5'; 5' additional setback for side abutting public street
Min. Rear Setback:	20'
Projections:	Maximum 3' into any required setback
Max. Bldg. Height:	30'
Max. Lot Coverage:	60%
Min. Separation of Bldgs On Same Lot:	10'
Min. Separation of Bldgs On Adjacent Lots:	0'; 10' if setback is provided on at least one lot

Unofficial Document

e. Residential Low/Medium

Min. Lot Size:	4,500 s.f.
Min. Lot Width and Depth:	50'
Min. Front Setback:	
Front Garage:	18'
Side Garage:	10'
Living:	12'
Min. Side Setback:	0'; 10' aggregate; where a side yard setback is provided, it must be a minimum of 5';

	5' additional setback for side abutting public street
Min. Rear Setback:	15'
Projections:	Maximum 3' into any required setback
Max. Bldg. Height:	30'
Max. Lot	%
Min. Separation of Bldgs On Same Lot:	10'
Min. Separation of Bldgs On Adjacent Lots:	0'; 10' if setback is provided on at least one lot

Unofficial Document

f. **Residential Medium**

Min. Lot Size:	3,500 s.f.
Min. Lot Width and Depth:	Fifty percent (50%) of all lots within an individual platted subdivision shall be a minimum of 40' and fifty percent (50%) shall be a minimum of 45'
Min. Front Setback:	
Front Garage:	18'
Side Garage:	10'
Living:	8'
Min. Side Setback:	0'; 5' aggregate; where a side yard setback is provided, it must be a minimum of 5'; 5' additional setback for side abutting public street
Min. Rear Setback:	15'
Projections:	Maximum 3' into any required setback
Max. Bldg. Height:	30'
Max. Lot Coverage:	65%
Min. Separation of Bldgs On Same Lot:	10'
Min. Separation of Bldgs On Adjacent Lots:	0'; 10' if setback is provided on at least one lot

Residential High, Platted Lots and **Residential High, Development Site Plan** Development Options allow for multi-family or attached, single-family residential uses intended to provide for the development of higher density duplexes, townhomes, rowhouses, condominiums, seniors' apartments, assisted living and congregate care facilities, and apartments. The Unofficial Document will provide an important balance to the community, allowing alternative housing opportunities for various lifestyles and income levels. Building configurations include front-loaded and alley-loaded multi-family housing types to create diversity within these neighborhoods. These residential types may be located adjacent to high-intensity land uses such as resort, employment, business, and retail.

g. Residential High, Platted Lots

Min. Subdivision Size:	One acre
Min. Lot Size:	1,000 s.f.
Min. Lot Width:	20'
Min. Lot Depth:	40'
Min. Front Setback:	18' or greater; or 3' or less
Min. Side Setback:	0'; where a side yard setback is provided, it must be a minimum of 5';
Min. Rear Setback:	3'
Max. Bldg. Height:	40'
Max. Lot Coverage:	75%
Min. Open Space:	10% open space within platted subdivision
Min. Separation of Bldgs On Same Lot:	10'
Min. Separation of Bldgs On Adjacent Lots:	0'; 10' if setback is provided on at least one lot

h. Residential High, Development Site Plan

Min. Parcel Size:	One acre
Perimeter Setback:	20'
Projections:	Maximum 3' into any required setback

Max. Bldg. Height:	48' or 4 stories
Max. Site Coverage:	75%
Min. Open Space:	10% open space within parcel, not including setback area
Min. Separation of Bldgs On Same Parcel:	10' for single story structures; 20' structures exceeding a single story

Unofficial Document

B. Commercial/Mixed Use

The Commercial/Mixed Use land designation is designed to accommodate general commercial, retail, employment, residential, civic, cultural, entertainment, recreational, and industrial uses.

The Commercial/Mixed Use land designation provides the opportunity to create economic vitality for the Town by expanding its employment and commercial base. This designation will provide opportunities for a balanced range of land uses serving the needs of the Caterpillar community. Three (3) Commercial/Mixed Use Development Options provide a range of land use intensities from suburban to more intense, urban uses.

1. Permitted Uses

a. All uses permitted in the Residential Land Use Designation;
b. Residential uses located above, below, or adjacent to commercial uses;
c. Resorts (and all associated facilities including spa and golf uses);
d. Retail sales, specifically including but not limited to liquor sales and automobile sales;
e. Professional, business, and administrative offices;
f. Personal service businesses such as but not limited to beauty shops, barber shops, laundry and dry cleaning establishments;
g. Bars and restaurants;
h. Night clubs;
i. Banking and financial services;
j. Child care facilities;
k. Entertainment uses including museums, theaters, cinemas, auditoriums, and places of public assembly, excluding adult theaters and adult live entertainment;

l. Sports facilities including, but not limited to, professional sports facilities;
m. Hotels/motels;
n. Health clubs;
o. Copying and printing businesses;
p. Self-storage facilities *;
q. Wholesal[i] Unofficial Document [o]n *;
r. Medical offices and clinical laboratories;
s. Hospitals;
t. Veterinary offices and clinical laboratories;
u. Veterinary hospitals;
v. Motion picture production, radio, and television broadcast studios;
w. Manufacturing and assembly *;
x. Mortuaries and crematoriums;
y. Convenience uses including drive-in uses;
z. Gas/service stations, including automobile repair;
aa. Recreational vehicles storage facilities *;
bb. Used car sales, provided that such sales are ancillary to a new automobile sales establishment.
(Note: "*" indicates an industrial use.)

2. Prohibited Uses

a. Adult uses.

3. Development Options

One of the following Commercial/Mixed Use Development Options shall be selected at the point of or prior to Development Site Plan review and shall be subject to the development standards set forth herein for each respective Development Option.

a. Commercial/Mixed Use, Low

Max. Height:	3 stories or 40'
Min. Open Space (may include setback area):	25%
Perimeter Setback:	20'

b. Commercial/Mixed Use, Medium

Max. Height:	4 stories or 60'
Min. Open Space (may include setback area):	20%
Perimeter Setback:	10'

Unofficial Document

c. Commercial/Mixed Use, High

Max. Height:	6 stories or 84'
Min. Open Space (may include setback area):	5%
Perimeter Setback:	0'

C. Resort Overlay

One thousand (1,000) resort rooms shall be permitted on the Property. Any resort use shall be designed and developed to fit into the unique and special environs of the Property and shall be subject to the development standards in any of the three (3) Commercial/Mixed-Use Development Options set forth in **Section 3.01.B**.

3.02 LAND USE BUDGET

Maximum intensities for the Land Use Designations described in **Section 3.01** are provided in the Land Use Budget set forth in **Exhibit J**.

A. Land Use Intensity -- Residential

A maximum of 14,080 residential units shall be permitted on the Property. The allocation of residential units within each Planning Unit shall be as set forth in the Land Use Budget, subject to the provisions of **Sections 3.02.E and 3.02.F**.

B. Land Use Intensity -- Commercial/Mixed Use

A total of 4,028,750 square feet of gross floor area shall be permitted for all commercial/mixed-use development on the Property. The allocation of total gross floor area for commercial development within each Planning Unit shall be as set forth in the Land Use Budget, subject to the provisions of **Sections 3.02.E and 3.02.F**.

C. **Land Use Intensity -- Resort Overlay**

A maximum of one thousand (1,000) resort rooms shall be permitted on the Property. Additional resort rooms are allowed at a reduction of overall residential units of 0.5 residential units for each additional resort unit.

D. **Land Use Designatior** Unofficial Document

The specific location of each Land Use Designation within a Planning Unit shall be determined at the time of preliminary plat or Development Site Plan approval.

E. **Land Use Intensity Transfers**

The owner of any portion of the Property may transfer residential dwelling units or commercial/mixed-use square footage and amend the preliminary allocation within Planning Units, and from one Planning Unit to another, subject to approved documentation as required in **Section 3.02.F**. Reallocation of units or square footage in accordance with this Section shall be subject to the provisions of **Section 1.02.F**.

F. **Documentation of Intensity Transfer**

Any submittal to the Planning Director which includes a request for an intensity transfer shall include: (1) the written consent of the Developer; and (2) documentation which sets forth the reallocation of dwelling units or commercial/mixed-use square footage within the Land Use Budget and which indicates the Planning Units that have a reduction or increase in the number of dwelling units or amount of commercial/mixed-use square footage. At the time of final plat approval or Development Site Plan approval, the Developer shall submit to the Planning Director documentation for inclusion in the Land Use Budget indicating the final status of intensity of the affected Planning Units.

G. **Residential Dwelling Unit Bonus**

As an inducement to provide Common Areas throughout the Property, the total number of residential units allowed on the Property may be increased as described in the Residential Dwelling Unit Bonus table set forth in **Exhibit K**.

3.03 GENERAL DEVELOPMENT STANDARDS

The purpose of general development standards contained in the CMP is not to restrict imagination, innovation, or variety, but rather to assist in focusing on those elements of design which can produce creative solutions that will develop a satisfactory visual appearance, preserve property values, limit incompatibilities, and promote the public health, saf Unofficial Document fare.

The use, construction, improvement, or other development of any portion of the Property shall be subject to all of the property development standards contained in the CMP, except as may be modified by each Planning Unit Plan required to be submitted pursuant to **Section 2.02.**

A. Perimeter Transition Areas

A perimeter transition area with an average width of one hundred (100) feet and a minimum width of fifty (50) feet shall be provided along the eastern boundary of the Property as depicted in **Exhibit L** (the "Perimeter Transition Area"). Any development within the Perimeter Transition Area shall be limited to a height not to exceed thirty (30) feet.

B. Setback and Height Exceptions

1. Structure projections (bay windows, balconies, overhangs, etc.) will be allowed to extend three (3) feet beyond any setback line. Further projection may be allowed by the Planning Director for buildings over two (2) stories provided that such projection will not adversely impact any adjacent properties.

2. The height regulations of the CMP shall not apply to spires, belfries, chimneys, cooling towers, elevator bulkheads, fire towers, monuments, stacks, radio or television aerials, cellular communication facilities, ornamental towers, or necessary mechanical structures as long as the above features do not exceed seventy-five (75) feet in height from finished grade for all Development Options, except for the Commercial/Mixed-Use, High Development Option where such features shall not exceed one hundred (100) feet in height from finished grade. If attached to a building, such features shall not occupy a horizontal area in excess of twenty-five (25) percent of the entire roof area of the building. In addition, height regulations of the

CMP shall not apply to hospitals, resorts, signature architecture, or water tanks.

C. **Residential Accessory Buildings**, (including detached guest houses)

1. Accessory buildings shall not:

Unofficial Document

a. Exceed the height of the primary residence;

b. Be located within ten (10) feet of the primary residence;

c. Be constructed prior to the construction of the primary residence.

D. **Air Quality**

1. Purpose and Intent

Air quality within the Town is a natural asset. It is the intent of the CMP to maintain air quality by controlling dust caused by new development and motor vehicle traffic.

2. Conformity

Each Planning Unit Street and Circulation Plan shall include a statement of conformance with the state air quality plan, as developed by the Maricopa Association of Governments for all proposed transportation improvements.

3. Construction

Maricopa County air quality regulations shall be adhered to for all construction activities on the Property.

4. Surface and Traffic Control

a. For any drive-in establishment, a directional sign shall be posted to encourage reduced vehicle idling.

b. Development plans shall be designed to reduce traffic flows and encourage efficient traffic circulation.

c. Parking, loading, and vehicle storage areas shall be maintained in a manner that minimizes dust emissions.

d. Vacant property which is not in its natural vegetative state and which was not disturbed prior to the adoption of the CMP shall be contr [boilerplate: Unofficial Document] dust emissions beyond the boundaries of the site.

e. Air blowers used for landscape maintenance having a fifty (50) cubic centimeter engine or larger shall be prohibited.

E. Building Construction

1. General Requirements

a. All buildings and structures, both existing and new, shall be maintained in a safe and sanitary manner.

b. All construction or work for which a permit is required shall be subject to inspection by the Building Inspector, in accordance with the applicable provisions of the Uniform Building Code.

2. Uniform Codes Applicable to the Property

The following uniform codes are hereby made part of the CMP. In the event the Town adopts an updated version of any or all of the following uniform codes, the most-recently adopted version shall prevail.

UNIFORM BUILDING CODE, 1991 edition, published by the International Conference of Building Officials,
NATIONAL ELECTRICAL CODE, 1990 edition, published by the National Fire Protection Association,
UNIFORM PLUMBING CODE, 1991 edition, published by the International Association of Plumbing and Mechanical Officials,
UNIFORM MECHANICAL CODE, 1991 edition, published by the International Association of Plumbing and Mechanical Officials,
UNIFORM FIRE CODE, 1991 edition, published by the International Conference of Building Officials and the Western Fire Chiefs Association,

UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS, 1991 edition, published by the International Conference of Building Officials, and any and all supplements to said codes.

3. Licenses Required

The design an Unofficial Document buildings shall be under the supervision of licensed engineers, contractors, or architects when required by applicable state law. The Town shall enforce and require adherence to state laws governing such and may refuse to issue permits if documentation on licensing requirements is not provided.

F. Residential Density

Gross density for the Property shall be in accordance with **Section 3.02** and the Land Use Budget set forth in **Exhibit J**. Residential densities for the Property shall be allowed to vary within and between neighborhoods. Residential densities may range from approximately one (1) dwelling unit per ten (10) acres to fifty (50) dwelling units per acre.

G. Flood Control

1. Floodplain Management

The Maricopa County Flood Control District (the "FCD") is responsible for all floodplain management activities within the corporate limits of the Town. The FCD is authorized to exercise the powers and duties set forth in Title 45, Chapter 10, Article 4, Arizona Revised Statutes.

2. Drainage Provisions

a. General Requirements

Provisions for drainage shall meet the requirements of the Uniform Drainage Policies and Standards for Maricopa County. Drainage facilities shall be installed to provide for the adequate containment and disposal of surface water and to maintain any natural drainage course on the Property.

b. Drainage Report

Prior to approval of any commercial or residential development, a drainage report shall be submitted to and approved by the Town Engineer.

c. Drainage Clearance

Drainage Unofficial Document required prior to permit issuance for any development or substantial improvement which may have an adverse effect on existing drainage.

d. Final Inspection

Drainage inspection approval shall be obtained prior to issuance of a Certificate of Occupancy or final building inspection of any site or structure.

3. Drainage Design

a. General

The entire drainage detention/retention and runoff conveyance system shall be designed to eliminate or minimize storm water runoff effects and convey the runoff through the development with minimum detrimental effect. No system shall be approved if the effect may cause an increase in the peak discharge or velocity of runoff or change the point of entry of drainage onto adjacent properties during the runoff event.

b. Storm Frequency Criteria

The rainfall event based upon the one hundred (100) year storm frequency generating the peak discharge for the area contributing runoff to the development shall be used in designing the overall drainage system.

c. Detention/Retention of Storm Drainage

i. The detention/retention system shall be designed to retain the increase in runoff volume due to development and reduce the post-development peak discharge to

less than or equal to the pre-development peak discharge.

ii. On-site detention/retention facilities may include natural depressions or man-made basins. Dry wells are permitted.

Unofficial Document

iii. Individual lot detention/retention shall not be permitted in residential subdivisions with a lot size less than one-half (½) acre, except in conjunction with development pursuant to either the Residential High, Platted Lot or the Residential High, Development Site Plan Development Options set forth in Section 3.01. A.2.g-h.

iv. Detention/retention can occur in the Town's right-of-way upon approval of the Town Engineer.

v. A public utility easement shall not be designated for detention/retention without approval of affected utility companies.

vi. Off-site drainage shall either be to the street or to a designated wash or drainage structure with adequate capacity and outfall.

vii. Detention/retention can occur in public areas and parks.

d. Storm Water Disposal

On-site runoff that has been detained/retained shall be disposed of within thirty-six (36) hours either by percolation, dry wells, catch basins, or drainage into an approved drainage way. One hundred (100) year peak discharge flows from the Property shall not exceed pre-development flows and shall be in the location and direction of the historic off-site flows.

e. Finished Floor Elevation

Finished floors shall be elevated a minimum of fourteen (14) inches above the low adjacent top of curb or lot outfall elevation, or twelve (12) inches above the computed one

hundred (100) year water surface elevation, whichever is greater. A finished floor elevation may be other than the minimum permitted provided it is determined by technical data certified by a registered professional engineer who is licensed to practice in the State of Arizona to be the minimum necessary to be safe from inundation by the one hundred (100) year peal Unofficial Document inished floor elevation shall be referenced to a known benchmark.

f. Drainage Easements

Drainage easements or tracts may be required to preserve washes, streams and channels (drainageways). The width of the drainage easements or tracts shall be defined by the water surface during the 100-year storm event, and may include buffer areas. The need for a drainage easement or tract, and its width and location will be determined on a case by case basis.

H. Landscaping

1. Purpose

Landscaping has a two-fold purpose: 1) to create an aesthetic environment, and 2) to maintain groundcover for control of dust and weeds.

2. Landscaping Required

All development within the Property shall meet or exceed the landscaping requirements of this Section and shall conform with the Landscape Plant Palette set forth in **Exhibit M**. The plant palette expands on the approved Arizona Department of Water Resources list to allow greater flexibility in design concepts while ensuring environmental sensitivity. The Landscape Plant Palette appropriately provides botanical diversity given the regional context.

a. All commercial and industrial uses shall provide landscaping within the front setback area or between the building and the street frontage, whichever is less. On corner lots, landscaping is to be provided on both street frontages within the setback

area or between the building(s) and the street frontages, whichever is less.

b. Landscaping shall be provided by the Developer or subdivider between the public roadway improvements and the adjacent property line.

Unofficial Document

c. Landscaping within the public right-of-way on Principal Arterial streets shall include one (1) tree and three (3) shrubs for each twenty (20) feet of street frontage. A minimum of sixty percent (60%) of the required trees shall be twenty four inch (24") box or larger.

d. Landscaped areas along Principal Arterial streets shall be contoured or bermed to provide variations in grade.

e. All landscape areas shall be finished with a natural topping material which may include, but not be limited to, the following: turf, groundcover, decomposed granite, river run rock, native soils or expanded shale.

f. All residential uses shall be landscaped in accordance with the Landscape Plant Palette set forth in **Exhibit M**.

3. Irrigation and Maintenance

All landscaping improvements shall include a suitable method for irrigation.

4. Right-of-Way Encroachment

Landscaping allowed within sight distance triangles and safe stopping sight distance areas in the public right-of-way shall be a maximum height of three (3) feet. Landscaping in the public right-of-way not within sight distance triangles and safe stopping sight distance areas may exceed three (3) feet in height. Trees and turf may be allowed in the public right-of-way, subject to applicable governmental regulations. Trees within sight distance triangles and safe stopping sight distance areas may be allowed in the public right-of-way if branches are trimmed up to six (6) feet above ground level. The Public Works Director shall have the authority to order removal of any

landscaping or trees which, in the opinion of the Public Works Director, poses a hazard to the public.

I. Lighting

1. Applicability

Unofficial Document

Indoor or outdoor lighting that is one hundred fifty (150) watts or less shall be exempt from the provisions of this Section.

2. General Standards

   a. Sources of illumination that are directly visible from a public street or residential property shall be minimized to reduce glare.

   b. Light intensity shall not exceed one (1) foot-candle on any adjacent property.

3. Lighting Requirements

   a. All fixtures are to be fully shielded. Metal halide and florescent fixtures shall be filtered. Mercury vapor fixtures are prohibited.

   b. Fixtures over two hundred (200) watts shall be directed downwards.

   c. The height of any fixture shall not exceed:

      i. Fifteen (15) feet for residential uses;

      ii. Twenty (20) feet for commercial uses;

      iii. Forty (40) feet for industrial uses;

      iv. Thirty-five (35) feet for any recreational or public use (ballfields and arenas exempted).

4. Street lighting requirements will be addressed by each Planning Unit Environmental Design Plan and may or may not include continuous lighting other than at major intersections.

J. Outdoor Storage

1. General Standards

Unofficial Document

a. Storage of materials, supplies, or similar matter is prohibited outside an enclosed structure, unless associated with an industrial use, which shall be screened from view. Storage of inventory, materials, or other debris outside an enclosed building is prohibited in conjunction with a residential or commercial use.

b. Storage associated with an industrial use shall only be allowed within the confines of a solid fence or landscape screen not less than six (6) feet in height, unless no practicable alternative is available.

c. Merchandise which is offered for sale may be displayed beyond the confines of an enclosed structure, the area of which shall not exceed ten (10) percent of the principal building floor area, unless such merchandise is a type customarily displayed outdoors, such as automobiles, garden supplies, and seasonal sales.

d. No display or storage of any type shall be permitted within the one-half (½) of the required front or side street setback nearest the street, nor within any required interior side or rear setback.

2. Vehicle Storage

a. Mobile or manufactured homes are allowed to be stored only in conjunction with an industrial use and shall be placed in the rear half of the lot and completely screened from view of a public street.

b. Recreational vehicles shall be parked to the rear of the front setback line.

c. Parking of commercial vehicles in residential districts is limited to one (1) commercial vehicle with a one (1) ton chassis, having a capacity of not more than ten thousand (10,000) pounds gross vehicle weight rating (GVWR).

d. Inoperable vehicles shall be stored only in conjunction with an industrial Unofficial Document ned from view of a public street.

e. There shall not be any type of vehicle stored on a vacant parcel of land.

3. Temporary Storage

These regulations shall not be applicable to any storage being placed in a certain location less than twenty-four (24) hours, unless the storage constitutes a public hazard or nuisance.

K. Parking and Traffic Circulation

1. Purpose

Contained herein are standards intended to provide for attractive, effectively developed parking, including, but not limited to, on-street, parallel, and diagonal parking with sufficient room for maneuvering and landscaping.

2. Traffic Access

a. Every lot shall have access that is sufficient to afford a reasonable means of ingress and egress for emergency vehicles as well as for all those likely to need or desire access to the Property in its intended use.

b. All driveway entrances and other openings onto streets within the Property shall be constructed so that:

i. Vehicles can enter and exit from the lot in question without posing any substantial danger to themselves, pedestrians, or vehicles traveling on abutting streets.

ii. Interference with the free and convenient flow of traffic in abutting or surrounding streets is minimized.

c. Minimum lot width at the driveway access point on a single lot shall be twenty (20) feet. If two or more adjacent flag lots share a common driveway, the minimum combined lot width at the drivev Unofficial Document ll be thirty (30) feet, as set forth in **Exhibit I**.

d. Up to six (6) platted residential lots may be accessed from a common driveway, unless otherwise approved by the Town Engineer.

e. Unless no other practicable alternative is available, all driveways and other openings for commercial/mixed-use development shall be located a minimum of:

i. Seventy-five (75) feet from a street intersection;

ii. Forty (40) feet from another access driveway;

f. Shared driveways for commercial/mixed-use development shall be encouraged.

3. Parking Requirements

a. Standards

i. Off street parking spaces shall be provided as set forth in **Table A**. Loading spaces shall be provided as per **Table B**. Fractional results shall be rounded up to the nearest whole number if the fraction is 0.5 or greater.

ii. In the case of mixed uses, the total number of spaces shall be based on parking demand as determined by a parking study as set forth in **Section 3.03.K.4**.

iii. Accessible parking spaces shall comprise five (5) percent of the total required spaces when over ten (10) spaces are required.

iv. An emergency access lane having twenty (20) feet of unobstructed width shall be provided when required by the Property's emergency service provider. The twenty (20) foot width can consist of sixteen (16) feet of paved lane with two (2) foot shoulders on each side with plantings less than eighteen (18) inches in height within the

Unofficial Document

TABLE A — **PARKING SPACES REQUIRED (BY LAND USE TYPE)**

Unofficial Document

	REQUIRED PARKING	MINIMUM SPACES TO BE PROVIDED (by development site)
SINGLE FAMILY	2	2
MULTIPLE FAMILY	1.5 per unit	4
SENIOR HOUSING		
Assisted Living	0.75 per unit	2
Independent Living	1.5 per unit	2
Nursing Home	.5 per bed	2
COMMERCIAL (general)	2 (1)	4
OFFICE	1.5 (1)	2
INDUSTRIAL	1 (1)	4
SERVICE ESTABLISHMENT	3 (1)	4
PUBLIC ASSEMBLY	3 (1)	10

(1) Parking spaces per 1,000 square feet of gross floor area.

TABLE B — **LOADING SPACES REQUIRED FOR NEW DEVELOPMENT (BY LAND USE TYPE)**

Unofficial Document

	LOADING SPACES TO BE PROVIDED PER 10,000 SQUARE FEET OF GROSS FLOOR AREA [1]	MINIMUM SPACES TO BE PROVIDED [2]
SINGLE FAMILY	N/A	N/A
MULTIPLE FAMILY	N/A	N/A
COMMERCIAL	1	1
OFFICE	1	N/A
INDUSTRIAL	0.2	2
SERVICE ESTABLISH.	2	1
PUBLIC ASSEMBLY	1	N/A

[1] Loading spaces are to be to the rear or side of the building
[2] The minimum number of loading spaces may be waived by the Planning Director upon a showing that the spaces are not necessary in the ordinary course of a particular use.

b. Design

i. To control dust and drainage, parking areas shall be constructed with dust-free materials including but not limited to stabilized, decomposed granite.

ii. Dimension requirements as set forth in **Table C** shall be followed in the construction or modification of any parking area.

iii. The preferred location for parking shall be the interior of the lot, exclusive of on-street parking.

iv. Paving shall be provided to a sufficient thickness to withstand repeated vehicular traffic, except for single-family dwelling uses.

4. Parking Study Option

As an alternative Unofficial Document listed elsewhere in this Section, a parking plan may be submitted for approval by the Planning Director, which plan shall find that an alternate design or a reduction in the total number of parking spaces required would fulfill the intent and purpose of this Section. The Planning Director may require the study to be completed by a registered traffic engineer.

TABLE C **PARKING / LOADING SPACE DESIGN REQUIREMENTS**

	90 DEGREE SPACES[1]	60 DEGREE SPACES[1]	45 DEGREE SPACES[2]	LOADING SPACES
WIDTH (STD)	9'	9'	9'	12
WIDTH (ACC)	13'	13'	13'	N / A
LENGTH (STD)	18'	18'	18'	55
LENGTH (ACC)	18'	18'	18'	N / A
AISLE WIDTH	25'	20'	15'	25

[1] For 90 and 60 degree parking, aisle dimensions are 2 - way.
[2] For 45 degree parking, aisle dimensions are 1 - way.

L. Screening

1. General Requirements

a. Fences may be allowed within the public right-of-way upon approval of the Public Works Director. The height of any fence within the public right-of-way shall be a maximum of three (3) feet. The Public Works Director shall have the authority to

order removal of any fence which, in the opinion of the Public Works Director, poses a threat to public safety.

b. The height of any fence located between the principal structure and the rear or side property line shall not exceed six (6) feet within any residential designation and eight (8) feet within any commerci Unofficial Document ation, unless associated with an industrial use, in which case the fence may extend to a height of ten (10) feet.

c. Material used for fences shall be limited to those listed in **Table D**.

2. Required Screening

New development shall provide screening in accordance with **Table D** for those uses and improvements specified.

3. Roof-Mounted Equipment

All roof-mounted equipment shall be completely screened from view from ground level of adjacent property. The parapet, if provided, shall be architecturally compatible with the primary building.

4. Swimming Pool Enclosure

The following swimming pool enclosure regulations shall apply to the Property. Unless otherwise provided herein, swimming pools shall be entirely enclosed by a protective fence or solid wall of not less than five (5) feet in height.

a. Applicability

The provisions of this Section shall apply to the following:

i. Swimming pools used in conjunction with single-family dwellings, including single-family cluster developments.

ii. Swimming pools used in conjunction with a multiple-family use.

iii. Swimming pools used in conjunction with a commercial or public use.

TABLE D **REQUIRED SCREENING**

Unofficial Document

	MINIMUM HEIGHT REQUIRED FOR SCREENING	MATERIALS ALLOWED TO BE USED FOR SCREENING[1,2]
REFUSE CONTAINER	6'	1
VEHICLE DISPLAY	2.5'	1,2,3
PARKING AREA	3'	1,3
OUTDOOR STORAGE	6'	1,4,5
MECHANICAL EQUIP.	3.5'	1,3,5

[1] Materials for fence construction shall be limited to the following:

1. masonry block
2. wrought iron
3. landscape screen
4. chain - link with slats
5. wood

[2] Other materials may be allowed upon the Planning Director finding that they are similar to those listed above.

b. Design

i. The pool enclosure shall be set a minimum of twenty (20) inches from the edge of the water.

ii. The protective fence or wall shall have no vertical opening larger than four (4) inches. Wrought iron and wood fences shall be constructed with at least fifty-four (54) inches between the horizontal members.

iii. Gates shall be self-closing, self-latching, with latches being a minimum of fifty-four (54) inches above ground level. Gates shall swing out, away from pool. Those gates not used for normal access to and from the pool do not need to be self-closing if secured by a padlock or other similar device in lieu of a latch.

Unofficial Document

iv. The protective fence or wall shall be located a minimum horizontal distance of fifty-four (54) inches from any structure, storage, or equipment that could be used to climb the wall or fence from the outside.

v. The protective fence or wall shall contain no opening, handhold, or other means accessible from the exterior side of the enclosure that could be used to climb the wall or fence.

vi. The protective fence or wall shall be constructed of block, wrought iron, wood, or other similar material approved by the Planning Director. Chain link material shall not be used as a protective fence.

vii. All ground level doors with direct access to the pool area must be equipped with self-latching devices which shall be located at least fifty-four (54) inches above the floor and must be self-closing and must open in a direction away from the pool area.

viii. All emergency escape and/or rescue windows of sleeping rooms with direct access to the pool area must be equipped with a self-closing and self-latching device located no less than fifty-four (54) inches above the floor.

ix. All other openable dwelling unit or guest room windows with access to the pool area must be equipped with: 1) screwed in place wire mesh screens, 2) keyed locks that prevent opening the window more than four (4) inches, or 3) self-closing and self-latching devices located no less than fifty-four (54) inches above the floor.

c. Owner Responsibility

It is the responsibility of the property owner to ensure that any pool enclosure fence and its appurtenances (i.e. gates, latching devices, locks, etc.) are maintained in safe and good working c Unofficial Document

M. Signs

1. Permit Required

The placement of signs, except as listed below, shall require a sign permit issued by the Planning Director in accordance with the procedures set forth in the Development Code. Signs listed as follows are exempt from obtaining a permit:

a. Political signs and banners;

b. Directional and traffic signs, including temporary variable street construction signs;

c. Window signs not exceeding twenty (20) percent of the window area;

d. Signs not visible from off property or business;

e. Signs pertaining to the lease, sale, or rental of land or buildings, the size of which are six (6) square feet or less for parcels up to five (5) acres and twenty-four (24) square feet or less for parcels more than five (5) acres.

2. Prohibited Signs

The following types of signs are prohibited:

a. Signs with audible devices, moving parts, or flashing lights. This shall also include electronic messaging boards with moving words or letters;

b. "Sandwich" or portable signs and outdoor banners displaying product information;

c. Roof mounted signs or signs projecting above the roof line of a building;

d. Signs plaUnofficial Document right-of-way;

e. All signs mounted on, or applied to trees, utility poles, or public structures, except as otherwise provided;

f. Any sign determined to be a safety hazard to the flow of traffic;

g. Commercial signs remaining at an abandoned or vacant building for a period exceeding one hundred eighty (180) days.

3. Design Standards

a. Signs shall not exceed the dimensions set forth in **Table E** and **Table F**.

b. Signs shall be located on the same parcel as the use for which they advertise, except freeway commercial signs.

c. Illuminated signs may be internally lighted in the Commercial/Mixed Use designation. The source of illumination of any sign is to be shielded so that it is not visible from or causes glare or reflection onto adjacent properties and streets.

TABLE E

MAXIMUM SIZE ALLOWED FOR FREE - STANDING SIGNS (BY LAND USE TYPE)

Unofficial Document

	HEIGHT ALLOWED	MAXIMUM SIGN AREA (IN SQUARE FEET) ALLOWED
MULTIPLE FAMILY	3.5'	18
PUBLIC ASSEMBLY	3.5'	18
COMMERCIAL	20'	72
OFFICE	3.5'	18
SERVICE ESTABLISHMENT	15'	32
FREEWAY COMMERCIAL	65' *	300
INDUSTRIAL	20'	48

* Freeway commercial and billboard signs shall be allowed to extend sixty-five (65) feet above the grade of the freeway nearest the sign.

TABLE F

MAXIMUM SIZE ALLOWED FOR ATTACHED SIGNS (BY LAND USE TYPE)

Unofficial Document

	SIGN AREA ALLOWED (IN SQUARE FEET) FOR EACH LINEAL FOOT OF BUILDING FACING THE STREET FRONTAGE
MULTIPLE FAMILY	0.25
PUBLIC ASSEMBLY	0.25
COMMERCIAL	1.00
OFFICE	0.50
SERVICE ESTABLISH.	0.75
FREEWAY COMM.	1.00
INDUSTRIAL	0.50

* Attached signs shall be placed below roof eave line.
* Each side of a building having a street frontage may be counted separate and used to place signs.
* Buildings located over fifty (50) feet from the street frontage are allowed to double the allowed sign area amount.

N. Topography

The provisions of this Section shall apply to all new development activities within the Property. The foregoing notwithstanding, regrading or reshaping activities in areas of disturbance which occurred prior to the adoption of the CMP shall be exempt f Unofficial Document f this Section.

1. Grading

The purpose of this Section is to set forth the objectives and engineering standards for the grading and earthwork elements for the development of the Property. The grading elements include street and parking lot cut and fill limits, site grading limits, slope control or soil stabilization, mitigation of adverse conditions including boulder instability, slope instability, soil erosion, and drainage disruption, and landscaping of scarred areas due to grading.

a. General

A grading plan shall be approved by the Town Engineer prior to any grubbing, grading, or clearing. All grading shall be in accordance with all applicable M.A.G. standards or the uniform building code, whichever is applicable to the site.

b. Cut and Fill

Cut and fill slopes, except for those required for roadway improvements, shall meet the following requirements:

i. Cut and fill slopes shall not be steeper than 3:1, except stable rock which may be vertical. Steeper slopes will be allowed when justified by adequate engineering analysis and documentation, subject to approval by the Town Engineer.

ii. Cut and fill slopes within drainage retention and detention basins shall be no steeper than 4:1. Steeper slopes will be allowed when justified by adequate engineering analysis and documentation, subject to approval by the Town Engineer.

iii. The maximum height of cut is not to exceed eighty (80) feet and the maximum height of fill shall not exceed sixty (60) feet, unless otherwise approved by the Town Engineer. All exposed cuts and fills are subject to the mitigation criteria established herein.

Unofficial Document

c. Retaining Walls

Retaining walls may be used to reduce the horizontal distance required to construct cut and fill slopes. Retaining walls may include masonry, rigid concrete structures, earth filled bins, gabions, and any other form of structural elements used to retain and support cut or fill slopes.

Retaining walls up to twenty (20) feet shall be allowed. Retaining walls higher than twenty (20) feet may be approved by the Town Engineer. Retaining walls shall be designed by a registered professional engineer who is licensed to practice in the State of Arizona.

d. Revegetation

Revegetation for landscaping or erosion and sediment control is an integral part of grading activity. Graded areas that are to be revegetated shall be revegetated with those plants included in the Landscape Plant Palette as set forth in **Exhibit M**.

e. Dust Control

All dust control activities shall comply with all Federal, state, and county dust control requirements.

2. Hillside

It is the purpose of this Section to establish regulations which recognize that development of hillside areas on the Property involves special considerations. Hillside development standards apply to all land wherever the natural terrain of the proposed disturbance areas within any lot or parcel has a slope of fifteen (15) percent or greater as determined by a registered professional engineer who is licensed

to practice in the State of Arizona ("Hillside Area"). All land use designations and respective development options contained herein may be developed within Hillside Areas and shall be governed by the provisions of this Section and the standards of each respective development option set forth in **Section 3.01.A.2** and **Section 3.01.B.2**. In the event of a conflict between the development standards of thi Unofficial Document standards set forth in **Section 3.01.A.2** and **Section 3.01.B.2**, the provisions of this Section shall prevail.

a. General Provisions for Construction in Hillside Areas

In addition to drawings, plans, specifications and details necessary to obtain a building permit, the following documentary requirements and certifications shall be provided for review by the Town Engineer and Town Building Inspector:

i. A topographic map at an appropriate scale on a 24" x 36" sheet presenting the total lot and a twenty (20) foot area beyond the property line. This map shall show existing and proposed finished contours at two (2) foot intervals within a twenty (20) foot perimeter from any proposed building, five (5) foot intervals elsewhere. Existing contours shall be shown with dashed lines. This map shall show limits of excavation and fill, slope of cut and fill, and total cubic yards of excavation and fill.

ii. Detailed site plans and landscape plans at an appropriate scale which show the following: grade and slope in percent of all disturbed areas; dimensions and calculations of all cut and fill for the building site, roads, drives, swimming pools, and the method of concealment for each fill or exposed cut; dimensions of length and height of retaining walls, fences, and other attachments; the location and grade of all drainage channels, swales, drain pipes, etc.; and the amount and degree of surface disturbance, destruction, or removal of natural vegetation.

iii. Cross-sections at 1:1 scale at two (2) or more locations perpendicular to the contours through the building site. Locations of the cross-sections shall be clearly shown on the topographic map. Properties impacting ridge lines shall provide additional cross-sections indicating their relation and impact on such ridge lines.

Unofficial Document

iv. An overall excavation, grading, and drainage plan prepared and certified by a registered professional engineer who is licensed to practice in the State of Arizona.

v. Where possible and appropriate, the combining of the above maps into one drawing may be acceptable.

b. Heights and Appearances

i. For development within Hillside Areas, the height of structures shall be determined by the following and not by the definition of building height as described in **Section 1.03**:

> No part of any structure shall penetrate an imaginary plane (the "Sloping Plane of Measurement"), the height of which is thirty (30) feet measured vertically from the highest ridge or parapet of the building to the existing natural grade directly beneath that point. Minor topographic variations may be excluded from those measurements if those areas are less than twenty-five (25) feet in width. Exposed building walls measured in a vertical plane shall not exceed a height of thirty (30) feet measured from the lowest point of the wall to the top of the wall. In addition, the overall projected height will be measured from the lowest wall improvement attached to the main structure to the highest ridge or parapet, and be limited to forty-five (45) feet. Exceptions to the maximum height requirements are allowed for architectural features that are less than ten (10) percent of the

entire roof area. A diagram depicting height measurements in Hillside Areas is set forth in **Exhibit N**.

ii. Materials used for exterior surfaces of all structures shall blend in color, hue, and tone with the surrounding na Unofficial Document d high contrasts. The overall intent is to create a materials and color palette that when utilized is deemed complementary and compatible to the desert setting.

(a) Structures, walls, roofs and fences shall blend with the surrounding terrain and there shall be no material or colors used which have a light reflecting value (LRV) greater than thirty-five (35) percent.

(b) Mirror surfaces, or any treatment which changes ordinary glass into a mirror surface, is prohibited. Bright, untarnished copper or other metallic surfaces shall be treated so they are non-reflective.

(c) All electrical service equipment and subpanels and all mechanical equipment including, but not limited to, air conditioning and pool equipment, solar panels, and antennas shall not be visible from outside the property when viewed from the same or a lower elevation. Restrictions of solar panels and mechanical equipment may be modified if they are integrated into the roof design.

iii. Fences or walls on lots within a Hillside Area, excluding retaining walls, shall be restricted to privacy walls attached to or directly screening a portion of the main residence.

c. Disturbed Area

Lots in Hillside Areas shall be developed to provide for the minimum amount of ground disturbance during the time of construction so as to prevent rock slides and falls, erosion, and seepage. At final construction, disturbed areas shall be hidden or suppor Unofficial Document , buildings, finished surfaces, or shall be landscaped.

i. All buildings, structures, and roads shall, to the fullest extent practicable, utilize the natural contours of the land so as to minimize the disturbed area.

ii. The maximum height of any cut or fill used to establish a building site or a driveway shall not exceed fifteen (15) feet. The maximum height of any cut or fill used to establish a road or roadway shall not exceed thirty (30) feet.

iii. The limits of construction and proposed disturbed areas shall be clearly designated on the property prior to and during construction with flags or visible roping. No disturbance outside the designated area shall take place.

iv. All surplus excavated material shall be removed from the lot.

d. Roadways and Driveways

i. The roadway standards for the CMP set forth in **Exhibit D** include roadway cross-sections that minimize the impact of roads in Hillside Areas. The roadway standards include narrow street sections, custom street turn-around configurations, and custom cul-de-sac termination details all designed to minimize the intrusion of roadways within Hillside Areas.

ii. If any portion of a driveway grade is more than twenty (20) percent, the entire residence and all accessory buildings over one hundred twenty (120) square feet of

roof area shall be protected with an approved fire sprinkling system.

iii. Driveways with turning radii of less than thirty five (35) feet may be used provided all structures are protected with an approved fire sprinkling system.

Unofficial Document

iv. Any driveway cut greater than twelve (12) feet in depth shall not have a length greater than two hundred (200) feet.

e. Retaining Walls and Erosion Control Measures

i. The design of all retaining walls and erosion control measures shall be prepared by a registered professional engineer or architect who is licensed to practice in the State of Arizona.

ii. Raw spill slopes are prohibited.

iii. All exposed disturbed area fill shall be contained behind retaining walls or landscaped.

iv. Retaining walls shall not exceed twenty (20) feet in height. If additional height is needed, the wall shall be offset at a minimum of four (4) feet or one (1) foot per one (1) foot of height. Privacy walls may be erected on a retaining wall so long as the total height does not exceed twenty (20) feet.

f. Lighting and Utilities

i. All outdoor lighting concepts, fixture types, lamps, and wattage for lot development shall be indicated on the site plan.

ii. Street lighting is discouraged unless deemed necessary for safety.

iii. All sources of exterior lighting shall be screened to minimize impact on adjacent properties. All building

mounted light fixtures will be encouraged to shed light downward.

iv. The use of fixtures to floodlight the exterior of a structure is prohibited; except if the structure is considered to be Signature Architecture.

Unofficial Document

v. Recessed soffit mounted fixtures must have the lamp recessed into the soffit a minimum of 3".

vi. Only low voltage or incandescent type fixtures of a maximum of seventy-five (75) watts shall be allowed for exterior lighting, unless otherwise approved by the Planning Director.

vii. Exterior landscape lighting requirements shall encourage "moonlighting" techniques where a path or tree is highlighted from above, rather than aiming fixtures up at the tree.

viii. Exterior spotlights may only be used for security purposes and must be set on a timer for a maximum of twenty (20) minutes. The light source must be shielded from view from adjacent properties.

ix. All on-site utilities shall be placed underground.

g. Landscaping

Landscaping in Hillside Areas shall be limited to the Desert Wash/Sonoran Landscape component of the Landscape Plant Palette set forth in **Exhibit M**. However, within courtyards or outdoor spaces enclosed by site walls, plants from the entire Landscape Plant Palette may be used, except for trees that have a mature growth beyond twenty-five (25) feet in height.

O. Utilities

1. Wastewater Facilities

Wastewater facilities for the Property shall conform to the Master Wastewater Plan and any refinements thereto contained in any Planning Unit W Unofficial Document

2. Water Supply System

The water supply system for the Property shall conform to the Master Potable Water Plan and any refinements thereto contained in any Planning Unit Potable Water Plan.

3. Underground Service Lines

All utility lines, including irrigation service lines, but not including transformers or enclosures containing equipment such as switches, meters or capacitors which are ground mounted, shall be placed underground in accordance with the specifications and policies of the respective utility company.

4. Refuse Service

All commercial development shall provide refuse enclosures for solid waste collection in accordance with the following:

a. Located so as to facilitate collection and minimize any negative impact on persons occupying the development site, neighboring properties, or public rights-of-way.

b. Constructed according to specifications established by the Public Works Director to allow for collection without damage to the development site or the collection vehicle.

P. Public Area Improvements

1. Purpose

The purpose of these requirements is to promote road safety, assure adequate access for fire and rescue vehicles, and promote adequate vehicular circula Unofficial Document

2. Coordination of Streets

a. All new streets required pursuant to the Master Street and Circulation Plan and each Planning Unit Street and Circulation Plan shall intersect with surrounding existing streets at safe and convenient locations.

b. The Town may require temporary turnarounds to be constructed for temporary cul-de-sacs between development phases.

3. Street Layout

a. All permanent dead end streets shall be developed as cul-de-sacs. Cul-de-sacs shall extend no further than six hundred (600) feet as measured from the center of the last intersection or intermediate turnaround. This length may be exceeded with approval of the Fire Chief upon submittal of a Preliminary Plat.

b. If automatic sprinkler systems are used for fire protection, cul-de-sacs shall extend no further than one thousand five hundred (1,500) feet as measured from the center of the last intersection or intermediate turnaround. This length may be exceeded with approval of the Fire Chief on cul-de-sacs serving twenty-five (25) or fewer residential units.

c. Turnarounds shall be of either a circular or hammerhead configuration in accordance with the standards set forth in **Exhibit O**.

d. The right-of-way of a cul-de-sac shall have a minimum radius of forty-five (45) feet. The radius of the paved area of a turnaround shall be forty (40) feet. If the center of a circular

turnaround is left unpaved, the area shall be landscaped and the pavement width shall be a minimum of sixteen (16) feet.

e. Half streets (i.e., streets of less than the full right-of-way and pavement width) with a minimum pavement width of twenty four (24) feet to accommodate two-way traffic shall be allowed as an inte Unofficial Document

4. Street Intersections

a. Streets shall intersect as nearly as possible at right angles, and no more than two (2) streets may intersect at any one (1) point. Arterials shall have no more than five (5) degrees from ninety (90) degrees at intersections. Collectors and Local streets shall be allowed up to fifteen (15) degrees from ninety (90) degrees at intersections.

b. Where a centerline offset (jog) occurs at an intersection, the distance between centerlines of the intersecting streets shall be not less than one hundred fifty (150) feet.

c. Except when no other alternative is practicable or legally possible, no two (2) collector streets may intersect with any other collector street on the same side at a distance of less than three hundred (300) feet from centerline to centerline of the intersecting collector streets. When the intersected street is an arterial, the distance between intersecting collector streets shall be at least six hundred (600) feet.

5. Street Design Standards

Streets shall be designed and constructed in accordance with the roadway standards set forth in **Exhibit D**. Typical cross-sections depicting roadway standards are also set forth in **Exhibit D**.

6. Right-of-Way Landscaping

Landscaping shall be provided in all public rights-of-way in conjunction with development of adjacent parcels. All right-of-way and drainage areas not used for street or sidewalk improvements

shall be left in a natural state or improved with landscaping in accordance with **Section 3.03.H.**

7. Bridges

All bridges shall be designed by a registered professional engineer who is licensed tUnofficial Documente of Arizona in accordance with standard design criteria and approved by the Town Engineer.

8. Fire Hydrants

a. All development within the Property shall include a system of fire hydrants which are constructed according to M.A.G. standards.

b. The Fire Chief shall determine the precise location, number, and type of all hydrants depending on the location, building size, density and lot size of the subject development.

c. Water lines that serve hydrants shall be at least six (6) inches in diameter if looped or eight (8) inches in diameter for dead-end lines. Unless no other practicable alternative is available, dead-end lines shall be allowed; provided, however, the maximum length of dead-end lines shall be one thousand five hundred (1,500) feet, with fire hydrants spaced along the alignment. A water system analysis shall be prepared to show that the farthest fire hydrant from the looped main on a dead-end line meets the minimum fire flow requirements.

d. The maximum spacing for fire hydrants shall be five hundred (500) feet for detached residential land uses and three hundred (300) feet for attached residential, commercial/mixed-use, and resort land uses. If automatic sprinkler systems are used for fire protection, the maximum spacing for fire hydrants may be increased to one thousand (1,000) feet for detached residential land uses and seven hundred (700) feet for attached residential, commercial/mixed use, and resort land uses. Fire hydrants shall be located at maximum intervals of a quarter mile along unloaded traffic corridors.

9. Lighting Requirements

All lighting for streets, sidewalks, and other common areas or facilities in all public rights-of-way shall be in accordance with the lighting standards as provided in the CMP.

10. Non-Vehicular C Unofficial Document

Non-vehicular circulation improvements shall be in accordance with the Planning Unit Pedestrian and Trails Plan required in **Section 2.02.E**.

IV. LAND SUBDIVISION

4.01 GENERAL PROVISIONS

Land to be subdivided shall be of such character that it can be used for building purposes without danger to health or peril from fire, flood, or other menace, and land shall not be subdivided until available public facilities and improvements exist and proper provision has been made for drainage, water, wastewater, and public facilities as specified in the applicable Planning Unit Plans required to be submitted pursuant to **Section 2.02**.

Unofficial Document

4.02 STREET NAMING

The Developer shall have the authority to establish street names throughout the Property. The Developer shall indicate street names for public streets on all preliminary plats.

Street signs shall be placed at all street intersections by the Developer and shall be in place when street paving is completed.

4.03 LAND SPLITS

A. Purpose

Land splits are regulated for the purpose of ensuring each parcel of land within the Town has sufficient public access, provision for water and waste disposal, adequate parcel size and dimensions for the use intended, and availability of public services.

B. Requirements

The following requirements shall be met for any land split within the jurisdiction of the Town:

1. Parcel size and dimensions shall meet the requirements of the applicable Development Option.

2. Adequate access for ingress/egress shall be provided.

3. Adequate provision for utilities, including electric, water, and wastewater service shall be available and such availability shall be indicated on a survey submitted with a request for a land split.

C. Approval

A request for a land spUnofficial Document l by the Planning Director if the application meets all the requirements as stated in **Section 4.03.B**.

4.04 PRELIMINARY PLAT

A. Significance of Preliminary Plat Approval

Preliminary plat approval constitutes authorization to proceed with preparation of the final plat and the engineering plans and specifications for public improvements. Preliminary plat approval is based on the following terms:

1. The basic conditions under which approval of the preliminary plat is granted will not be substantially changed prior to the expiration date of the preliminary plat.

2. Approval is valid for a period of twelve (12) months from the date of Development Board approval to the date of submittal to the Town of a final plat. Six (6) month extensions of the preliminary plat approval may be granted by the Development Board upon receipt of a letter from the applicant prior to the expiration date indicating proper cause.

B. Required Information for Preliminary Plat

The information required as part of the preliminary plat submittal shall be shown graphically, by note on plans, or by written report, and may comprise several sheets showing various elements of required data. All mapped data for the same plat shall be drawn at the same standard engineering scale, said scale having not more than one hundred (100) feet to an inch. Whenever practical, scale shall be adjusted to produce an overall drawing measuring twenty-four (24) by thirty-six (36) inches.

1. Identification and Descriptive Data

   a. Proposed name of subdivision and its location by section, township, and range; reference by dimension and bearing to a section corner or quarter section corner.

   b. Name, ac[illegible] Unofficial Document [illegible]mber of applicant.

   c. Name, address, and phone number of person preparing plat.

   d. Scale, north point, and date of preparation, including dates of any subsequent revisions.

   e. A location map which shall show the relationship of the proposed subdivision to existing community facilities which serve or influence it, including main traffic arterials, public transportation lines, shopping areas, elementary and high schools, parks and playgrounds, and churches. This map may be on the preliminary plat if practicable, or if not, a separate map showing title, scale, north point, and site data.

   f. Identification of applicable Development Option.

2. Existing Conditions Data

   a. Topography by contours or spot elevations related to U.S.G.S. survey datum, or other datum approved by the Town Engineer, shown on the same map as the proposed subdivision layout. Contour intervals shall be such as to adequately reflect the character and drainage of the land.

   b. Location of water wells, streams, canals, irrigation laterals, private ditches, washes, lakes, or other water features; direction of flow; location and extent of areas subject to inundation, whether such inundation be frequent, periodic, or occasional.

   c. Location, widths, and names of all platted streets, railroads, utility right-of-way of public record, public areas, permanent structures to remain, including Town utilities and municipal corporation lines within or adjacent to the tract. Two (2) copies

of a preliminary title report showing the above shall be submitted.

d. Name, book, and page numbers of adjacent subdivisions, along with county assessor number of all adjacent parcels having a common boundary with the tract.

Unofficial Document

e. By note, the existing land use district classification of the subject and surrounding tracts.

f. By note, the acreage of the subject tract.

g. Boundaries of the tract to be subdivided shall be delineated and fully dimensioned.

h. By note, reference to the recorded Master Covenants, Conditions and Restrictions for Caterpillar.

3. Proposed Conditions Data

a. Street layout, including location, width of public and private streets, alleys, crosswalks, centerline geometry, and easements; connections to adjoining platted tracts.

b. Typical lot dimensions (scaled); dimensions of all corner lots and lots of curvilinear sections of streets; each lot numbered individually; total number of lots.

c. Locations, width, and use of easements.

d. Designation of all land to be dedicated or reserved for public use with use indicated.

e. Typical lot details showing proposed setbacks.

f. Proposed water, sewer and non-potable water pipelines with respective sizes; locations of valves and fire hydrants.

g. Any updates to completed Planning Unit Plans necessary as a result of changes affecting potable water, wastewater, drainage or street and circulation infrastructure.

4. Proposed Utility Methods

a. Statement as to the type of wastewater disposal facilities and effluent re-use facilities, in general conformance to the respective Planning Unit Wastewater Plan.

Unofficial Document

b. Statement as to the type of potable water facilities and the existence of a one hundred (100) year assured water supply as required by the Arizona Department of Water Resources, in general conformance with the respective Planning Unit Potable Water Plan.

c. Preliminary Drainage Report which includes hydrologic calculations, the layout of proposed drainage system and locations of retention/detention areas.

d. Statement as to the provision of other utilities being supplied to the plat area such as electric, phone, gas, and irrigation.

4.05 FINAL PLAT

A. General Requirements for Filing

1. The final plat shall substantially conform to the approved preliminary plat.

2. Land uses proposed shall be in conformance with the CMP.

3. Prior to the filing of the final plat, the subdivider shall obtain approval from the applicable utility interests for easement location and width as required for utility purposes.

B. Required Information for Final Plat

The final plat shall be drawn with India ink on linen or mylar having a left-hand margin of two (2) inches on a sheet size of twenty-four (24) by thirty-six (36) inches. If more than two (2) sheets are required for the drafting of the final plat, an index sheet shall be filed showing the entire subdivision on one sheet and the portion thereof contained on the other sheets. Copies of the final plat shall be reproduced in the form of blue or black line prints on a

white background. The final plat shall be drawn to a scale not to exceed one (1) inch equals one hundred (100) feet from an accurate survey.

1. Identification Data Required

   a. A title which includes the name of the subdivision and its location by Unofficial Document , township, range, and county.

   b. Name, address, and registration number of seal of the registered civil engineer or registered land surveyor preparing the plat.

   c. Scale, north arrow, and date of plat preparation.

   d. A legal description of the property to be subdivided shall be shown on the cover sheet.

2. Survey Data Required

   a. Boundaries of the tract to be subdivided fully balanced and closed, showing all bearing and distances, determined by an accurate survey in the field. All dimensions shall be expressed in feet and decimals thereof.

   b. Any excepted parcel(s) within the plat boundaries shall show all bearings and distances, determined by an accurate survey in the field. All dimensions shall be expressed in feet and decimals thereof.

   c. Location and description of cardinal points to which all dimensions, angles, bearings, and similar data on the plat shall be referenced; each of two (2) corners of the subdivision traverse shall be tied by separate course and distance to separate section corner or quarter section corners.

   d. Location of all physical encroachments upon the boundaries of the tract.

3. Descriptive Data Required

a. Name, right-of-way lines, courses, lengths, width of all public streets, crosswalks, and utility easements; radii, points of tangency and central angles of all curvilinear streets; radii of all rounded street line intersections.

Unofficial Document

b. All drainage ways shall be shown on the plat. The rights-of-way of all major drainage ways, as designated by the Town Engineer, shall be dedicated to the public.

c. All easements for rights-of-way provided for public services or utilities and any limitations of the easements. Construction within the easement shall be limited to utilities, and wood, wire, or removable type fencing.

d. Location and dimensions of all lots.

e. All lots shall be numbered by consecutive numbers through the plat. "Exceptions," "tracts", and "private parks" shall be so designated, lettered or named, and clearly dimensioned.

f. Location, dimensions, bearing, radii, arcs, and central angles of all sites to be dedicated to the public with the use clearly indicated.

g. Location of all adjoining subdivisions with date, book, and page number of recordation noted, or if unrecorded or unsubdivided, so marked.

h. The recorded Master Covenants, Conditions and Restrictions for Caterpillar shall be referenced on the final plat.

4. Dedication and Acknowledgment

a. Dedication: Statement of dedication of all streets, crosswalks, drainage ways, pedestrian ways, and other easements for public use by the person holding title of record, by persons holding titles as vendees under land contract, by spouse of said parties, lienholder and all other parties having an interest in the property. If lands dedicated are mortgaged, the

mortgagee shall also sign the plat. Dedication shall include a written location by section, township, and range of the tract.

b. Acknowledgment of Dedication: Execution of dedication acknowledged and certified by a notary public.

5. Required Certifi[c] Unofficial Document

a. Certification by the registered civil engineer or registered land surveyor making the final plat that the final plat is correct and accurate and that the monuments described in it have either been set or located as described. The certification shall be accompanied by the signature and seal of such civil engineer or surveyor.

b. Certification by the Planning Director that all lots shown upon the plat conform to the CMP and are suitable for the purpose for which they are subdivided.

c. Certification by the Town Engineer that all engineering conditions and requirements of the CMP have been complied with.

d. Certification by the Town Clerk of the date the final plat was approved by the Town Council.

e. Certification of recordation by the Maricopa County Recorder.

4.06 SUBDIVISION DESIGN

All subdivisions within the Property shall meet or exceed the minimum development standards set forth in the CMP.

4.07 ENGINEERING AND CONSTRUCTION PLANS

It shall be the responsibility of the subdivider to have prepared by registered professional engineer who is licensed to practice in the State of Arizona, a complete set of engineering plans and a Final Drainage Report in accordance with all applicable Town codes and the CMP, for the construction of all required subdivision

improvements. Such plans and Final Drainage Report shall be in conformance with the approved preliminary plat and Preliminary Drainage Report.

The Town Engineer shall approve the engineering plans and Final Drainage Report unless they fail to conform with one or more requirements of the CMP, or the plans differ substantially from the approved preliminary plat and Preliminary Drainage Report.

Unofficial Document

4.08 RESPONSIBILITY FOR PUBLIC IMPROVEMENTS

A. Financial Guarantee

The Town Council shall require the subdivider to guarantee that all required improvements will be completed in a manner satisfactory to the Town using either of the following methods:

1. A performance bond, an irrevocable letter of credit, assurance of construction of subdivision improvements, funds in a restricted escrow account, or other financial guarantee approved by the Town Attorney prior to the recordation of the final plat.

    a. The financial guarantee shall be one hundred (100) percent of the cost of the labor and materials necessary to complete the required subdivision improvements based upon a construction cost estimate prepared by a registered professional engineer who is licensed to practice in the State of Arizona.

    b. The period within which required improvements must be completed shall be specified and shall not exceed two (2) years from the date of final approval.

2. As an alternative procedure, the Town Council may approve a Final Plat and the Planning Director may record the Final Plat but withhold the issuance of a Certificate of Occupancy until such time that all required subdivision improvements have been completed.

B. Inspection of Improvements

Prior to the approval of the required improvements by the Town Engineer, an engineer retained by the applicant shall certify to the Town that all facilities and improvements to be dedicated to the Town have been constructed in

accordance with the requirements of the CMP and applicable provisions of the Development Code. The Town Engineer shall also inspect all required improvements and certify that they comply with all specifications as set forth in the approved improvement plans. Any inspection expenses incurred by the Town shall be reimbursed by the applicant.

Unofficial Document

V. PROJECT GOVERNANCE

5.01 PROJECT GOVERNANCE

Unofficial Document

The purpose of the Caterpillar project governance structure is to insure that there is a workable, thorough, and enforceable mechanism in place which implements the vision of excellence for Caterpillar. The internal governance and regulatory system must combine a sense of stewardship with workable enforcement techniques. The governance structure must work under the period of control by the Developer and after the Developer passes the powers of governance to property owners within Caterpillar. The Caterpillar CMP creates a framework to allow additional planning throughout the development of the Property. This flexibility, however, requires assurances to the broader community that fundamental goals and concepts developed for Caterpillar will be met. Project governance is a way to provide such assurance.

In addition to the Caterpillar CMP and applicable Town codes, rules, guidelines, and official policies controlling permitted uses of the Property, it is important for orderly development of the Property to establish a cohesive concept and enforceable structure for project governance. In this context, project governance contemplates three elements:

A. Governance Entities

The creation of appropriate entities empowered with creation and administration of private governance processes, empowered by recorded covenants, conditions and restrictions (the "CC&Rs) which bind all present and future owners within Caterpillar and provide for the perpetual support and maintenance of the Caterpillar governance entities and processes. A conceptual outline of the CC&R's for Caterpillar is set forth in **Exhibit P**.

B. Design Standards

Enforceable architectural and landscape design standards shall be applicable to all development within the Property. Although intended to be created on a phased basis throughout the years of development of the Property, the general elements to be addressed in design review guidelines developed for Caterpillar are set forth in **Exhibit Q**.

C. Common Area Management

Creation of a conceptual framework for ownership and management by various respective private governance entities of the broad matrix of location and character of common areas throughout the Property, including provisions for public access.

Unofficial Document

Unofficial Document

EXHIBIT A
LEGAL DESCRIPTION

WOOD/PATEL

CIVIL ENGINEERS • HYDROLOGISTS • LAND SURVEYORS

Darrel E. Wood, P.E., R.L.S.
Ashok C. Patel, P.E., R.L.S.
James S. Campbell, P.E.
Gordon W. R. Wark, P.E.
Thomas R. Gettings, R.L.S.
Bruce Friedhoff, P.E.
Scott A. Nelson, R.L.S.
Richard L. Hiner, P.E.
Timothy A. Huval, P.E.
Michael J. Sexton, R.L.S.
Jack K. Moody, P.E.
Leslie J. Kland, P.E.
Curtis L. Brown, P.E.
R. Scott Rasmussen, P.E.
Paul M. Haas, P.E.
Shimin Zou, Ph.D., P.E.
David T. Phelps, P.E.
Michael T. Young, P.E.
Shawn D. Gustafson, P.E.

EXHIBIT "A"

PARCEL DESCRIPTION

Unofficial Document

PARCEL NO. 1:

The South half of Section 20, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 3:

Lots 1, 2, 3 and 4, the East half of the West half, and the East half of Section 7, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 4:

That portion of Section 19, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

PARCEL DESCRIPTION

BEGINNING at the Southwest corner of said Section 19, said point being a G.L.O. brass ca Unofficial Document 1 degrees 16 minutes 12 seconds East along the West line of said Section 19, a distance of 12.38 feet from the Southeast corner of Section 24, Township 2 North, Range 3 West;

THENCE North 00 degrees 05 minutes 12 seconds West, continuing along said West line, a distance of 1662.38 feet;

THENCE North 89 degrees 34 minutes 51 seconds East, a distance of 1787.58 feet;

THENCE North 49 degrees 16 minutes 47 seconds East, a distance of 1245.15 feet;

THENCE South 40 degrees 43 minutes 13 seconds East, a distance of 2304.31 feet to a point of curvature of a tangent curve concave to the West;

THENCE Southerly along the arc of said curve to the right, having a radius of 1000.00 feet, a central angle of 40 degrees 17 minutes 40 seconds, and an arc length of 703.27 feet to a point of tangency;

THENCE South 00 degrees 25 minutes 33 seconds East, a distance of 63.42 feet to a point on the South line of the Southeast quarter of said Section 19;

THENCE South 89 degrees 34 minutes 27 seconds West along said South line, a distance of 1832.76 feet to the South quarter corner of said Section 19;

THENCE South 89 degrees 34 minutes 51 seconds West along the South line of the Southwest quarter of said Section 19, a distance of 2641.88 feet to the TRUE POINT OF BEGINNING;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of

PARCEL DESCRIPTION

Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved [illegible] and recorded June 30, 1978 in Docket 15005, page 205.

Unofficial Document

PARCEL NO. 5:

That portion of Section 19, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at the Northwest corner of said Section 19, said point being a 1/2 inch ACP stamped LS 19324;

THENCE South 00 degrees 08 minutes 44 seconds East along the East line of Section 24, Township 2 North, Range 3 West, a distance of 856.96 feet to the TRUE POINT OF BEGINNING, said point being on the arc of a non-tangent curve concave to the Northwest, a radial line of said curve through said point having a bearing of South 22 degrees 42 minutes 19 seconds East;

THENCE Northeasterly along the arc of said curve to the left, having a radius of 1500.00 feet, a central angle of 03 degrees 02 minutes 28 seconds, and an arc length of 79.62 feet to a point of tangency;

THENCE North 64 degrees 15 minutes 13 seconds East, a distance of 1571.18 feet to a point of curvature of a tangent curve concave to the South;

THENCE Easterly along the arc of said curve to the right, having a radius of 1500.00 feet, a central angle of 25 degrees 33 minutes 20 seconds, and an arc length of 669.05 feet to a point on the North line of said Section 19;

THENCE North 89 degrees 48 minutes 33 seconds East along said North line, a distance of 150.00 feet;

PARCEL DESCRIPTION

THENCE South 04 degrees 07 minutes 50 seconds West, a distance of 1265.21 feet to a point of curvature of a tangent curve concave to the East;

Unofficial Document

THENCE Southerly along the arc of said curve to the left, having a radius of 2000.00 feet, a central angle of 44 degrees 51 minutes 03 seconds, and an arc length of 1565.59 feet to a point of tangency;

THENCE South 40 degrees 43 minutes 13 seconds East, a distance of 100.00 feet;

THENCE South 49 degrees 16 minutes 47 seconds West, a distance of 1245.15 feet;

THENCE South 89 degrees 34 minutes 51 seconds West, a distance of 1787.47 feet to a point on the West line of the Southwest quarter of said Section 19;

THENCE North 00 degrees 05 minutes 12 seconds West along said West line, a distance of 969.93 feet to the West quarter corner of said Section 19;

THENCE North 00 degrees 56 minutes 58 seconds West along said West line, a distance of 19.93 feet to the East quarter corner of Section 24, Township 2 North, Range 2 West;

THENCE North 00 degrees 08 minutes 44 seconds West along the East line of said Section 24, a distance of 1757.45 feet to the TRUE POINT OF BEGINNING;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL DESCRIPTION

PARCEL NO. 6:

Sections 18 and 19, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

Unofficial Document

EXCEPT that portion of said Section 19 described as follows:

BEGINNING at the Southwest corner of said Section 19, said point being a G.L.O. brass cap which bears South 01 degrees 16 minutes 12 seconds East along the West line of said Section 19, a distance of 12.38 feet from the Southeast corner of Section 24, Township 2 North, Range 3 West;

THENCE North 00 degrees 05 minutes 12 seconds West, continuing along said West line, a distance of 1662.38 feet;

THENCE North 89 degrees 34 minutes 51 seconds East, a distance of 1787.58 feet;

THENCE North 49 degrees 16 minutes 47 seconds East, a distance of 1245.15 feet;

THENCE South 40 degrees 43 minutes 13 seconds East, a distance of 2304.31 feet to a point of curvature of a tangent curve concave to the West;

THENCE Southerly along the arc of said curve to the right, having a radius of 1000.00 feet, a central angle of 40 degrees 17 minutes 40 seconds, and an arc length of 703.27 feet to a point of tangency;

THENCE South 00 degrees 25 minutes 33 seconds East, a distance of 63.42 feet to a point on the South line of the Southeast quarter of said Section 19;

THENCE South 89 degrees 34 minutes 27 seconds West along said South line, a distance of 1832.76 feet to the South quarter corner of said Section 19;

PARCEL DESCRIPTION

THENCE South 89 degrees 34 minutes 51 seconds West along the South line of the Southwest quarter of said Section 19, a distance of 2641.88 feet to tl[illegible] TRUE POINT OF BEGINNING; and

Unofficial Document

EXCEPT that portion of said Section 19 described as follows:

COMMENCING at the Northwest corner of said Section 19, said point being a 1/2 inch ACP stamped LS 19324;

THENCE South 00 degrees 08 minutes 44 seconds East along the East line of Section 24, Township 2 North, Range 3 West, a distance of 856.96 feet to the TRUE POINT OF BEGINNING, said point being on the arc of a non-tangent curve concave to the Northwest, a radial line of said curve through said point having a bearing of South 22 degrees 42 minutes 19 seconds East;

THENCE Northeasterly along the arc of said curve to the left, having a radius of 1500.00 feet, a central angle of 03 degrees 02 minutes 28 seconds, and an arc length of 79.62 feet to a point of tangency;

THENCE North 64 degrees 15 minutes 13 seconds East, a distance of 1571.18 feet to a point of curvature of a tangent curve concave to the South;

THENCE Easterly along the arc of said curve to the right, having a radius of 1500.00 feet, a central angle of 25 degrees 33 minutes 20 seconds, and an arc length of 669.05 feet to a point on the North line of said Section 19;

THENCE North 89 degrees 48 minutes 33 seconds East along said North line, a distance of 150.00 feet;

THENCE South 04 degrees 07 minutes 50 seconds West, a distance of 1265.21 feet to a point of curvature of a tangent curve concave to the East;

THENCE Southerly along the arc of said curve to the left, having a radius of 2000.00 feet, a central angle of 44

degrees 51 minutes 03 seconds, and an arc length of 1565.59 feet to a point of tangency;

Unofficial Document

THENCE South 40 degrees 45 minutes 15 seconds East, a distance of 100.00 feet;

THENCE South 49 degrees 16 minutes 47 seconds West, a distance of 1245.15 feet;

THENCE South 89 degrees 34 minutes 51 seconds West, a distance of 1787.47 feet to a point on the West line of the Southwest quarter of said Section 19;

THENCE North 00 degrees 05 minutes 12 seconds West along said West line, a distance of 969.93 feet to the West quarter corner of said Section 19;

THENCE North 00 degrees 56 minutes 58 seconds West along said West line, a distance of 19.93 feet to the East quarter corner of Section 24, Township 2 North, Range 2 West;

THENCE North 00 degrees 08 minutes 44 seconds West along the East line of said Section 24, a distance of 1757.45 feet to the TRUE POINT OF BEGINNING;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 7:

That portion of Sections 30 and 31, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

PARCEL DESCRIPTION

BEGINNING at the Southwest corner of said Section 30, said point being a G.L.O. brass cap;

Unofficial Document

THENCE North 03 degrees 46 minutes 34 seconds East, a distance of 1315.07 feet;

THENCE South 86 degrees 13 minutes 26 seconds East, a distance of 334.04 feet to a point of curvature of a tangent curve concave to the North;

THENCE Easterly along the arc of said curve to the left, having a radius of 1500.00 feet, a central angle of 23 degrees 46 minutes 34 seconds, and an arc length of 622.46 feet to a point of tangency;

THENCE North 70 degrees 00 minutes 00 seconds East, a distance of 1795.40 feet;

THENCE South 20 degrees 00 minutes 00 seconds East, a distance of 42.78 feet to a point of curvature of a tangent curve concave to the West;

THENCE Southerly along the arc of said curve to the right, having a radius of 1000.00 feet, a central angle of 19 degrees 47 minutes 00 seconds, and an arc length of 345.28 feet to a point of tangency;

THENCE South 00 degrees 13 minutes 00 seconds East, a distance of 1584.28 feet to a point on the South line of said Section 30;

THENCE continuing South 00 degrees 13 minutes 00 seconds East, a distance of 776.75 feet;

THENCE South 78 degrees 35 minutes 03 seconds West, a distance of 2856.28 feet to a point on the West line of the Northwest quarter corner of said Section 31;

THENCE North 00 degrees 07 minutes 44 seconds West along said West line, a distance of 1313.31 feet to the Northwest corner

of said Section 31, said point also being the point of beginning;

Unofficial Document

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 8:

That portion of Sections 30 and 31, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Southeast corner of said Section 30, said point being a 3-1/2 inch aluminum cap;

THENCE South 00 degrees 13 minutes 21 seconds East along the East line of said Section 31, a distance of 300.00 feet;

THENCE South 78 degrees 35 minutes 03 seconds West, a distance of 2537.96 feet;

THENCE North 00 degrees 13 minutes 00 seconds West, a distance of 776.75 feet to a point on the North line of said Section 31;

THENCE continuing North 00 degrees 13 minutes 00 seconds West, a distance of 1584.28 feet to a point of curvature of a tangent curve concave to the West;

THENCE Northerly along the arc of said curve to the left, having a radius of 1000.00 feet, a central angle of 19 degrees 47 minutes 00 seconds, and an arc length of 345.28 feet to a point of tangency;

PARCEL DESCRIPTION

THENCE North 20 degrees 00 minutes 00 seconds West, a distance of 42.78 feet;

Unofficial Document

THENCE North 70 degrees 00 minutes 00 seconds East, a distance of 1728.96 feet to a point of curvature of a tangent curve concave to the South;

THENCE Easterly along the arc of said curve to the right, having a radius of 1500.00 feet, a central angle of 19 degrees 28 minutes 58 seconds, and an arc length of 510.06 feet to a point of tangency;

THENCE North 89 degrees 28 minutes 58 seconds East, a distance of 441.06 feet to the East quarter corner of said Section 30;

THENCE South 00 degrees 06 minutes 50 seconds East along the East line of said Section 30, a distance of 2622.84 feet to the point of beginning;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 9:

A parcel of land lying within Section 31, Township 2 North, Range 2 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the southeast corner of said Section 31, said point being the POINT OF BEGINNING of the herein described parcel;

THENCE along the south line of said Section 31, South 89 degrees 57 minutes 41 seconds West, a distance of 2487.65 feet, to the northwest corner of Section 6, Township 1 North, Range 2 West, said point also being the northeast corner of

PARCEL DESCRIPTION

Section 1, Township 1 North, Range 3 West;

THENCE leaving said south line, North 00 degrees 14 minutes 20 seconds West, a distance of 4485.83 feet;

Unofficial Document

THENCE North 78 degrees 35 minutes 03 seconds East, a distance of 2537.96 feet, to a point on the east line of said Section 31;

THENCE along said east line, South 00 degrees 13 minutes 21 seconds East, a distance of 2345.41 feet, to the east quarter corner of said Section 31;

THENCE continuing along said east line, South 00 degrees 12 minutes 22 seconds East, a distance of 2641.08 feet, to the POINT OF BEGINNING.

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 10:

A parcel of land lying within Section 31, Township 2 North, Range 2 East, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the northwest corner of said Section 31;

THENCE along the west line of said Section 31, South 00 degrees 07 minutes 44 seconds East, a distance of 1313.31 feet, to the POINT OF BEGINNING;

THENCE leaving said west line, North 78 degrees 35 minutes 03 seconds East, a distance of 2856.28 feet;

THENCE South 00 degrees 14 minutes 20 seconds East, a distance of 4485.83 feet, to a point on the south line of said Section 31, said point also being the northeast corner of Section 1, Township 1 North, Range 3 West, and the northwest corner of Section 6, Township 1 North, Range 2 West;

PARCEL DESCRIPTION

THENCE along the south line of said Section 31, South 89 degrees 16 minutes 01 seconds West, a distance of 2634.48 feet, to the north quarter of said Section 1;

Unofficial Document

THENCE continuing along said south line, South 89 degrees 35 minutes 34 seconds West, a distance of 174.95 feet, to the southwest corner of said Section 31;

THENCE along the west line of said Section 31, North 00 degrees 08 minutes 13 seconds West, a distance of 2642.08 feet, to the west quarter corner of said Section 31;

THENCE continuing along said west line, North 00 degrees 07 minutes 44 seconds West, a distance of 1313.32 feet, to the POINT OF BEGINNING.

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 11:

That portion of Section 30, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Northeast corner of said Section 30, said point being a 3-1/4 inch aluminum cap;

THENCE South 00 degrees 06 minutes 35 seconds East along said East line of said Section 30, a distance of 2622.91 feet to the East quarter corner of said Section 30;

THENCE South 89 degrees 25 minutes 58 seconds West, a distance of 441.06 feet to a point of curvature of a tangent curve concave to the South;

THENCE Westerly along the arc of said curve to the left, having a radius of 1500.00 feet, a central angle of 19

degrees 28 minutes 58 seconds, and an arc length of 510.06 feet to a point of tangency;

Unofficial Document

THENCE South 70 degrees 00 minutes 00 seconds West, a distance of 1728.96 feet;

THENCE North 20 degrees 00 minutes 00 seconds West, a distance of 50.00 feet to a point of curvature of a tangent curve concave to the East;

THENCE Northerly along the arc of said curve to the right, having a radius of 1000.00 feet, a central angle of 19 degrees 54 minutes 00 seconds, and an arc length of 347.32 feet to a point of tangency;

THENCE North 00 degrees 06 minutes 00 seconds West, a distance of 2901.73 feet to the North line of said Section 30;

THENCE North 89 degrees 34 minutes 27 seconds East along said North line of said Section 30, a distance of 2642.76 feet to the Northeast corner of said Section 30, said point also being the point of beginning;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 12:

That portion of Section 30, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Northwest corner of said Section 30, said point being a G.L.O. brass cap;

PARCEL DESCRIPTION

THENCE North 89 degrees 34 minutes 51 seconds East, a distance of 2641.88 feet along the North line of said Section 30;

Unofficial Document

THENCE South 00 degrees 06 minutes 00 seconds East, a distance of 2901.73 feet to a point of curvature of a tangent curve concave to the East;

THENCE Southerly along the arc of said curve to the left, having a radius of 1000.00 feet, a central angle of 19 degrees 54 minutes 00 seconds, and an arc length of 347.32 feet to a point of tangency;

THENCE South 20 degrees 00 minutes 00 seconds East, a distance of 50.00 feet;

THENCE South 70 degrees 00 minutes 00 seconds West, a distance of 1795.40 feet to a point of curvature of a tangent curve concave to the North;

THENCE Westerly along the arc of said curve to the right, having a radius of 1500.00 feet, a central angle of 23 degrees 46 minutes 34 seconds, and an arc length of 622.46 feet to a point of tangency;

THENCE North 86 degrees 13 minutes 26 seconds West, a distance of 334.04 feet to a point on the arc of a non-tangent curve concave to the East, a radial line of said curve through said point having a bearing of North 86 degrees 13 minutes 26 seconds West;

THENCE Northerly along the arc of said curve to the right, having a radius of 1500.00 feet, a central angle of 14 degrees 13 minutes 14 seconds, and an arc length of 372.29 feet to a point of tangency;

THENCE North 17 degrees 59 minutes 48 seconds East, a distance of 835.53 feet to a point of curvature of a tangent curve concave to the West;

PARCEL DESCRIPTION

THENCE Northerly along the arc of said curve to the left, having a radius of 1500.00 feet, a central angle of 37 degrees 50 minutes 47 seconds, and an arc length of 990.81 feet to a point of tangency;

Unofficial Document

THENCE North 19 degrees 50 minutes 58 seconds West, a distance of 794.67 feet to a point of curvature of a tangent curve concave to the East;

THENCE Northerly along the arc of said curve to the right, having a radius of 1500.00 feet, a central angle of 15 degrees 36 minutes 40 seconds, and an arc length of 408.70 feet to a point of tangency;

THENCE North 04 degrees 14 minutes 18 seconds West, a distance of 672.77 feet to the point of beginning;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 13:

That portion of Section 25, Township 2 North, Range 3 West and Section 30, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

BEGINNING at the Southeast corner of said Section 25, said point being a G.L.O. brass cap;

THENCE North 89 degrees 52 minutes 15 seconds West along the South line of said Section 25, a distance of 2635.19 feet to the South quarter corner of said Section 25;

THENCE North 89 degrees 41 minutes 17 seconds West along said

South line, a distance of 2641.10 feet to the Southwest corner of said Section 30;

Unofficial Document

THENCE North 00 degrees 04 minutes 18 seconds West along the West line of said Section 25, a distance of 1000.00 feet;

THENCE North 75 degrees 41 minutes 52 seconds East, a distance of 5874.45 feet;

THENCE South 17 degrees 59 minutes 48 seconds West, a distance of 835.53 feet to a point of curvature of a tangent curve concave to the East;

THENCE Southerly along the arc of said curve to the left, having a radius of 1500.00 feet, a central angle of 14 degrees 13 minutes 14 seconds, and an arc length of 372.29 feet to a point of tangency;

THENCE South 03 degrees 46 minutes 34 seconds West, a distance of 1315.07 feet to the Southeast corner of Section 25, said point also being the point of beginning;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 14:

That portion of Sections 23 and 24, Township 2 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Southwest corner of said Section 23, said point being a G.L.O. brass cap;
THENCE North 00 degrees 05 minutes 59 seconds West along the West line of said Section 23, a distance of 600.00 feet;

PARCEL DESCRIPTION

THENCE North 67 degrees 14 minutes 01 seconds East, a distance of 5728.70 feet to a point on the East line of the Southeast quarter of said Section 25;

Unofficial Document

THENCE continuing North 67 degrees 14 minutes 01 seconds East, a distance of 1068.51 feet to a point on the arc of a non-tangent curve concave to the Northeast, a radial line of said curve through said point having a bearing of South 75 degrees 26 minutes 44 seconds West;

THENCE Southeasterly along the arc of said curve to the left, having a radius of 4400.00 feet, a central angle of 31 degrees 16 minutes 47 seconds, and an arc length of 2402.11 feet to a non-tangent line, a radial line of said curve through said point having a bearing of South 44 degrees 09 minutes 57 seconds West;

THENCE South 44 degrees 09 minutes 57 seconds West, a distance of 1689.79 feet to a point on the South line of the Southwest quarter corner of said Section 24;

THENCE North 89 degrees 44 minutes 36 seconds West along said South line of said Section 24, a distance of 1000.00 feet to the Southwest corner of said Section 24;

THENCE North 89 degrees 42 minutes 50 seconds West along the South line of said Section 23, a distance of 2641.62 feet to the South quarter corner of said Section 23;

THENCE North 89 degrees 40 minutes 59 seconds West along the South line of said Section 23, a distance of 2640.87 feet to the Southwest corner of said Section 23, said point also being the point of beginning;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential

PARCEL DESCRIPTION

to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13002, page 205.

Unofficial Document

PARCEL NO. 15:

That portion of Section 23, Township 2 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Northwest corner of said Section 23, said point being a G.L.O. brass cap;

THENCE South 89 degrees 47 minutes 21 seconds East along the North line of said Section 23, a distance of 1857.42 feet;

THENCE South 53 degrees 00 minutes 55 seconds East, a distance of 2857.55 feet;

THENCE South 00 degrees 01 minutes 18 seconds East, a distance of 1216.34 feet;

THENCE South 67 degrees 14 minutes 01 seconds West, a distance of 4481.73 feet to a point on the West line of the Southeast quarter corner of Section 23;

THENCE North 00 degrees 05 minutes 59 seconds West along said West line, a distance of 2043.82 feet to the West quarter corner of said Section 23;

THENCE North 00 degrees 05 minutes 41 seconds West along said West line, a distance of 2632.79 feet to the Northwest corner of Section 23, said point also being the point of beginning;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of

PARCEL DESCRIPTION

commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

Unofficial Document

PARCEL NO. 16:

That portion of Sections 23 and 24, Township 2 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

BEGINNING at the Northwest corner of said Section 24, said point bearing South 00 degrees 01 minutes 18 seconds East, a distance of 6.60 feet from a G.L.O. brass cap witness corner;

THENCE South 89 degrees 44 minutes 26 seconds East along the North line of said Section 24, a distance of 810.49 feet;

THENCE South 02 degrees 00 minutes 00 seconds East, a distance of 1065.56 feet to a point of curvature of a tangent curve concave to the East;

THENCE Southerly along the arc of said curve to the left, having a radius of 4400.00 feet, a central angle of 12 degrees 33 minutes 16 seconds, and an arc length of 964.11 feet to a non-tangent line, a radial line of said curve through said point having a bearing of South 75 degrees 26 minutes 44 seconds West;

THENCE South 67 degrees 14 minutes 01 seconds West, a distance of 1068.51 feet to a point on the West line of the Southwest quarter corner of said Section 24;

THENCE continuing South 67 degrees 14 minutes 01 seconds West, a distance of 1246.97 feet;

THENCE North 00 degrees 01 minutes 18 seconds West, a distance of 1216.34 feet;

THENCE North 53 degrees 00 minutes 55 seconds West, a distance of 2857.55 feet to a point on the North line of the

PARCEL DESCRIPTION

Northwest corner of said Section 23;

THENCE South 89 degrees 47 minutes 21 seconds East, a distance of 788.00 feet to the North quarter corner of said Section 23:

Unofficial Document

THENCE South 89 degrees 39 minutes 30 seconds East along the North line of said Section 23, a distance of 2644.01 feet to the Northeast corner of Section 23, said point also being the point of beginning;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 17:

That portion of Section 24, Township 2 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, lying Northerly of the following described property:

BEGINNING at the Southeast corner of said Section 24, said point being a G.L.O. brass cap;

THENCE South 01 degrees 16 minutes 12 seconds West, a distance of 12.38 feet to a point on the arc of a non-tangent curve concave to the North, a radial line of said curve through said point having a bearing of South 00 degrees 25 minutes 09 seconds East;

THENCE Westerly along the arc of said curve to the right, having a radius of 4400.00 feet, a central angle of 05 degrees 01 minutes 39 seconds, and an arc length of 386.07 feet to a point on the South line of said Section 24;

PARCEL DESCRIPTION

THENCE continuing Northwesterly along the arc of said curve to the right, having a radius 4400.00 feet, a central angle of 70 degrees 50 minu[boilerplate: Unofficial Document] arc length of 5439.92 feet to a non-tangent line, a radial line of said curve through said point having a bearing of South 75 degrees 26 minutes 44 seconds West;

THENCE North 75 degrees 23 minutes 57 seconds East, a distance of 4425.12 feet to a point on the East line of the Northeast quarter of said Section 24;

THENCE South 00 degrees 08 minutes 44 seconds East along said East line, a distance of 1757.45 feet to the East quarter corner of said Section 24, which bears North 00 degrees 56 minutes 58 seconds West along the East line of the Southeast quarter of said Section 24, a distance of 19.93 feet from the West quarter corner of Section 19, Township 2 North, Range 2 West;

THENCE South 00 degrees 05 minutes 59 seconds East along said East line, a distance of 2639.86 feet to the Southeast corner of said Section 24, said point also being the point of beginning;

EXCEPT the following described property:

BEGINNING at the Northwest corner of said Section 24, said point bearing South 00 degrees 01 minutes 18 seconds East, a distance of 6.60 feet from a G.L.O. brass cap witness corner;

THENCE South 89 degrees 44 minutes 26 seconds East along the North line of said Section 24, a distance of 810.49 feet;

THENCE South 02 degrees 00 minutes 00 seconds East, a distance of 1065.56 feet to a point of curvature of a tangent curve concave to the East;

THENCE Southerly along the arc of said curve to the left, having a radius of 4400.00 feet, a central angle of 12

PARCEL DESCRIPTION

degrees 33 minutes 16 seconds, and an arc length of 964.11 feet to a non-tangent line, a radial line of said curve through said point having a bearing of South 75 degrees 26 minutes 44 seconds West;

Unofficial Document

THENCE South 67 degrees 14 minutes 01 seconds West, a distance of 1068.51 feet to a point on the West line of the Southwest quarter corner of said Section 24;

THENCE continuing South 67 degrees 14 minutes 01 seconds West, a distance of 1246.97 feet;

THENCE North 00 degrees 01 minutes 18 seconds West, a distance of 1216.34 feet;

THENCE North 53 degrees 00 minutes 55 seconds West, a distance of 2857.55 feet to a point on the North line of the Northwest corner of said Section 23;

THENCE South 89 degrees 47 minutes 21 seconds East, a distance of 788.00 feet to the North quarter corner of said Section 23;

THENCE South 89 degrees 39 minutes 30 seconds East along the North line of said Section 23, a distance of 2644.01 feet to the Northeast corner of Section 23, said point also being the point of beginning;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL DESCRIPTION

Revised June 14, 1999
June 7, 1999
WP #97678.03

PARCEL NO. 18:

That portion of Sections 24 and 25, Township 2 North, Range 3 West and Section 30, Township 2 North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Unofficial Document

BEGINNING at the Northwest corner of said Section 30, said point being a G.L.O. brass cap;

THENCE South 04 degrees 14 minutes 18 seconds East, a distance of 672.77 feet to a point of curvature of a tangent curve to the East;

THENCE Southerly along the arc of said curve to the left, having a radius of 1500.00 feet, a central angle of 15 degrees 36 minutes 40 seconds, and an arc length of 408.70 feet to a point of tangency;

THENCE South 19 degrees 50 minutes 58 seconds East, a distance of 794.67 feet to a point of curvature of a tangent curve concave to the West;

THENCE Southerly along the arc of said curve to the right, having a radius of 1500.00 feet, a central angle of 37 degrees 50 minutes 47 seconds, and an arc length of 990.81 feet to a non-tangent line, a radial line of said curve through said point having a bearing of South 72 degrees 00 minutes 12 seconds East;

THENCE South 75 degrees 41 minutes 52 seconds West, a distance of 5874.45 feet to a point on the West line of the Southwest quarter corner of said Section 25;

THENCE North 00 degrees 04 minutes 18 seconds West along said West line, a distance of 1639.32 feet to the West quarter corner of said Section 25;

PARCEL DESCRIPTION

THENCE North 00 degrees 01 minutes 21 seconds West along said West line, a distance of 2637.50 feet to the Northwest corner of said Section 25;

Unofficial Document

THENCE South 89 degrees 44 minutes 36 seconds East along the North line of said Section 25, a distance of 1000.00 feet;

THENCE North 44 degrees 09 minutes 57 seconds East, a distance of 1689.79 feet to a point on the arc of a non-tangent curve concave to the Northeast, a radial line of said curve through said point having a bearing of South 44 degrees 09 minutes 57 seconds West;

THENCE Southeasterly along the arc of said curve to the left, having a radius of 4400.00 feet, a central angle of 39 degrees 33 minutes 28 seconds, and an arc length of 3037.82 feet to a point of curvature of a curve concave to the North, said point being a point on the South line of the Southeast quarter of said Section 24;

THENCE continuing Southeasterly along the arc of said curve to the left, having a radius of 4400.00 feet, a central angle of 05 degrees 01 minutes 39 seconds, and an arc length of 386.07 feet to the point of beginning;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 19:

That portion of Sections 24 and 25, Township 2 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

PARCEL DESCRIPTION

BEGINNING at the Southeast corner of said Section 24, said point being a G.L.O. brass cap;

THENCE South 01 degrees 16 minutes 12 seconds West, a distance of 12.38 feet to a p[illegible] n-tangent curve concave to the North, a radial line of said curve through said point having a bearing of South 00 degrees 25 minutes 09 seconds East;

Unofficial Document

THENCE Westerly along the arc of said curve to the right, having a radius of 4400.00 feet, a central angle of 05 degrees 01 minutes 39 seconds, and an arc length of 386.07 feet to a point on the South line of said Section 24;

THENCE continuing Northwesterly along the arc of said curve to the right, having a radius of 4400.00 feet, a central angle of 70 degrees 50 minutes 15 seconds, and an arc length of 5439.92 feet to a non-tangent line, a radial line of said curve through said point having a bearing of South 75 degrees 26 minutes 44 seconds West;

THENCE North 75 degrees 23 minutes 57 seconds East, a distance of 4425.12 feet to a point on the East line of the Northeast quarter of said Section 24;

THENCE South 00 degrees 08 minutes 44 seconds East along said East line, a distance of 1757.45 feet to the East quarter corner of said Section 24, which bears North 00 degrees 56 minutes 58 seconds West along the East line of the Southeast quarter of said Section 24, a distance of 19.93 feet from the West quarter corner of Section 19, Township 2 North, Range 2 West;

THENCE South 00 degrees 05 minutes 59 seconds East along said East line, a distance of 2639.86 feet to the Southeast corner of said Section 24, said point also being the point of beginning;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential

PARCEL DESCRIPTION

to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 20:

Unofficial Document

Lots 1, 2, 3 and 4, the South half of the North half, and the South half of Section 3, Township 2 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

PARCEL NO. 21:

Sections 10, 11, 12 and 13, Township 2 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

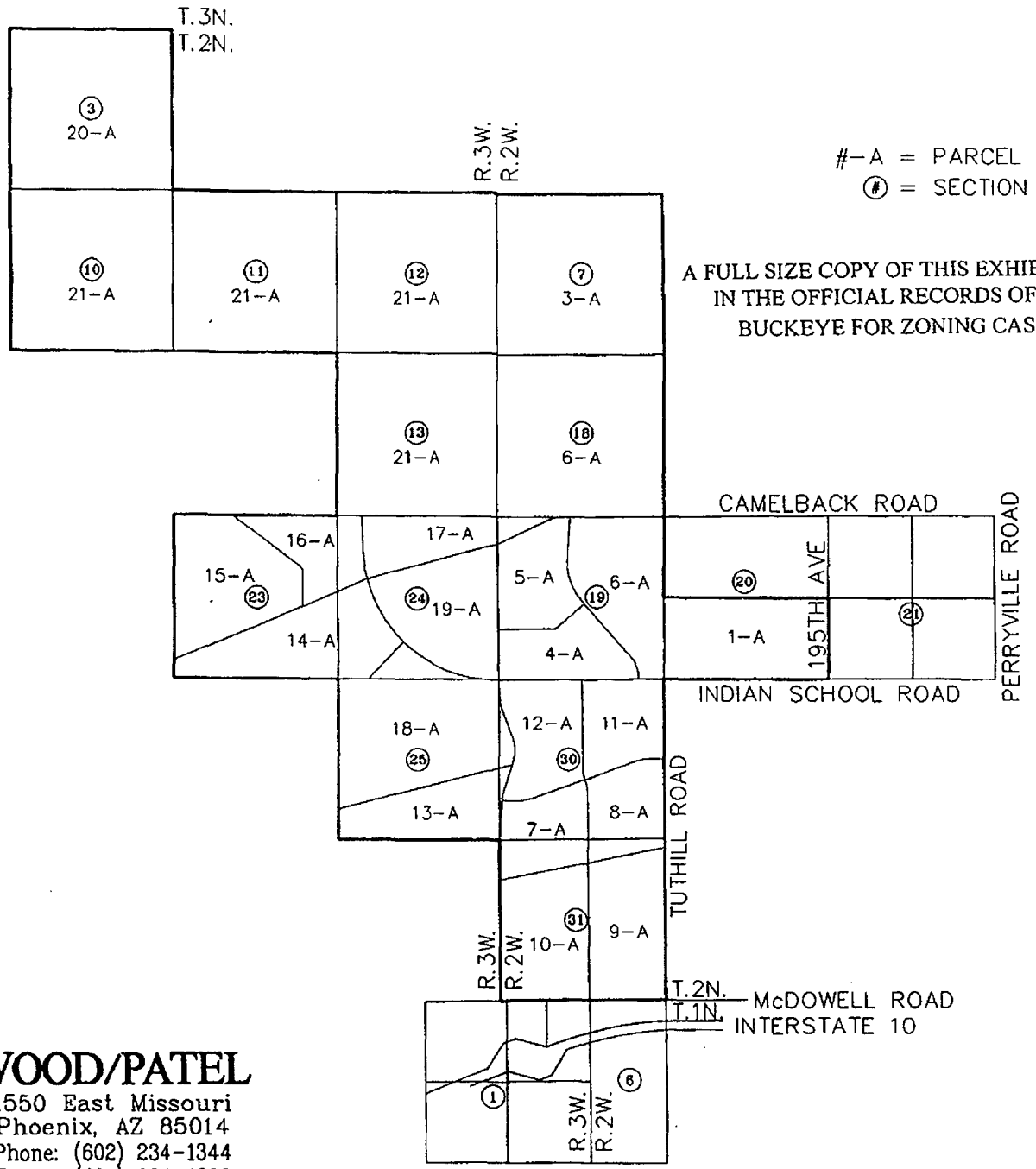
EXCEPTING THEREFROM all uranium, thorium, or any other material which is or may be determined by the laws of the State, the United States, or competent judicial decision of Federal or State of Arizona Court to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, as reserved in the Patent to said land recorded June 30, 1978 in Docket 13003, page 205.

Containing 8639.41 acres, or 376,332,700 square feet of land, more or less.

All parcels subject to existing rights-of-way and easements.

Y:\WP\LEGALS\97678.03.CaterpillarProvingGrounds.wpd





#-A = PARCEL A LEGAL DESCRIPTION
(#) = SECTION NUMBER

A FULL SIZE COPY OF THIS EXHIBIT IS AVAILABLE IN THE OFFICIAL RECORDS OF THE TOWN OF BUCKEYE FOR ZONING CASE CMP-99-22

N

Unofficial Document

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27239
THOMAS R.
GETTINGS
Date Signed 6-14-99
ARIZONA, U.S.A.

WOOD/PATEL
1550 East Missouri
Phoenix, AZ 85014
Phone: (602) 234-1344
Fax: (602) 234-1322

EXHIBIT "A"
Parcel "A"
CATERPILLAR
06-14-99
97678.03
PAGE 27 OF 27
NOT TO SCALE
T:\980708\LEGAL\0708L4

19991071208

WOOD/PATEL

CIVIL ENGINEERS • HYDROLOGISTS • LAND SURVEYORS

Darrel E. Wood, P.E., R.L.S.
Ashok C. Patel, P.E., R.L.S.
James S. Campbell, P.E.
Gordon W. R. Wark, P.E.
Thomas R. Gettings, R.L.S.
Bruce Friedhoff, P.E.
Scott A. Nelson, R.L.S.
Richard L. Hiner, P.E.
Timothy A. Huval, P.E.
Michael J. Sexton, R.L.S.
Jack K. Moody, P.E.
Leslie J. Kland, P.E.
Curtis L. Brown, P.E.
R. Scott Rasmussen, P.E.
Paul M. Haas, P.E.
Shimin Zou, Ph.D., P.E.
David T. Phelps, P.E.
Michael T. Young, P.E.
Shawn D. Gustafson, P.E.

Revised June 14, 1999
June 7, 1999
WP #97678.03

See Exhibit "B"

EXHIBIT "A"
PARCEL DESCRIPTION
PARCEL "B"

Unofficial Document

A parcel of land lying within Section 6, Township 1 North, Range 2 West, of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the northwest corner of said Section 6, said point also being the POINT OF BEGINNING of the herein described parcel;

THENCE along the north line of Section 6 per the Results of Survey as recorded in Book 499, page 48, Maricopa County Records, North 89 degrees 57 minutes 39 seconds East, a distance of 2437.60 feet to the northwest corner of Parcel No. 3 of a Quit-Claim Deed as recorded in Docket 10822, page 9, Maricopa County Records;

THENCE leaving said north line, along the westerly line of said Parcel No. 3, South 14 degrees 06 minutes 52 seconds East, a distance of 206.19 feet, to the southeast corner of said Parcel No. 3 and to a point on the east line of Section 6 per said Results of Survey;

THENCE leaving said westerly line, along said east line, South 00 degrees 04 minutes 51 seconds East, a distance of 491.44 feet, to a point on the northerly right-of-way line of Interstate 10 and the beginning of a non-tangent curve;

THENCE leaving said east line, along said right-of-way line, westerly along said curve, having a radius of 11602.57 feet, concave southerly, whose radius bears South 02 degrees 39 minutes 27 seconds East, through a central angle of 12 degrees 26 minutes 54 seconds, a distance of 2520.84 feet, to a point on the west line of Section 6 per said Results of Survey, and a point of intersection with a non-tangent line;

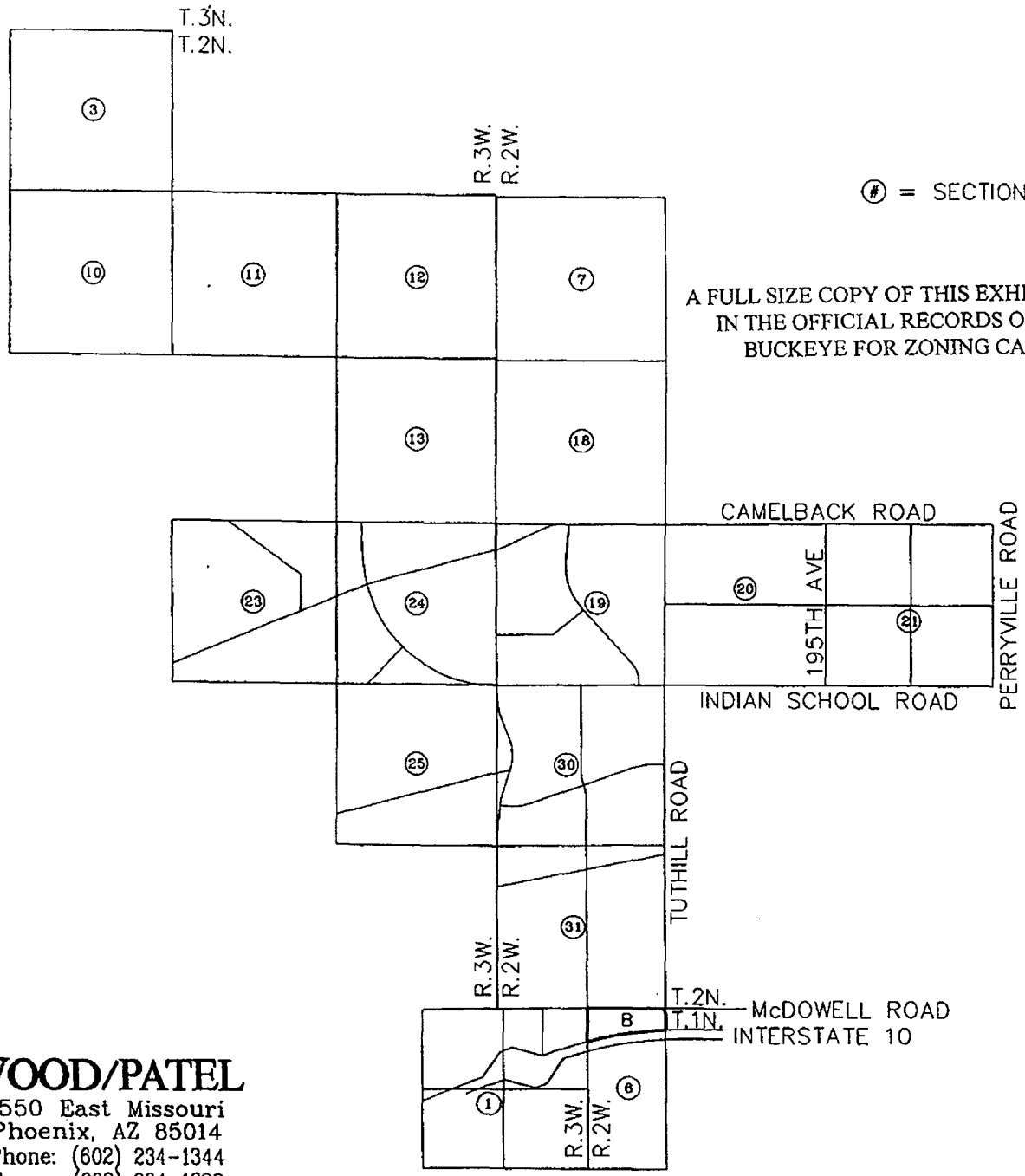
THENCE leaving said northerly right-of-way line, along said west line, North 00 degrees 09 minutes 05 seconds West, a distance of 1078.18 feet, to the POINT OF BEGINNING.

Containing 47.77 acres, or 2,080,805 square feet of land, more or less.

Subject to existing rights-of-way and easements.

Y:\WP\LEGALS\97678.03.CaterpillarParcelB.wpd

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27239
THOMAS R. GETTINGS
Date Signed 6-14-99
ARIZONA, U.S.A.



Unofficial Document

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27239
THOMAS R.
GETTINGS
Date Signed 6-14-99
ARIZONA, U.S.A.

WOOD/PATEL
1550 East Missouri
Phoenix, AZ 85014
Phone: (602) 234-1344
Fax: (602) 234-1322

EXHIBIT "A"
Parcel "B"
CATERPILLAR
06-14-99
97678.03
PAGE 2 OF 2
NOT TO SCALE
T:\980708\LEGAL\0708L4

19991071208

WOOD/PATEL

CIVIL ENGINEERS • HYDROLOGISTS • LAND SURVEYORS

Darrel E. Wood, P.E., R.L.S.
Ashok C. Patel, P.E., R.L.S.
James S. Campbell, P.E.
Gordon W. R. Wark, P.E.
Thomas R. Gettings, R.L.S.
Bruce Friedhoff, P.E.
Scott A. Nelson, R.L.S.
Richard L. Hiner, P.E.
Timothy A. Huval, P.E.
Michael J. Sexton, R.L.S.
Jack K. Moody, P.E.
Leslie J. Kland, P.E.
Curtis L. Brown, P.E.
R. Scott Rasmussen, P.E.
Paul M. Haas, P.E.
Shimin Zou, Ph.D., P.E.
David T. Phelps, P.E.
Michael T. Young, P.E.
Shawn D. Gustafson, P.E.

Revised June 14, 1999
June 7, 1999
WP #97678.03

See Exhibit "C"

EXHIBIT "A"
PARCEL DESCRIPTION
PARCEL "C"

Unofficial Document

PARCEL NO. 1:

The West 1240.84 feet of the following described parcel:

Lots 1 and 2, and the South half of the Northeast quarter of Section 1, Township 1 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, lying North of the land conveyed to the State of Arizona by and through the Department of Transportation in Docket 11015, page 374 and in Docket 11052, page 724.

PARCEL NO. 2:

Lots 1 and 2, and the South half of the Northeast quarter of Section 1, Township 1 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, lying North of the land conveyed to the State of Arizona by and through the Department of Transportation in Docket 11015, page 374 and in Docket 11052, page 724;

EXCEPT the West 1240.84 feet.

PARCEL NO. 3:

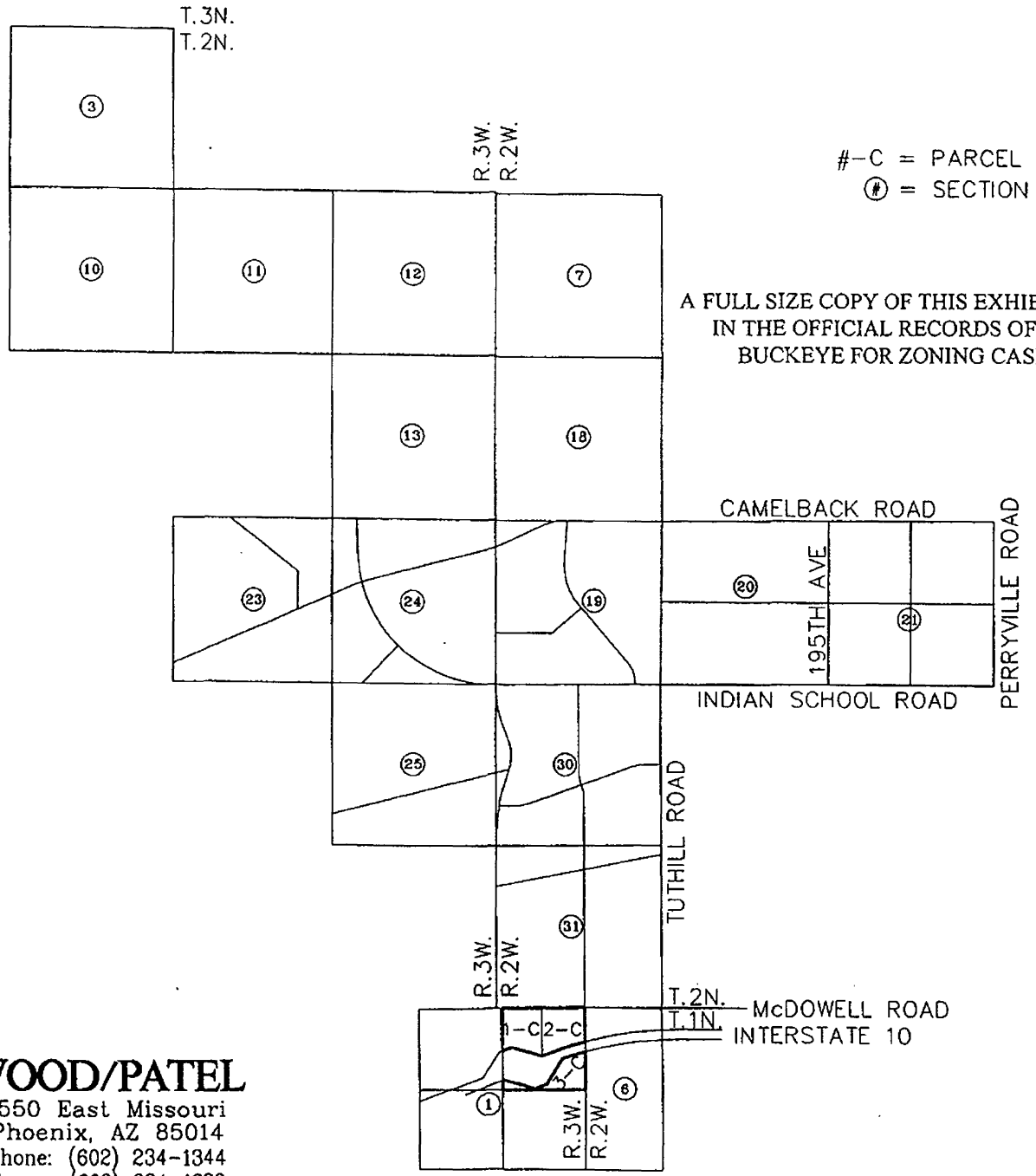
The Northeast quarter of Section 1, Township 1 North, Range 3 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, lying South of the land conveyed to the State of Arizona by and through the Department of Transportation in Docket 11015, page 374 and in Docket 11052, page 724.

Containing 111.87 acres, or 4,872,970 square feet of land, more or less.

All parcels subject to existing rights-of-way and easements.

Y:\WPLEGALS\97678.03 CaterpillarParcelC.wpd

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27239
THOMAS R.
GETTINGS
Date Signed: 6/14/99
ARIZONA, U.S.A.



Unofficial Document

REGISTERED LAND SURVEYOR
CERTIFICATE NO.
27239
THOMAS R.
GETTINGS
Date Signed 6-14-99
ARIZONA, U.S.A.

WOOD/PATEL
1550 East Missouri
Phoenix, AZ 85014
Phone: (602) 234-1344
Fax: (602) 234-1322

EXHIBIT "A"
Parcel "C"
CATERPILLAR
06-14-99
97678.03
PAGE 2 OF 2
NOT TO SCALE
T:\980708\LEGAL\0708L4

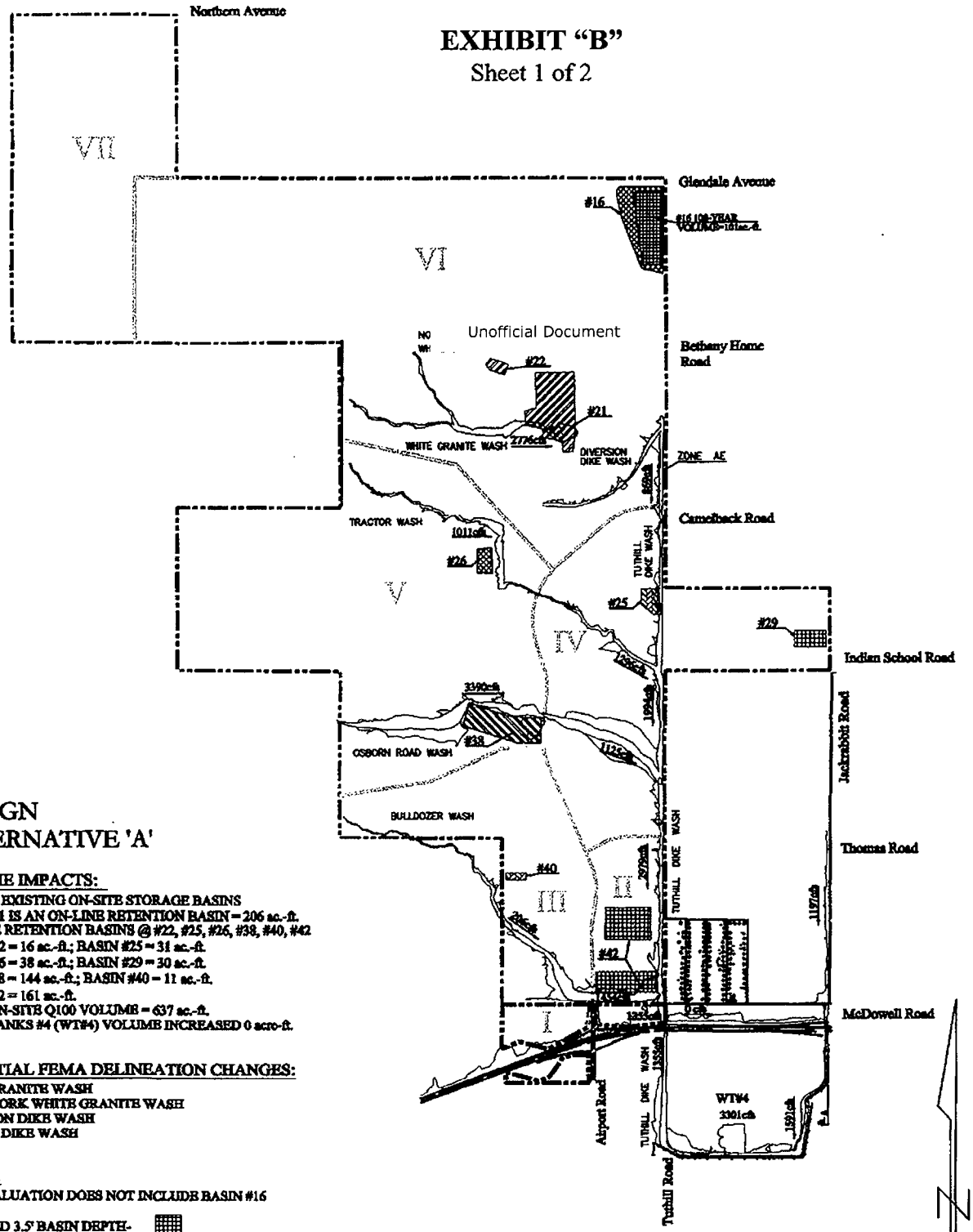
19991071208

Unofficial Document

EXHIBIT B
MASTER DRAINAGE PLAN

EXHIBIT "B"

Sheet 1 of 2



DESIGN ALTERNATIVE 'A'

VOLUME IMPACTS:

REMOVE EXISTING ON-SITE STORAGE BASINS
BASIN #21 IS AN ON-LINE RETENTION BASIN = 206 ac.-ft.
OFF-LINE RETENTION BASINS @ #22, #25, #26, #38, #40, #42
BASIN #22 = 16 ac.-ft.; BASIN #25 = 31 ac.-ft.
BASIN #26 = 38 ac.-ft.; BASIN #29 = 30 ac.-ft.
BASIN #38 = 144 ac.-ft.; BASIN #40 = 11 ac.-ft.
BASIN #42 = 161 ac.-ft.
TOTAL ON-SITE Q100 VOLUME = 637 ac.-ft.
WHITE TANKS #4 (WT#4) VOLUME INCREASED 0 acre-ft.

POTENTIAL FEMA DELINEATION CHANGES:

WHITE GRANITE WASH
NORTH FORK WHITE GRANITE WASH
DIVERSION DIKE WASH
TUTHILL DIKE WASH

NOTES:

THIS EVALUATION DOES NOT INCLUDE BASIN #16

PROPOSED 3.5' BASIN DEPTH-
PROPOSED 4.5' BASIN DEPTH-
PROPOSED 5.0' BASIN DEPTH-
PROPOSED 5.5' BASIN DEPTH-
PROPOSED 6.5' BASIN DEPTH-
100-YEAR DISCHARGE- 2000cfs

A FULL SIZE COPY OF THIS EXHIBIT IS AVAILABLE IN THE OFFICIAL RECORDS OF THE TOWN OF BUCKEYE FOR ZONING CASE CMP-99-22

4000 0 2000 4000

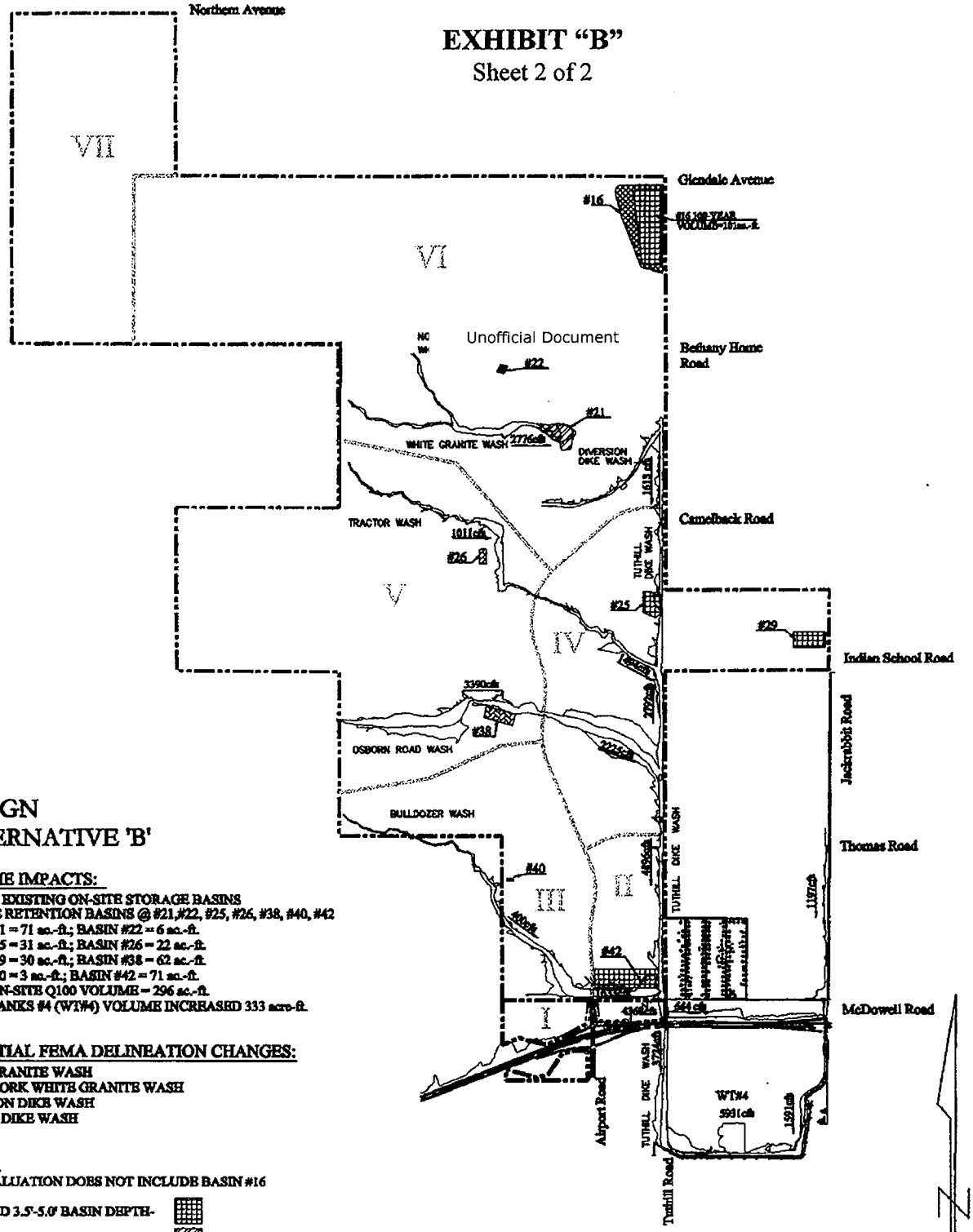
DMB

MASTER DRAINAGE PLAN - A
CATERPILLAR PROPERTY
BUCKEYE, ARIZONA

WOOD, PATEL & ASSOCIATES INC.
Civil Engineers, Hydrologist and Land Surveyors
(602) 234-1344

EXHIBIT "B"

Sheet 2 of 2



DESIGN ALTERNATIVE 'B'

VOLUME IMPACTS:

REMOVE EXISTING ON-SITE STORAGE BASINS
OFF-LINE RETENTION BASINS @ #21,#22, #25, #26, #38, #40, #42
BASIN #21 = 71 ac.-ft.; BASIN #22 = 6 ac.-ft.
BASIN #25 = 31 ac.-ft.; BASIN #26 = 22 ac.-ft.
BASIN #29 = 30 ac.-ft.; BASIN #38 = 62 ac.-ft.
BASIN #40 = 3 ac.-ft.; BASIN #42 = 71 ac.-ft.
TOTAL ON-SITE Q100 VOLUME = 296 ac.-ft.
WHITE TANKS #4 (WT#4) VOLUME INCREASED 333 acre-ft.

POTENTIAL FEMA DELINEATION CHANGES:

WHITE GRANITE WASH
NORTH FORK WHITE GRANITE WASH
DIVERSION DIKE WASH
TUTHILL DIKE WASH

NOTES:

THIS EVALUATION DOES NOT INCLUDE BASIN #16

PROPOSED 3.5'-5.0' BASIN DEPTH-

PROPOSED 7.0'-9.2' BASIN DEPTH-

PROPOSED 12.8' BASIN DEPTH-

100-YEAR DISCHARGE- 2000cfs

A FULL SIZE COPY OF THIS EXHIBIT IS AVAILABLE IN THE OFFICIAL RECORDS OF THE TOWN OF BUCKEYE FOR ZONING CASE CMP-99-22

DMB

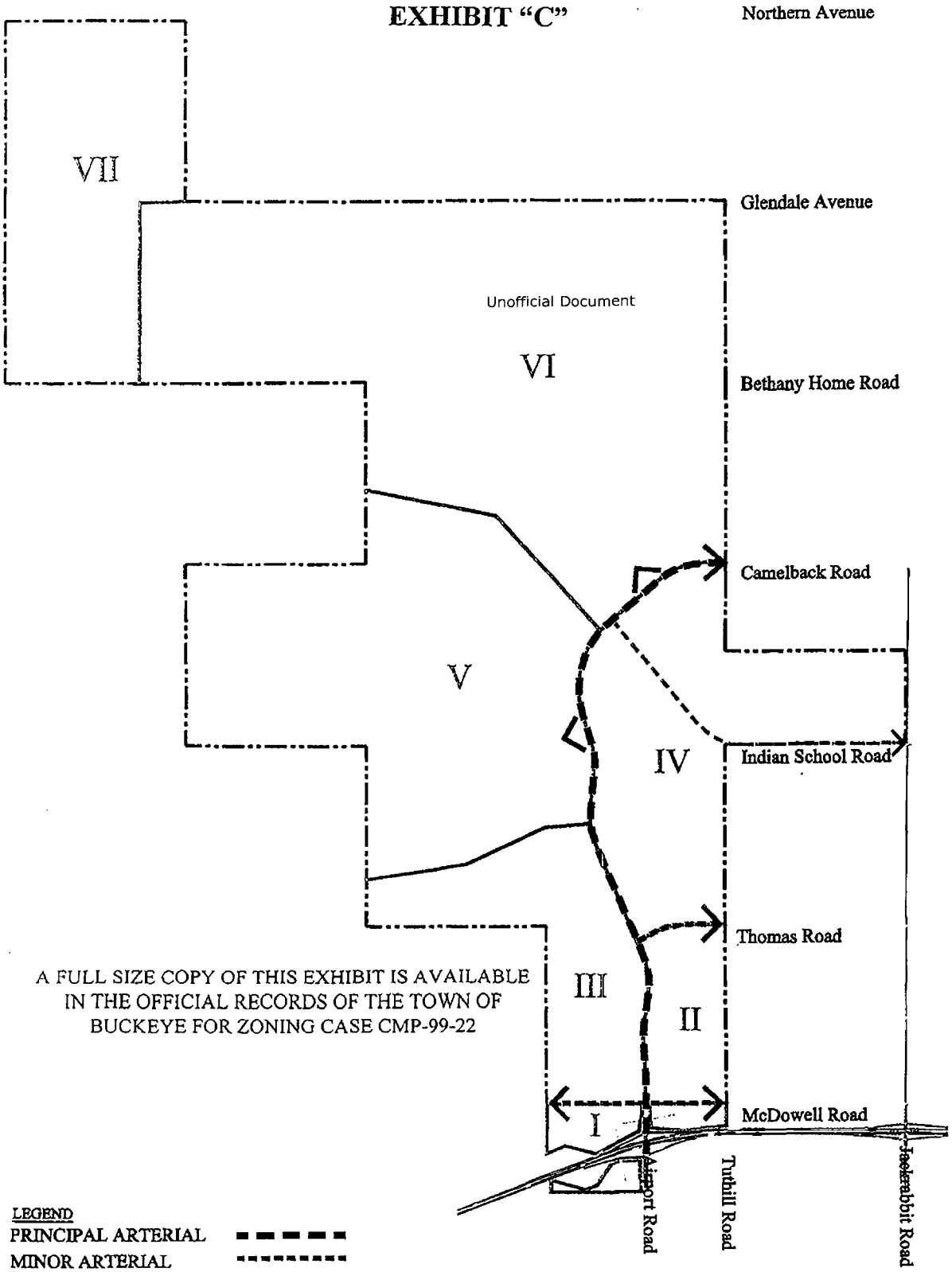
MASTER DRAINAGE PLAN - B
CATERPILLAR PROPERTY
BUCKEYE, ARIZONA

WOOD, PATEL & ASSOCIATES INC.
Civil Engineers, Hydrologist and Land Surveyors
(602) 335-8500

Unofficial Document

EXHIBIT C
MASTER STREET
AND CIRCULATION PLAN

EXHIBIT "C"



A FULL SIZE COPY OF THIS EXHIBIT IS AVAILABLE IN THE OFFICIAL RECORDS OF THE TOWN OF BUCKEYE FOR ZONING CASE CMP-99-22

MASTER STREET & CIRCULATION PLAN

CATERPILLAR PROPERTY

MARICOPA COUNTY, ARIZONA

DMB

EDAW/VSA

3/30/99

Unofficial Document

EXHIBIT D
ROADWAY STANDARDS

Caterpillar Property
Roadway Standards
Buckeye, Arizona

Roadway Design Element	One Way Road	Local Residential			Local Collector			Minor Collector		Major Collector (minimum)		Minor Arterial (minimum)	Principal Arterial (minimum)	
		Average Lot Size			Residential		Commercial / Industrial							
		<10,000 s.f.	10,000-18,000 s.f.	>18,000 s.f.	Raised Median	No Median		Raised Median	Striped Median	Raised Median	Striped Median		(4 Lane)	(6 Lane)
Right-of-way width, ft.	-	40	40	30	70	50	60	70	60	100	100	110	130	130
Number of lanes	1	2	2	2	2	2	2	2 (*1)	3	4	5	4	4	6
Bike lanes, width to back of curb, ft.	-	-	-	-	-	-	-	-	-	6	6	6	6	6
Pavement width to back of curb, ft.:														
Vertical curb	21	28	24	22	2-21	27 (*1)	40	2-21	40	2-32	72	2-32	2-32	2-44
Roll curb	16	28	24	22	2-16	27 (*1)	-	2-16	40	-	-	-	-	-
Ribbon curb	16	28	24	21	-	26 (*1)	-	-	-	-	-	-	-	-
Median width, ft.	-	-	-	-	9 (*1,2)	-	-	12 (*2)	-	12 (*2)	-	14 (*2,6)	14 (*2)	14 (*2)
Pathway (sides of road - width)	-	1-5' (*5, 7)	1-5' (*5,7)	-	1-5' (*5)	1-5' (*5)	1-5'	1-5' (*5)	1-5' (*5)	2-6' (*5,8)	2-6' (*5,8)	2-6' (*5,8)	2-5',8' (*5)	2-5',8' (*5)
Design Speed, mph	20		20			30			35		40	45	50	
Friction factor, a	0.30		0.30			0.22			0.20		-	-	-	
Friction factor, b	-		-			-			-		0.16	0.145	0.14	
Transition for 2% superelevation, ft.	100		100			135			135		210	240	320	
Min.curve radius, normal crown, ft.	100		100			310			475		780	1100	1400	
Min. curve radius, 2% superelevation, ft.	85		85			255			385		600	850	1050	
Min.tangent between reverse curves, ft.	0		50			150 (*4)			200 (*4)		225 (*4)	250 (*4)	300 (*4)	
Min.tangent,curves in same direction, ft.	0		0			150			200		300	500	660	
Minimum curve length, ft.	100		100			150			175		225	400	500	
Min. intersection approach tangent, ft.	-		-			75			75		100	150	200	
Stopping sight distance, ft., c	125		125			200			245		305	365	440	
Passing sight distance, ft., d	800		800			1100			1300		1[illegible]	1650	1800	
Sag vertical curve, K value	19		19			36			48		[illegible]	79	100	
Crest vertical curve, K value	12		12			30			45		[illegible]	100	146	
Intersection sight distance, left (S1), ft.	240		240			295			395		[illegible]	500	650	
Intersection sight distance, right (S2), ft.	280		280			340			450		[illegible]	620	860	
Average Daily Traffic range	-		1,500 max.			1,500 - 5,000			5,000 - 15,000		15,000 [illegible]00	25,000 - 35,000	35,000 - 55,000	
Minimum Grade, %	0.25		0.25			0.25			0.25		[illegible]	0.40	0.40	
Maximum Grade, %	15 (*3)		15 (*3)			12			12		[illegible]	9	9	

Notes:
*1 Adequate left turn lanes may be required at intersections. Provide 3-lane sections in areas with many access points.
*2 Minimum width - may vary.
*3 May be exceeded with approval from the Town Engineer.
*4 If curve radii are at least 50% greater than the radii required by design speed, the tangent sections can be eliminated.
*5 Pedestrian pathways may meander into tracts or easements.
*6 Optional median
*7 Pedestrian pathways are not required on local residential streets if an alternate pedestrian transportation system is provided.
*8 A single 8-foot wide multi-use pathway may be used in lieu of two 6-foot wide pedestrian pathways.

a - Based on 1990 AASHTO Manual, Low Speed Urban Streets, p.188 (design speeds up to 40 mph).
b - Based on 1990 AASHTO Manual, High Speed Urban Highways, p. 153.
$R = V^2/15(e+f)$, where V = design speed, f = friction factor, e = -0.02 normal crown, e = 0.02 superelevated
c - Based on 1990 AASHTO Manual, stopping sight distance - wet pavements (average), p. 120.
$K = S^2/1329$ when S < L, where S = stopping sight distance, L = length of curve (for crest vertical curve determined by stopping sight distance)
$K = S^2/(400+3.5S)$ when S < L, where S = stopping sight distance, L = length of curve (for sag vertical curve determined by stopping sight distance)
d - Based on 1990 AASHTO Manual, minimum passing sight distance for design of two-lane highways, p. 133.

Unofficial Document

A FULL SIZE COPY OF THIS E[illegible]IBIT IS AVAILABLE IN THE OFFICIAL RECORDS OF THE TOWN OF BUCKEYE FOR ZONING CASE CMP-99-22

EXHIBIT "D"
Sheet 1 of 2

19991071208

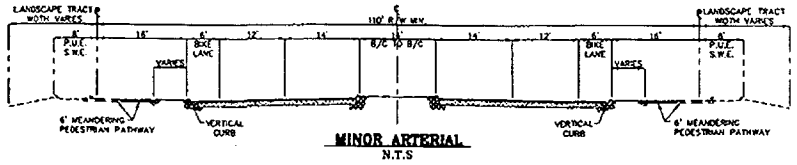
DMB

DEVELOPMENT STANDARDS

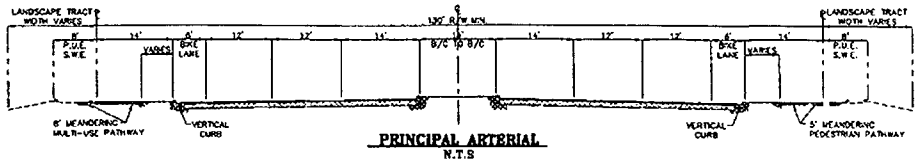
TYPICAL ROADWAY CROSS SECTIONS

CATERPILLAR PROPERTY

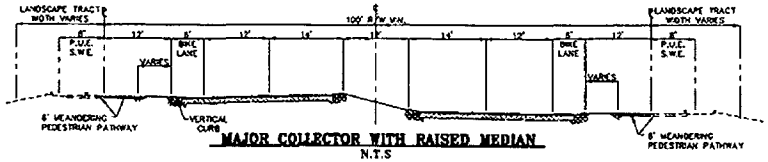
BUCKEYE, ARIZONA



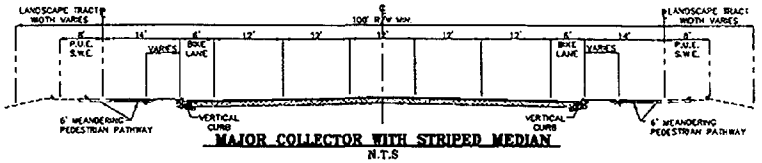
MINOR ARTERIAL
N.T.S



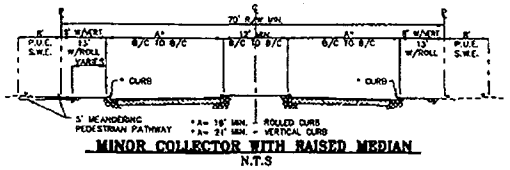
PRINCIPAL ARTERIAL
N.T.S



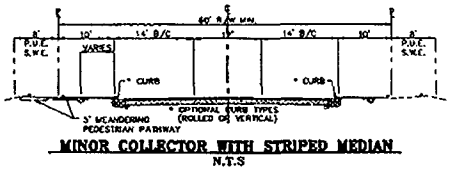
MAJOR COLLECTOR WITH RAISED MEDIAN
N.T.S



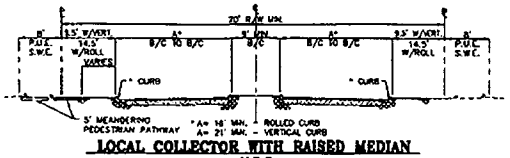
MAJOR COLLECTOR WITH STRIPED MEDIAN
N.T.S



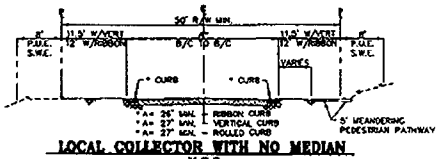
MINOR COLLECTOR WITH RAISED MEDIAN
N.T.S



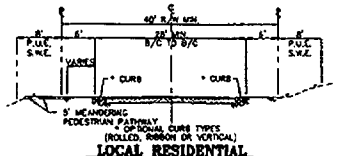
MINOR COLLECTOR WITH STRIPED MEDIAN
N.T.S



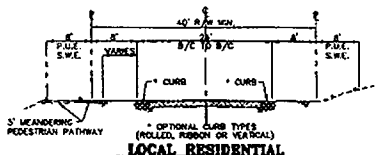
LOCAL COLLECTOR WITH RAISED MEDIAN
N.T.S



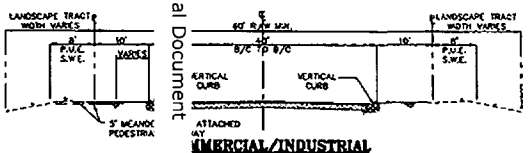
LOCAL COLLECTOR WITH NO MEDIAN
N.T.S



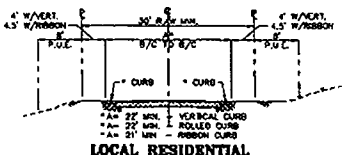
LOCAL RESIDENTIAL
(LOTS LESS THAN 10,000 S.F. AVERAGE)
N.T.S



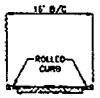
LOCAL RESIDENTIAL
(LOTS GREATER THAT 10,000 S.F. AVERAGE)
N.T.S



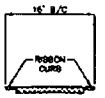
MMERCIAL/INDUSTRIAL
N.T.S



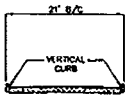
LOCAL RESIDENTIAL
(LOTS 10,000 S.F. MIN. AVERAGE)
N.T.S



ONE-WAY ROAD
N.T.S



ONE-WAY ROAD
N.T.S



ONE-WAY ROAD
N.T.S

A FULL SIZE COPY OF THIS EXHIBIT IS AVAILABLE IN THE OFFICIAL RECORDS OF THE TOWN OF BUCKEYE FOR ZONING CASE CMP-99-22

Unofficial Document

EXHIBIT "D"
Sheet 2 of 2

P.U.E. - PUBLIC UTILITY EASEMENT
S.W.E. - SIDEWALK EASEMENT

GENERAL NOTES:

1. MEDIAN WIDTH MAY EXCEED THE MINIMUM WIDTH AND MAY VARY.
2. PEDESTRIAN PATHWAYS MAY MEANDER OUTSIDE OF ROADWAY RIGHT-OF-WAY INTO LANDSCAPE TRACT OR SIDEWALK EASEMENT.
3. PEDESTRIAN PATHWAYS ARE NOT REQUIRED ON LOCAL RESIDENTIAL STREETS IF AN ALTERNATE PEDESTRIAN TRANSPORTATION SYSTEM IS PROVIDED.

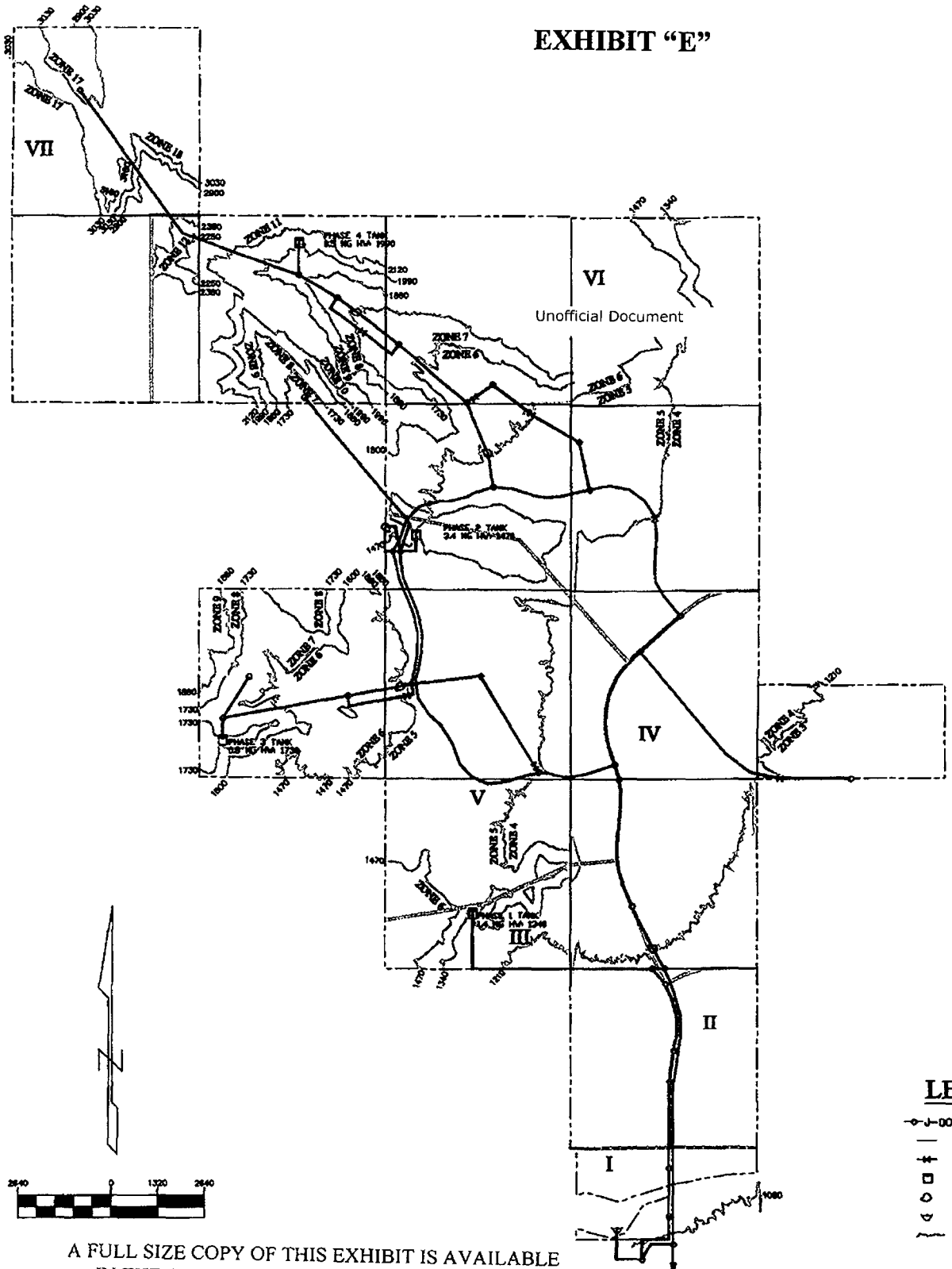
WOOD, PATEL & ASSOCIATES INC.
Civil Engineers, Hydrologists and Land Surveyors
(602) 234-1344

19991071208

Unofficial Document

EXHIBIT E
MASTER POTABLE WATER PLAN

EXHIBIT "E"



Unofficial Document

LEGEND

- J-000 – NODE
- – WATER PIPE
- – PRESSURE REDUCING VALVE
- – STORAGE TANK
- – BOOSTER PUMP
- – MAIN BOOSTER STATION
- – PRESSURE ZONE BOUNDARY

2640 0 1320 2640

A FULL SIZE COPY OF THIS EXHIBIT IS AVAILABLE IN THE OFFICIAL RECORDS OF THE TOWN OF BUCKEYE FOR ZONING CASE CMP-99-22

DMB

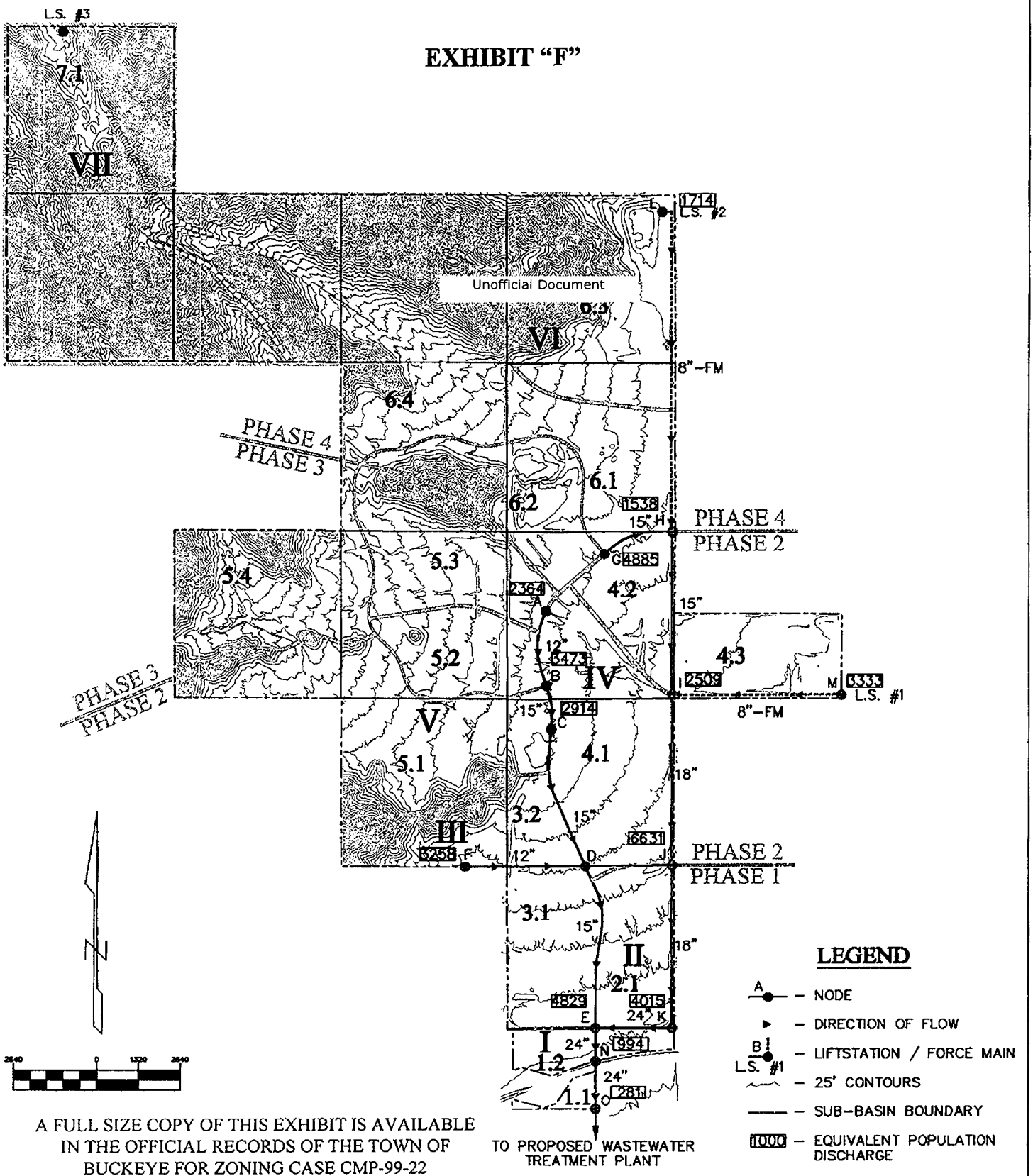
MASTER WATER PLAN
CATERPILLAR PROPERTY
BUCKEYE, ARIZONA

WOOD, PATEL & ASSOCIATES INC.
Civil Engineers, Hydrologist and Land Surveyors
(602) 234-1344

Unofficial Document

EXHIBIT F
MASTER WASTEWATER PLAN

EXHIBIT "F"



A FULL SIZE COPY OF THIS EXHIBIT IS AVAILABLE IN THE OFFICIAL RECORDS OF THE TOWN OF BUCKEYE FOR ZONING CASE CMP-99-22

DMB

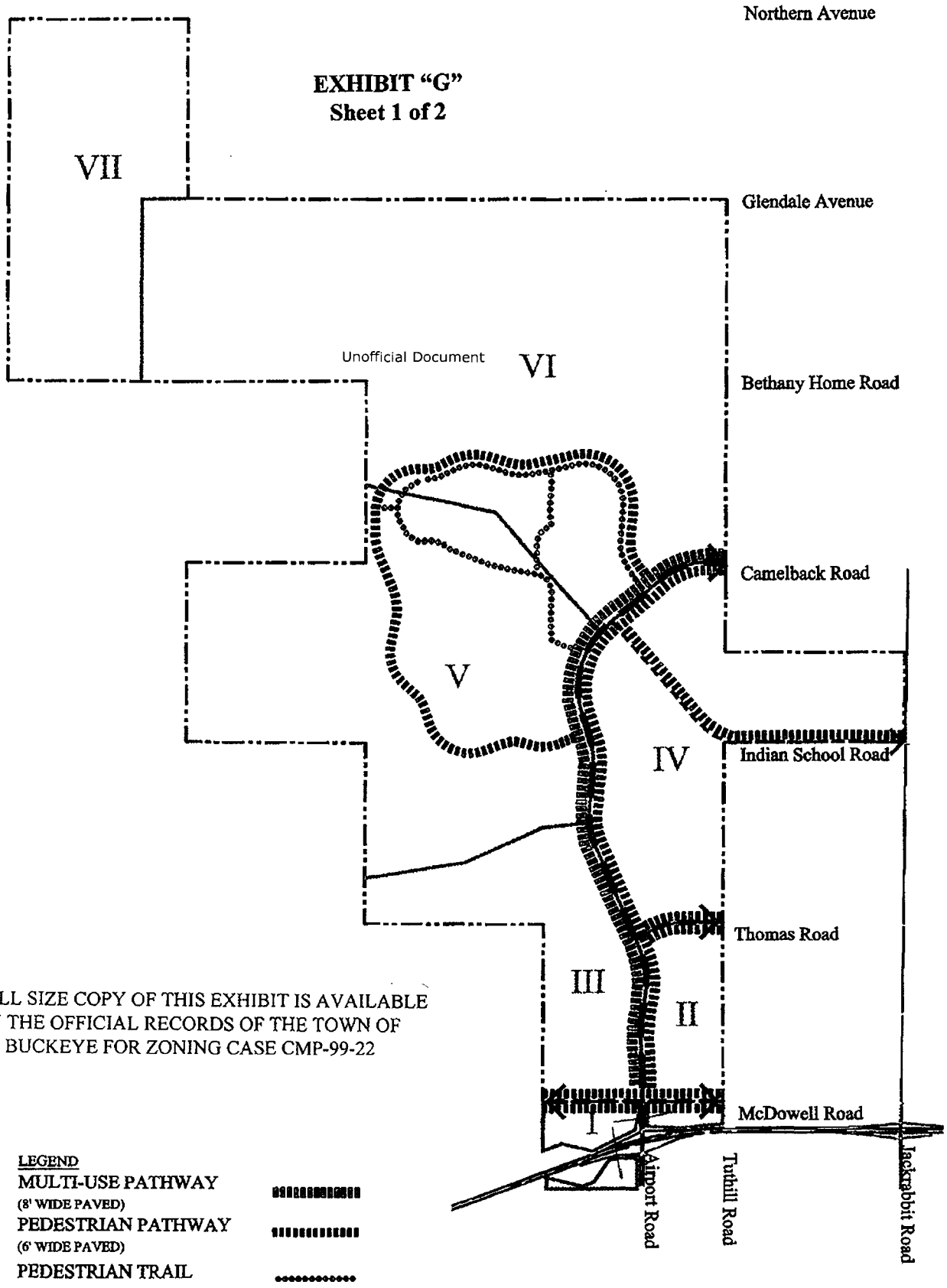
MASTER WASTERWATER PLAN
CATERPILLAR PROPERTY
BUCKEYE, ARIZONA

WOOD, PATEL & ASSOCIATES INC.
Civil Engineers, Hydrologist and Land Surveyors
(602) 234-1344

Unofficial Document

EXHIBIT G
MASTER PEDESTRIAN AND TRAILS PLAN

EXHIBIT "G"
Sheet 1 of 2



Unofficial Document

A FULL SIZE COPY OF THIS EXHIBIT IS AVAILABLE IN THE OFFICIAL RECORDS OF THE TOWN OF BUCKEYE FOR ZONING CASE CMP-99-22

LEGEND
MULTI-USE PATHWAY (8' WIDE PAVED)
PEDESTRIAN PATHWAY (6' WIDE PAVED)
PEDESTRIAN TRAIL

DMB

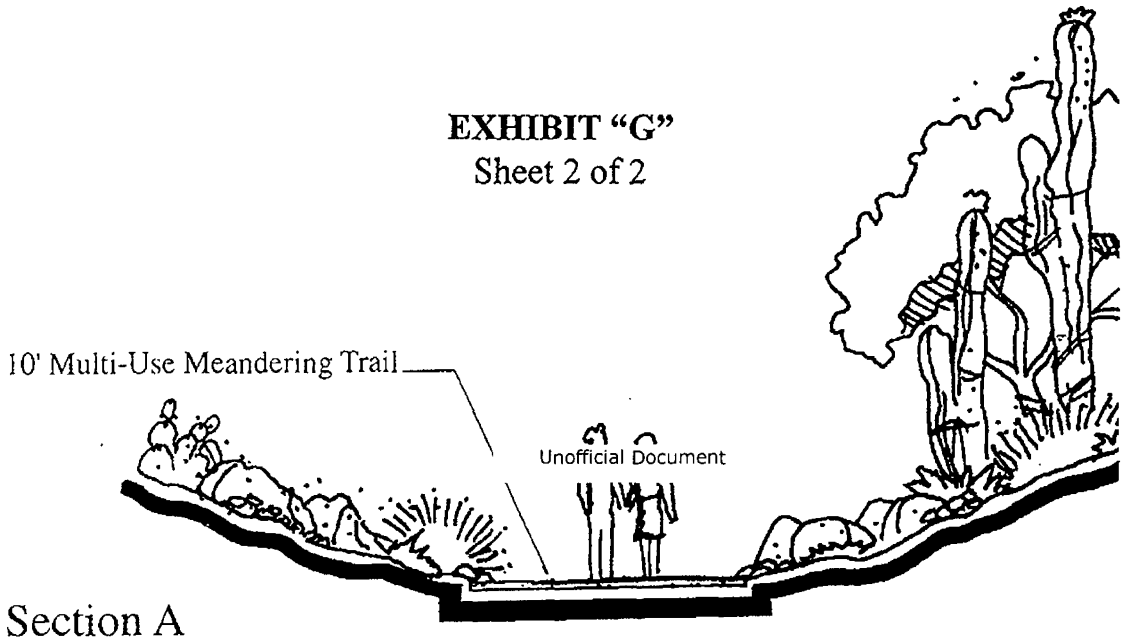
MASTER PEDESTRIAN AND TRAILS PLAN

CATERPILLAR PROPERTY

BUCKEYE, ARIZONA

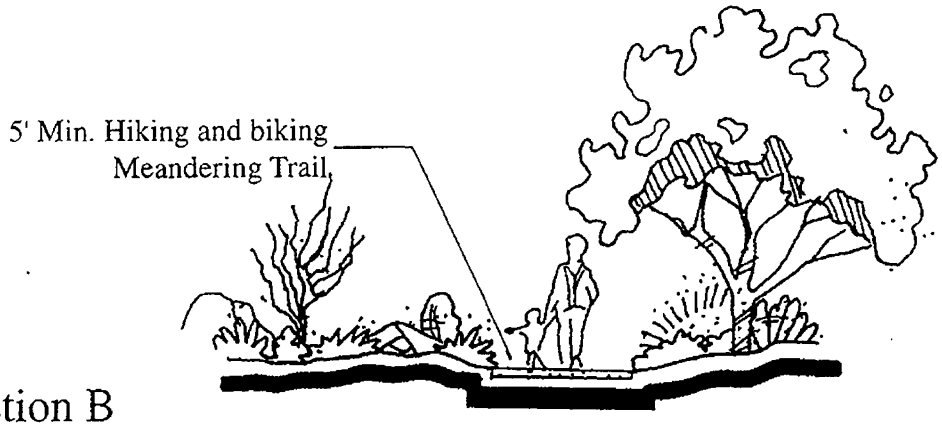
EDAW/VSA

EXHIBIT "G"
Sheet 2 of 2



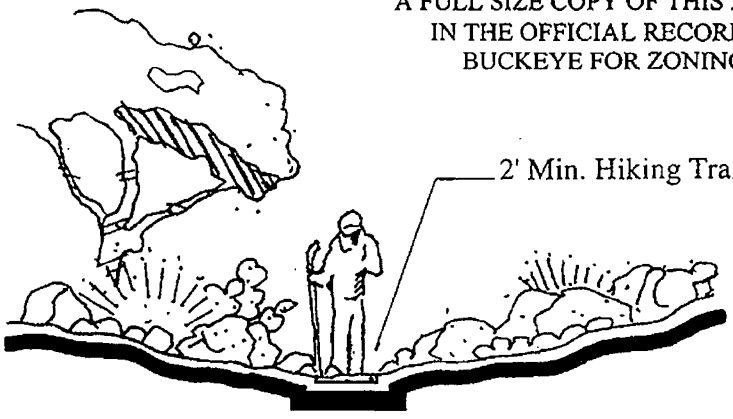
Unofficial Document

Section A
Multi-Use Trail (Unpaved)



Section B
Pedestrian Trail (Unpaved)

A FULL SIZE COPY OF THIS EXHIBIT IS AVAILABLE IN THE OFFICIAL RECORDS OF THE TOWN OF BUCKEYE FOR ZONING CASE CMP-99-22



Section C
Hiking Trail (Unpaved)

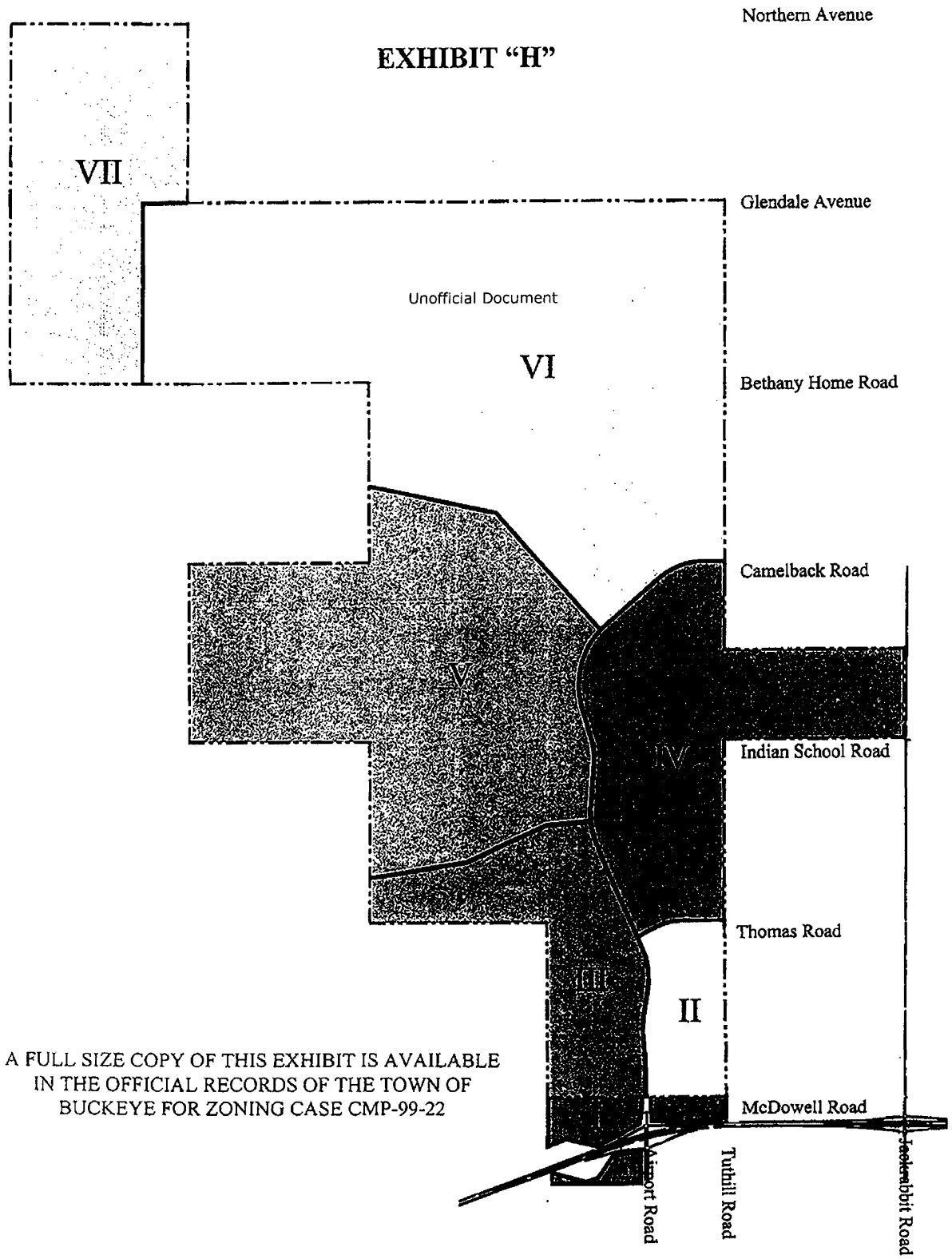
MASTER PEDESTRIAN AND TRAIL SECTIONS

CATERPILLAR PROPERTY

Unofficial Document

EXHIBIT H
PLANNING UNIT MAP

EXHIBIT "H"



A FULL SIZE COPY OF THIS EXHIBIT IS AVAILABLE IN THE OFFICIAL RECORDS OF THE TOWN OF BUCKEYE FOR ZONING CASE CMP-99-22

PLANNING UNIT MAP
CATERPILLAR PROPERTY
MARICOPA COUNTY, ARIZONA

EDAW/VSA

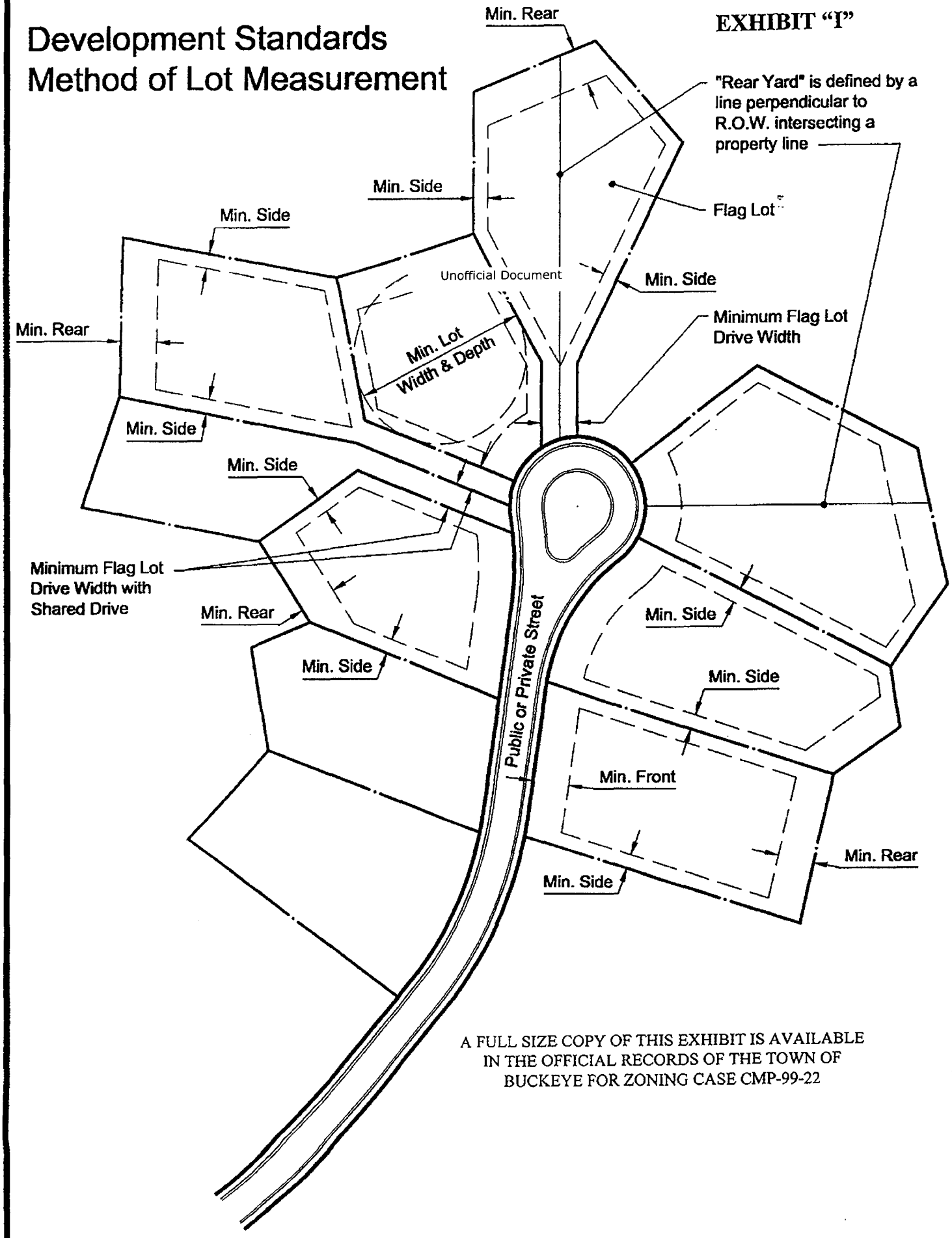
5/24/99

Unofficial Document

EXHIBIT I
METHOD OF LOT MEASUREMENT

Development Standards
Method of Lot Measurement

EXHIBIT "I"



A FULL SIZE COPY OF THIS EXHIBIT IS AVAILABLE IN THE OFFICIAL RECORDS OF THE TOWN OF BUCKEYE FOR ZONING CASE CMP-99-22

Unofficial Document

EXHIBIT J
LAND USE BUDGET

CATERPILLAR PROPERTY - *COMMUNITY MASTER PLAN*

LAND USE BUDGET

EXHIBIT "J"

Planning Unit	Total Project	Commercial/ Mixed-Use	Resort (3)	Residential (1,2)
	Acres	Proposed S.F.	Rooms	Proposed Units
I	149			
II	285	1,100,000		1,548
III	708	816,750		2,712
IV	1,227	110,000		4,428
V	2,057	272,000		2,876
VI	3,266	110,000		2,255
VII	1,108			261
TOTAL	8,800	4,028,750	1,000	14,080

Unofficial Document

Notes:

1. Residential land uses may include such uses as parks, schools, fire station, police station, library, religious facilities, etc..
2. Maximum residential density calculated at 1.6 du/gross ac. with a range of densities of 0 du/ac to 35 du/ac.
3. The resort overlay allows for up to 1000 rooms to be located in any of the planning areas. Additional resort rooms are possible at a reduction of overall residential units of .5 residential units for each additional resort unit.

A FULL SIZE COPY OF THIS EXHIBIT IS AVAILABLE
IN THE OFFICIAL RECORDS OF THE TOWN OF
BUCKEYE FOR ZONING CASE CMP-99-22

Unofficial Document

EXHIBIT K
RESIDENTIAL DWELLING UNIT BONUS TABLE

Unofficial Document

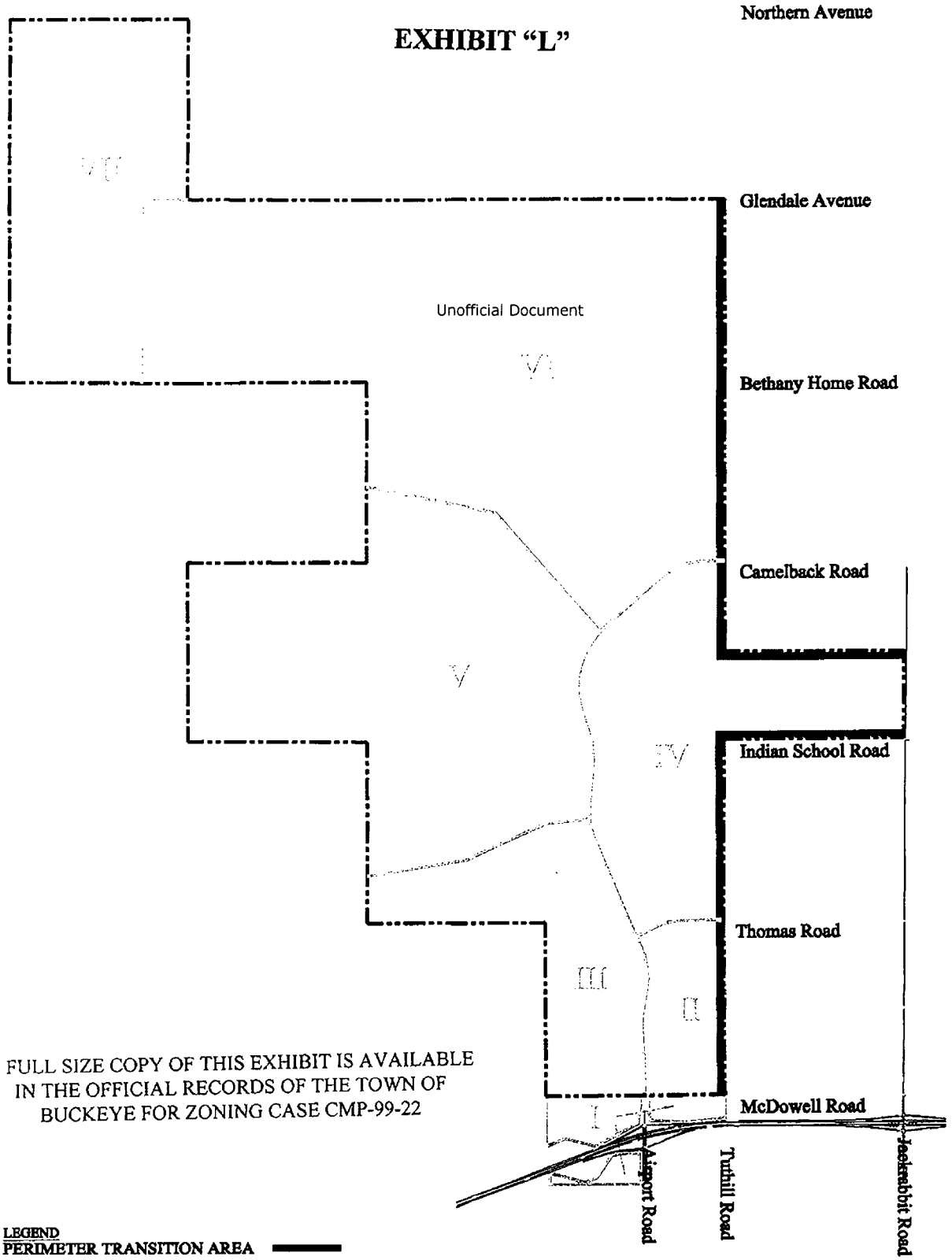
COMMON AREA	RESIDENTIAL DWELLING UNIT BONUS DWELLING UNIT BONUS PER ACRE
fifteen percent or more	0.5
twenty percent or more	1.0
twenty-five percent or more	1.5
thirty percent or more	2.0

* COMMON AREA is inclusive of 1,082 acres already committed for Property.
* DWELLING UNIT BONUS is added to the base entitlement of 1.60 dwelling units per gross acre allowed in this CMP.

Unofficial Document

EXHIBIT L
PERIMETER TRANSITION AREAS

EXHIBIT "L"



Unofficial Document

A FULL SIZE COPY OF THIS EXHIBIT IS AVAILABLE IN THE OFFICIAL RECORDS OF THE TOWN OF BUCKEYE FOR ZONING CASE CMP-99-22

LEGEND
PERIMETER TRANSITION AREA

PERIMETER TRANSITION AREAS
CATERPILLAR PROPERTY
BUCKEYE, ARIZONA

EDAW/VSA

Unofficial Document

EXHIBIT M
LANDSCAPE PLANT PALETTE

Caterpillar Property

LANDSCAPE PLANT PALETTE

EXHIBIT "M"

DESERT WASH / SONORAN LANDSCAPE

TREES			
Acacia abyssinica	*Abyssinian Acacia*	*Leucaena retusa*	*Golden Ball Lead Tree*
Acacia aneura	*Mulga*	Nicotiana glauca	Tree Tobacco
Acacia berlandieri	*Berlandier Acacia*	*Olneya tesota*	*Ironwood*
Acacia coriacea		*Parkinsonia aculeata*	*Mexican Palo Verde*
Acacia eriloba	*Camel Thorn*	*Pithecellobium flexicaule*	*Texas Ebony*
Acacia greggii	*Catclaw Acacia*	*Pithecellobium mexicanum*	*Mexican Ebony*
Acacia pendula	*Pendulous Acacia*	*[illegible] pallens*	*Apes-earring*
Acacia rigidula	*Black Brush Acacia*	Populus fremontii	Fremont Cottonwood
Acacia schaffneri	*Twisted Acacia*	Platanus wrightii	Arizona Sycamore
Acacia stenophylla	*Shoestring Acacia*	*Prosopis alba*	*Argentine Mesquite*
Acacia willardiana	*Palo Blanco*	*Prosopis chilensis*	*Mesquite*
Brachychiton populneus	*Bottle Tree*	*Prosopis emoryi*	*Emory Oak*
Bauhinia congesta	*Anacacho Orchid Tree*	*Prosopis glandulosa*	*Texas Honey Mesquite*
Brahea armata	*Mexican Blue Palm*	*Prosopis pubescens*	*Screwbean Mesquite*
Brahea edulis	*Guadalupe Palm*	*Prosopis velutina (juliflora)*	*Velvet Mesquite*
Bursea hindsiana	*Copal*	Rhus ovata	Sugar Sumac
Bursea microphylla	*Elephant Tree*	*Rhus lanceolata*	*Prairie Flameleaf Sumac*
Butia capitata	*Jelly Palm*	Robinia pseodoacacia	Black Locust
Caesalpina spp.	*Bird of Paridise*	Sapindus saponaria	Western Soapberry
Caesalpinia cacalaco	*Cascalote*	Salix gooddingii	Goodding Willow
Callistemon viminalis	*Weeping Bottlebrush*	Sambucus mexicana	Mexican Elderberry
Canotia holacantha	*Crucifixion Thorn*	Sophora secundiflora	Texas Mountain Laurel
Casuarina cunninghamiana	*River She Oak*	*Quercus buckleyi*	*Texas Red Oak*
Casuarina equisetifolia	*Horsetail Tree*	*Quercus buckley 'Red Rock'*	*Red Rock Oak*
Casuarina stricta	*Coast Beefwood*	*Quercus emoryi*	*Emory Oak*
Catalpax tashkentensis	*Chilitapa*	*Quercus suber*	*Cork Oak*
Celtis reticulata	*Hackberry*	*Quercus turbinella*	*Shrub Live Oak*
Cericidium spp.	*Palo Verde*	*Quercus spp.*	*Heritage Live Oak*
Cericidium 'Desert Museum'	*Hybrid Palo Verde*		
Cercidium floridum	*Blue Palo Verde*	**SHRUBS**	
Cericidium microphyllum	*Foothills PaloVerde*	*Acacia angustissima hirta*	*Fern Acacia*
Cercocarpus betuloides	Mountain Mahogany	*Acacia berlandieri*	*Guajillo*
Cercidium praecox	*Palo Brea*	*Acacia constricta*	*Whitethorn Acacia*
Cercis canadensis v 'Texensis'	*Texas Redbud*	*Acacia millefolia*	*Santa Rita Acacia*
Cercis canadensis v 'Mexicana'	*Mexican Redbud*	*Acacia notabillis*	
Cupressus arizonica	*Arizona Cypress*	*Acacia rigidula*	*Blackbrush Acacia*
Forestiera neomexicana	Desert Olive	Abutilon incanum	Indian Mallow
Geijera parvifolia	*AustralianWillow*	*Abutilon palmeri*	*Superstition Mallow*
Holacantha emoryi	*Crucifixion Thorn*	Abutilon pringlei	Indian Mallow
		Ambrosia ambrosioides	*Canyon Ragweed*
		Ambrosia dumosa	*White Bursage*
		Ambrosia deltoidea	*Bursage/*

Unofficial Document

19991071208

Caterpillar Property

LANDSCAPE PLANT PALETTE

	Triangle Leaf Bursage	Condalia spathulata	Crucillo
Anisacanthus andersonii	*Anderson's Honeysuckle*	Condalia ericoides	Javelina-bush
Anisacanthus thurberi	*Desert Honeysuckle*	*Cordia boissieri*	*Anacahuite*
Anisacanthus quadrifidus	*Flame Honeysuckle*	*Cordia parvifolia*	*Small Leaf Cordia*
Anisacanthus quadrifidus		Coursetia glandulosa	Coursetia
v.brevilobus	Mountain Flame	*Dalea bicolor v argyraea*	*Silver Dalea*
Anisacanthus quadrifidus		[illegible]s	*Black Dalea*
v. wrightii 'Mexican Flame'	Flame Honeysuckle	*Dalea frutescens*	
Asclepias linaria	*Pineleaf Milkweed*	*'Sierra Negra' TM*	*Sierra Negra Dalea*
Asclepias subulata	*Desert Milkweed*	*Dalea pulchra*	*Indigo Bush*
Asclepias tuberosa	Butterfly Weed	*Dalea versicolor var. sessilis*	*Wislizenus Dalea*
Baccharis glutinosa	Seep Willow	Dicliptera suberecta	Velvet Honeysuckle
Bauhinia macaranthera	*Orchid Tree*	*Dodonaea viscosa*	*Hopbush*
Bauhinia ramosissima	*Orchid Tree*	*Encelia farinosa*	*Brittlebush*
Bebbia juncea	Chuckwalla's Delight	Ephedra fasciculata	Joint Fir
Berberis haematocarpa	*Red Barberry*	*Ephedra nevadensis v aspera*	*Boundary Ephedra*
Berberis trifoliolata	*Agarita*	*Ephedra trifurca*	*Mormon Tea*
Brickellia coulteri	Brickellia	*Ephedra antisyphilitica*	*Mormon Tea*
Buddleia marrubifolia	*Wooly Butterfly Bush*	*Ericameria laricifolia*	*Turpentine Bush*
Caesalpinia gilliesii	*Desert Bird of Paradise*	*Ericameria linearifolia*	*Turpentine Bush*
Caesalpinia mexicana	*Mexican Bird of Paradise*	*Eriogonum fasculatum*	*California Buckwheat*
Caesalpinia pulcherrima	*Red Bird of Paradise*	*Eriogonum fasculatum*	
Calliandra eriophylla	*Pink Fairy Duster*	*v poliofolium*	*Wild Buckwheat*
Calliandra peninsularis	*Fairy Duster*	*Eriogonum wrightii*	*Wright Buckwheat*
Callistemon citrinus	*Lemon Bottlebrush*	*Erythrina flabelliformis*	*Southwest Coralbean*
Callistemon phoeniceus	*Salt Resistant Bottlebrush*	*Euphorbia antisyphilitica*	*Wax Plant, Candelilla*
Callistemon viminalis cv		Eysenhardtia orthocarpa	Kidneywood
'Captain Cook'	*Dwarf Bottlebrush*	Fallugia paradoxa	Apache Plume
Calothamnus quadrifidus		Flourensia cernua	Tarbush
Calothamnus villosus	*Woolly Netbush*	*Genista hisparica*	*Spanish Broom*
Cassia (Senna is interchangeable)		Gossypium thurberi	Desert Cotton
Cassia artemisioides	*Feathery Cassia*	*Guterrezia microcephala*	*Snakeweed*
Cassia biflora	*Twin Flower Cassia*	Gutierrezia sarothrae	Snakeweed
Cassia goldmannii	*Goldmann's Cassia*	*Hamelia patens*	*Fire Bush*
Cassia nemophila	*Desert Cassia*	Haplopappus gooddingii	Goldenweed
Cassia phyllodinea	*Silver-leaf Cassia*	Herissantia crispa	Indian Mallow
Cassia wislizenii	*Shrubby Cassia*	Horsfordia newberryi	Horsfordia
Ceanothus greggii	Buck Brush	*Hyptis emoryi*	*Desert Lavender*
Celtis pallida	*Desert Hackberry*	Isocoma heterophylla	Jimmyweed
Chrysactinia mexicana	*Damianita*	Isocoma tenuisecta	Burroweed
Chrysothamnus nauseosus	*Rabbit Bush*	Janusia gracilis	Slender Janusia
Condalia globosa	*Bittle Condalia*	*Krameria parvifolia*	*Ratany*

Unofficial Document

19991071208

Caterpillar Property

LANDSCAPE PLANT PALETTE

Larrea tridentata	*Creosote Bush*	Quercus grisea	Gray Oak
Leucophyllum candidum		Quercus oblongifolia	Mexican Blue Oak
'Thunder Cloud' TM	*Thunder Cloud Sage*	Quercus toumeyi	Toumey Oak
Leucophyllum frutescens	*Texas Sage*	Quercus turbinella	Scrub Live Oak
Leucophyllum frutescens		*Rhus choriophylla*	*Mearns Sumac*
'Compacta'	*Compact Texas Sage*	*Rhus microphylla*	*Littleleaf Sumac/*
Leucophyllum frutescens		Unofficial Document	*Desert Sumac*
'Green Cloud'	*Green Cloud Sage*	*Rhus ovata*	*Sugarbush*
Leucophyllum frutescens		*Rhus tribolata*	*Skunkbush*
'White Cloud'	*White Cloud Sage*	*Rhus virens*	*Evergreen Sumac*
Leucophyllum frutescens		Ruellia peninsularis	Ruellia
'Rain Cloud'	*Compact Texas Sage*	Salazaria mexicana	Paperbag Bush
Leucophyllum laevigatum	*Chihuahuan Sage*	*Salvia chamaedryoides*	*Blue Sage*
Leucophyllum langmaniae	*Sierra Madre Sage*	*Salvia develandii*	*Chaparral Sage*
Leucophyllum langmaniae		Salvia coccinea	Cherry Red Sage
'Rio Bravo' TM	*Rio Bravo Sage*	*Salvia dorrii*	*Desert Sage*
Leucophyllum pruinosum	*Fragrant Sage*	*Salvia farinacea*	*Mealy-Cup Sage*
Leucophyllum pruinosum		*Salvia greggii*	*Autumn Sage*
'Sierra Bouquet'	*Sierra Bouquet Sage*	*Salvia leucantha*	*Mexican Bush Sage*
Leucophyllum revolutum		*Salvia leucophylla*	*Sage*
'Sierra Magic' TM	*Sierra Magic Sage*	Salvia microphylla	Salvia
Leucophyllum zygophyllum	*Blue Ranger*	Sageretia wrightii	Spiny Sageretia
Lippia (berlandieri)	*Mexican Oregano*	*Sophora arizonica*	*Arizona Sopphora*
Lotus rigidus	*Desert Rock Pea*	*Sophora formosa*	*Sopphora*
Lycium andersonii	*Wolfberry*	*Sphaeralcea ambigua*	*Desert Globemallow*
Lycium brevipes	*Frutilla*	*Trixis Californica*	*Trixis*
Lycium exsertum	Desert-Thorn	*Vauquelinia corymbosa*	*Narrowleaf Rosewood*
Lycium fremontii	*Fremont Lycium*	*Vauquelinia californica*	*Arizona Rosewood*
Maytenus phyllanthoides	*Mangle Dulce*	*Westringia rosmariniformis*	*Westringia*
Melaleuca spp.	*Australian Myrtle*	Zauschneria californica	California fuchsia
Menodora scabra	Menodora	*Ziziphus obtusifolia*	*Greythorn*
Mimosa biuncifera	*Wait-a-while*		
Mimosa dysocarpa	*Mimosa/*	GROUNDCOVERS	
	Velvet Pot Mimosa	*Abronia villosa*	*Sand-verbena*
Perovskia atriplicifolia		*Acacia redolens*	*Prostrate Acacia*
cv 'Heavenly Blue'	*Russian Sage*	*Allionia incarnata*	*Trailing Windmills*
Parthenium incanum	Mariola	*Amsonia palmeri*	*Amsonia*
Plumbago scandens	*Plumbago*	*Anigosanthos flavidus*	*Kangaroo Paw*
Plumbago scandens	*Summer Snow*	*Anigosanthos manglesii*	*Kangaroo Paw*
'Summer Snow'	*Plumbago*	*Anigosanthos viridis*	*Kangaroo Paw*
Quercus chihuahuensis	Chihuahuensis	*Anisodontea hypomandrum*	*African Mallow*
Quercus emoryi	Emory Oak	*Arctotis acaulis*	*African Daisy*

19991071208

Caterpillar Property

LANDSCAPE PLANT PALETTE

Aquilegia chrysantha	Golden-spurred Columbine	Euphorbia albomarginata	Rattlesnake Weed
Argemone munita	*Prickly Poppy*	*Eriastrum diffusum*	*Prickly Stars*
Argemone platyceras	*Prickly Poppy*	Erieron 'Profusion'	Profusion Fleabane Daisy
Argemone pleiacantha	*Prickly-poppy*	*Eriophyllum lanosum*	*Woolly Daisy*
Artemisia ludoviciana	Wormwood	*Eriophyllum wallacei*	*Wooly Daisy*
Aster tanacetifolius	Purple Aster	Unofficial Document itermedia	Plains Lovegrass
Astrolepis cochisensis	Cloak Fern	*Eschscholzia californica*	*California Poppy*
Astrolepis cochisensis	Cloak Fern	*Eschscholzia mexicana*	*Mexican Gold Poppy*
Bahia absinthifolia	Bahia	Gaillardia arizonica	Arizona Blanketflower
Baileya multiradiata	Desert Marigold	*Gaillardia pulchella*	*Indian Blanket*
Berlandiera lyrata	Chocolate Flower	*Geraea canescens*	*Desert Sunflower*
Buchloe dactyloides	Buffalo Grass	*Gilia leptantha*	*Showy Blue Gilia*
Calylophus hartwegii 'Sierra Sundrop'	Calylophus	*Gomphrena globosa*	*Globe Amaranth*
Camissonia breuipes	*Yellow Cups*	*Hardenbergia comptoniana*	*Wild Wisteria*
Camissonia cardiophylla	*Heart-leaved Primrose*	Helianthus annuus	Wild Sunflower
Castilleja lanata	*Indian Paintbrush*	*Helichrysum bracteatum*	*Everlasting Daisy*
Catharanthus roseus	*Madagascar Periwinkle*	Heteropogon contortus	Tanglehead
Centaurium calycosum	Santa Maria	Hilaria belangeri	Curly Mesquite
Centaurea rothrockii	*Basket Flower*	Hilaria mutica	Tobosa
Ceratoides lanata	Winterfat	*Ipomoea cristulata*	*Morning Glory*
Cheilanthes lindheimeri	Lip Fern	*Ipomoea leptotoma*	*Morning Glory*
Cirsium neomexicanum	*Thistle*	Kallstroemia grandiflora	Arizona Poppy
Clarkia amoena	*Farewell-to-Spring*	*Lasthenia chrysostoma*	*Goldfield*
Clianthus formosus	*Stuart's Desert Pea*	*Layia platyglossa*	*Tidy Tips*
Collinsia heterophylla	*Chinese-houses*	*Lesquerella gordonii*	*Yellow Blanket*
Convolvulus mauritanicus	*Ground Morning Glory*	*Linium grandiflora cv 'Rubrum'*	*Red Flax*
Cooperia drummondii	Rain Lily	Linum lewisii	Blue Flax
Coreopsis bigelovii	Desert Coreopsis	*Lupinus spp.*	*Lupine*
Cupea llavea	Bat Faced Cuphea	*Lupinus arizonicus*	*Arizona Lupine*
Dalea capitata 'Sierra Gold' TM	Sierra Gold Dalea	*Lupinus densiflorus*	*Lupine*
Datura inoxia	*Sacred Datura/Jimsonweed*	*Lupinus sparciflorus*	*Lupine*
Dichelostemma pulchellum	*Bluedicks*	*Lupinus succulentus*	*Arroyo Lupine*
Delphinium amabile	*Larkspur*	Lycurus phleoides	Wolftail
Delphinium scaposum	*Barestem Larkspur*	*Machaeranthera canescens*	*Blue Aster*
Ditaxis lanceolata	Common Ditaxis	*Machaeranthera gracilis*	*Yellow Aster*
Dronsanthemum speciosum 'Rosa'	Ice Plant	*Machaeranthera tanacetifolia*	*Purple Aster*
Dyssodia acerosa	*Dyssodia*	*Machaeranthera tortifolia*	*Mohave Aster*
Dyssodia pentachaeta	*Dyssodia*	*Macfadyena unguis-cati*	*Cat's Claw Vine*
		Martynia spp.	Devil's Claw
		Mascagnia lilacina	*Purple mascagnia (Vine)*
		Mascagnia macroptera	Yellow Orchid Vine

19991071208

Caterpillar Property

LANDSCAPE PLANT PALETTE

Matricaria grandiflora	*Pineapple Weed*
Matthiola longipetala cv'Bicornis'	*Evening Scented Stock*
Maurandya antirrhiniflora	*Snapdragon Vine*
Maurandya wislizeni	*Snapdragon Vine*
Melampodium leucanthum	Blackfoot Daisy
Merremia aurea	*Yuca Vine (Yellow)*
Mesembryanthemum spp.	Ice Plant
Mimulus bigelovii	*Bigelow's Monkeyflower*
Mimulus cardinalis	Monkey Flower
Mirabilis bigelovii	Mirabilis
Mirabilis coccinea	Four-O Clock
Mohavea confertiflora	*Ghost Flower*
Monarda austromontana	*Bee Balm*
Monoptilon bellioides	*Bellyflower*
Myoporum parvifolium	*Myoporum*
Oenothera berlandieri	*Mexican Evening Primrose*
Oenothera stubbei	*Saltillo Primrose*
Oryzopsis hymenoides	Indian Ricegrass
Panicum obtusum	Vine Mesquite Grass
Pentzia incana	*Karoo Bush*
Penstemon baccharifolius	*Rock Penstemon*
Penstemon barbatus	*Penstemon*
Penstemon cardinalis	*Penstemon*
Penstemon eatonii	*Firecracker Penstemon*
Penstemon fendleri	*Fendler Penstemon*
Penstemon grandiflorus	*Penstemon*
Penstemon palmeri	*Palmer's Penstemon*
Penstemon parryi	*Parry's Penstemon*
Penstemon pseudosoectabilis	*Desert Penstemon*
Penstemon setaceum cv 'Cupreum'	*Purple Fountain Grass*
Penstemon spectabilis	*Royal Penstemon*
Penstemon strictus	*Penstemon*
Penstemon superbus	*Superb Penstemon*
Penstemon thurberi	*Penstemon*
Penstemon wrightii	*Penstemon*
Psilostrophe tagetina	*Paperflower*
Ratibida columnaris	
Scleropogon brevifolius	Burrograss
Senecio douglasii	Threadleaf Groundsel
Senna covesii	Desert Senna
Senna lindheimeriana	Lindheirmer Senna
Setaria species	Brittlegrass
Sporobolus cryptandrus	*Sand Drapseed*
Sporobolus wrightii	Wright Sacaton
Stephanomeria pauciflora	Wire Lettuce
Selaginella arizonica	Spikemoss
Tagetes palmeri (lemmoni)	*Mt.Lemmon Marigold*
	Mexican Mint Marigold
Teucrium chamaedrys cv 'Prostrata'	*Germander*
Trichachne californica	*Cotton-top*
Tridens muticus	Slim Tridens
Tridens pilosus	Hairy Tridens
Tridens pulchellus	Fluffgrass
Typha angustifolia	Narrow-leaved Cattail
Verbena bipinnatifida	*Verbena*
Verbena peruviana	*Peruvian Verbena*
Verbena tenera	*Moss Verbena*
Verbena rigida	*Sandpaper Verbena*
Zephranthes candida	*Zephyr Flower/Rain Lily*
Zephranthes citrina	*Fairy Lily*
Zephranthes grandiflora	
Zinnia acerosa	Desert Zinnia
Zinnia grandiflora	Little Golden Zinnia

ACCENTS

Agave americana	*Century Plant*
Agave colorata	*Mescal Ceniza*
Agave desmettiana	*Agave*
Agave deserti	*Desert Agave*
Agave murpheyi	*Murphy's Agave*
Agave parryi	*Parry's Agave*
Agave toumeyana	*Toumey's Agave*
Agave victoriae-reginae	*Royal Agave*
Agave wilmoriana	*Octopus-Agave*
Asclepias subulata	Desert Milkweed
Bulbine frutescens	*Bulbine*
Carnegiea gigantea	*Saguaro*
Dasylirion acrotriche	*Green Desert Spoon*
Dasylirion leiophyllum	*Desert Spoon*
Dasylirion longissimum	*Desert Spoon*
Dasylirion wheeleri	*Desert Spoon*
Echinocereus engelmannii	*Engelmann's Hedgehog*

Unofficial Document

19991071208

Caterpillar Property

LANDSCAPE PLANT PALETTE

Echinocereus pectinatus v. rigidissimus	Rainbow Cactus
Echinocactus grusonii	*Golden Barrel Cactus*
Echinocactus horizonthalonius	*Turk's Head*
Euphorbia antisyphilitica	Candelilla
Euphorbia myrsinites	Euphorbia
Euphorbia rigida	*Gopher Plant*
Euphorbia tirucalli	Pencil Bush
Ferocactus acanthodes	*Fire Barrel*
Ferocactus wislizenii	*Fishook Barrel*
Fouquieria macdougallii	*Chunari*
Fouquieria splendens	*Ocotillo*
Hesperaloe campanula	*Bell Flower*
Hesperaloe funifera	*Coahuilan Hesperaloe*
Hesperaloe parviflora	*Red Hesperaloe*
Hesperaloe parviflora(Yellow)	*Yellow Hesperaloe*
Lophocereus schottii	Senita Cactus
Lophocereus schottii fa. monstrosus	Totem Pole Cactus
Manfreda maculosa	*Manfreda*
Mammillaria grahami	Pincushion Cactus
Mammillaria gummifera	Cream Cactus
Mammillaria mainiae	Pincushion Cactus
Mammillaria microcarpa	Pincushion Cactus
Mammillaria wrightii	Pincushion Cactus
Neolloydia erectocentra	
Neolloydia intertexta	
Nolina texana	*Beargrass*
Nolina bigelovii	*Beargrass*
Nolina matapensis	*Tree Bear grass*
Nolina microcarpa	*Bear grass*
Opuntia acanthocarpa	*Buckhorn Cholla*
Opuntia basilaris	*Beavertail Prickly Pear*
Opuntia bigelovii	*Teddybear Cholla*
Opuntia chlorotica	Pancake Prickly Pear
Opuntia englelmannii	*Engelmann's Prickly Pear*
Opuntia ficus-indica	*Indian Fig Prickly Pear*
Opuntia fulgida	Chainfruit Cholla
Opuntia imbricata	Tree Cholla
Opuntia kleiniae	Klein Cholla
Opuntia leptocaulis	Christmas Cactus
Opuntia microdasys	Bunny Ears
Opuntia robusta	Silver Dollar Prickly Pear
Opuntia spinosior	Cane Cholla
Opuntia santa-rita	Purple Prickly-Pear
Opuntia violacea	*Purple Prickly Pear*
Unofficial Document cea v. macrocentra	Santa Rita Prickly Pear
Pachycereus marginatus	*Mexican Organ Pipe*
Pedilanthus macrocarpus	*Lady Slipper*
Stenocereus marginatus	Mexican Fence Post
Stenocereus thurberi	*Organ Pipe Cactus*
Trichocereus candicans	*Argentine Trichocereus*
Yucca aloifolia	*Spanish Bayonet*
Yucca angustifolia	*Narrow Leaf Yucca*
Yucca baccata	*Banana Yucca*
Yucca brevifolia	*Joshua Tree*
Yucca carnerosana	*Spanish Bayonet*
Yucca elata	*Soaptree Yucca*
Yucca gloriosa	*Yucca*
Yucca macrocarpa	*Bigleaf Yucca*
Yucca recurvifolia	*Curveleaf Yucca*
Yucca rigida	*Blue Yucca*
Yucca rostrata	*Beaked Yucca*
Yucca rupicola	*Twisted Leaf Yucca*
Yucca torreyi	*Torrey Yucca*
Washingtonia filifera	California Fan Palm

ANNUAL WILDFLOWERS

Cassia covesii	*Desert Cassia*
Cosmos bipinnatus	
Cosmos parviflorus	
Cosmos sulphureus	*Yellow Cosmos*
Dimorphotheca sinuata	*African Daisy*
Erigeron divergens	*Spreading Fleabane*
Eupatorium greggii	*Eupatorium*
Evolvulus arizonicus	*Arizona Blue Eyes*
Gaura lindeimeri	*Desert Orchid*
Helipterum roseum	*Pink Everlasting*
Hesperocallis undulata	*Ajo Lily*
Hibiscus coulteri	*Desert Rose mallow*
Hymenoxys acaulis	*Angelita Daisy*

Caterpillar Property

LANDSCAPE PLANT PALETTE

Ipomopsis longiflora	*Pale Blue Trumpets*
Linaria Texana	*Toadflax*
Linaria pinnifolia	*Toadflax*
Linaria maroccana	*Toadflax*
Linum lewisii	*Blue Flax*
Mentzelia involucrata	*Morning Stars*
Mentzelia lindleyi	*Blazing Stars*
Melampodium leucanthum	*Blackfoot Daisy*
Mirabilis multiflora	*Desert Four-O Clock*
Nama demissum	
Nama hispidum	*Purple Mat*
Nemophila maculata	*Five Spot*
Nemophila menziesii	*Baby Blue Eyes*
Oenothera caespitosa	*Tufted Evening Primrose*
Oenothera deltoides	*Birdcage Evening Primrose*
Oenothera primiveris	*Evening Primrose*
Orthocarpus purpurascens	*Owl's Clover*
Papaver rhoeas	*Shirley Poppy*
Pectis papposa	*Chinch Weed*
Perityle emoryi	*Rock Daisy*
Phacelia campanularia	*California Bluebell*
Phacelia tanacetifolia	*Scorpian Weed*
Plantago insularis	*Indian Wheat*
Platystemon californicus	*Cream Cups*
Portalacaria afra	*Elephant's Food*
Proboscidea altheaefolia	*Devil's Claw*
Proboscidea parviflora	*Devil's Claw*
Psilostrophe cooperi	*Paperflower*
Rafinesquia neomexicana	*Desert-chicory*
Romneya coulteri	*Matilija Poppy*
Senna covesii	*Desert Senna*
Salvia columbariae	*Chia*
Sisymbrium ambiguum	*Purple Rocket*
Solanum xanti	*Solanum*
Stachys coccinea	*Red Mint, Betony*
Trithonia rotundifolia	*Mexican Sunflower*
Ursinia calenduliflora	*Ursinia*
Ursinia chrysanthemoides	
Ursinia speciosa	
Verbena goodingii	*Goodding Verbena*
Verbesina encelioides	*Golden Crown Beard*
Viguiera annua	*Golden Eye*
Viguiera deltoidea	*Goldeneye*
Viguiera tomentosa	*Golden Eye*

GRASSES

Aristida californica	*Threeawn Grass*
Aristida divaricata	*Poverty Three-awn*
Aristida [illegible]eta	*Red Three-awn*
Aristida wrightii	*Wright Threeawn*
Aristida purpurea	*Purple Threeawn*
Bouteloua aristioides	*Six Weeks Grama*
Bouteloua breviseta	*Chino Grama*
Bouteloua chondrosioides	*Sprucetop Grama*
Bouteloua curtipendula	*Sideoats Grama*
Bouteloua eriopoda	*Black Grama*
Bouteloua filiformis	*Slender Grama*
Bouteloua gracilis	*Blue Grama*
Bouteloua hirsuta	*Hairy Grama*
Erioneuron pulchellum	*Fluffgrass*
Hillaria rigida	*Big Galleta*
Muhlenbergia capillaris	*Gulf Muhley*
Muhlenbergia dumosa	*Bamboo Muhley*
Muhlenbergia emersleyi	*Bull Grass*
Muhlenbergia lindeimeri	*Lindheimer Muhly*
Muhlenbergia porteri	*Bush Muhly*
Muhlenbergia rigens	*Deer Grass*
Muhlenbergia rigida	*Deer Grass*
Muhlenbergia rigida 'Nashville' TM	*Nashville Grass*
Setaria macrostachya	*Plains Bristlegrass*
Schismus barbatus	*Mediterranean Grass*
Stipa speciosa	*Desert Needlegrass*

TURF USED IN ACTIVE AREAS

Unofficial Document

Caterpillar Property

LANDSCAPE PLANT PALETTE

"AGRARIAN" LANDSCAPE CHARACTER

TREES

Acacia farnesiana/smallii	*Sweet Acacia*
Acacia salicina	*Willowleaf Acacia*
Albizia julibrissin	Silk Tree
Carya illinoensis	Pecan
Ceratonia siliqua	*Carob Tree*
Chilopsis linearis	*Desert Willow*
Chorisia speciosa	Silk Floss Tree
Citrus aurantium	Seville Orange
Cupressus sempervirens	*Italian Cypress*
Dalbergia sissoo	*Sissoo Tree*
Eucalyptus erythrocory	*Red Cap Gum*
Eucalyptus formanii	*Forman's Eucalyptus*
Eucalyptus leucoxylon	*White Ironbark*
Eucalyptus microtheca	*Coolibah*
Eucalyptus papuana	*Ghost Gum*
Eucalyptus spathulata	*Swamp Malee*
Eucalyptus torquata	*Coral Gum*
Fraxinus anomala	Single Leaf Ash
Fraxinus greggii	*Littleleaf Ash*
Fraxinus velutina	Arizona Ash
Gleditsia tricanthos	*Honey Locust*
Jacaranda mimosifolia	Jacaranda
Lysiloma candida	*Palo Blanco*
Lysiloma microphylla v thornberi	*Desert Fern*
Olea europaea 'Swan Hill'	*Olive*
Pinus eldarica	*Afghan Pine*
Phoenix canariensis	*Canary Island Date Palm*
Phoenix dactylifera	*Medjool Date Palm*
Pinus canariensis	*Canary Island Date Palm*
Pinus eldarica	*Afghan Pine*
Pinus halepensis	*Allepo Pine*
Pinus pinea	*Italian Stone Pine*
Pinus roxburghii	*Chir Pine*
Pistachia atlantica	*Mt. Atlas Pistache*
Pistachia chinensis	*Chinese Pistache*
Pittosporum phillyraeoides	*Willow Pittosporum*
Platanus wrightii	Arizona Sycamore
Quercus Ilex	*Holly Oak*
Quercus virginiana	*Southern Live Oak*
Rhus lancea	*African Sumac*
Schinus molle	*California Pepper Tree*
Schinus terebinthifolius	*Brazilian Pepper Tree*
Sophora secundiflora	*Texas Mountain Laurel*
Tamarix aphylla	*Athel Tree*
Tipuana tipu	*Tipu Tree*
Ulmus parvifolia v 'sempervirens'	*Evergreen Elm*
Unganadia speciosa	*Mexican buckeye*
Vitex agnus-castus	*Chaste Tree*
Washingtonia filifera	*California Fan Palm*
Washingtonia robusta	*Mexican Fan Palm*
Xylosma congestum	*Xylosma*
Ziziphus jujuba	*Chinese Jujube*

Unofficial Document

SHRUBS

Acacia craspedocarpa	*Leather-leaf Acacia*
Acacia rigens	*Needle Acacia*
Ancanthus mollis	Acanthus
Alyosia gratissima	*Bee Bush*
Alyosia lycioides	*Bee Bush*
Alyosia macrostachya	*Sweet-stem*
Alyosia wrightii	*Orgenillo*
Alyogyne huegelii	Blue Hibiscus
Artemisia ludoviciana	*White Sage*
Artemisia lentiformis	*Quail Bush*
Atriplex canescens	*Fourwing Saltbush*
Atriplex hymenelytra	*Desert Holly*
Atriplex nummularia	*Old Man Saltbush*
Bougainvillea 'Barbara Karst'	*Bougainvillea*
Bougainvillea 'La Jolla'	*Bush Bougainvillea*
Bougainvillea 'San Diego Red	*Bougainvillea*
Bougainvillea spectabilis	*Bougainvillea*
Bumelia lanuginosa	Gum Bumelia
Calliandra californica	*Baja Fairy Duster*
Campsis radicans	Common Trumpetcreeper
Convolvulus cneorum	*Bush Morning Glory*
Cistus	*Rockrose*
Dodonea viscosa 'Purpurea'	Purple Hopbush
Elastica decora	Rubber Plant
Equisetum laevigatum	*Horsetail*
Eremophila glabra	Emu Bush

19991071208

Caterpillar Property

LANDSCAPE PLANT PALETTE

Eremophila maculata	Emu Bush
Euryops pectinatus	Golden Euryops
Euryops pectinatus 'Viridus'	Euryops Daisy
Fatsia japonica	Japanese Aralia
Feijoa sellowiana	Pineapple Guava
Jasminum mesnyi	*Primrose Jasmine*
Jatropha cardiophylla	*Limberbush*
Jatropha cinerea	*Lomboy*
Jatropha dioca	*Leatherstem*
Juniperus chinesis varieties	*Juniper*
Juniperus monosperma	One-seed Juniper
Justicia californica	*Chuparosa*
Justicia candicans (ovata)	*Red Honeysuckle*
Justicia spicigera	*Mexican Honeysuckle*
Justicia sonorae	*Palm Canyon Justicia*
Lantana camara	*Bush Lantana*
Myrtus communis	*True Myrtle*
Myrtus communis cv 'Compacta'	*Dwarf Myrtle*
Myrtus communis 'Boetica'	*Twisted Myrtle*
Nandina domestica	*Heavenly Bamboo*
Nerium oleander varieties	*Oleander*
Pittosporum tobira	Japanese Mock Orange
Podocarpus macrophyllus	Yew Pine
Punica granatum varieties	*Pomegranate*
Punica granatum 'Naya'	*Dwarf Pomegranate*
Pyracantha coccinea	*Firethorn*
Robinia neomexicana	New Mexican Locust
Rosemarinus officinalis	*Rosemary*
Ruellia brittoniana	Ruellia
Strelitzia reginae	Bird of Paradise
Simmondsia chinesis	*Jojoba*
Tecomaria capensis	*Cape Honeysuckle*
Teucrium fruticans	*Bush Germander*
Tagetes lemmoni	Spiny Sageretia
Tecoma stans	*Yellow Bells*
Thamnosma montana	*Turpentine Broom*
Thevetia peruviana	*Yellow Oleander*

GROUNDCOVERS

Antigonon leptopos	*Coral Vine, Queen's wreath*
Asparagus desiflorus 'sprengeri'	*Asparagus Fern*
Aspidistra elatior	Cast Iron Plant
Atriplex semibaccata	*Australian Saltbush*
Aucuba japonica	Japanese Aucuba
Baccharis 'Centennial'	*Centennial Baccharis*
Bougainvillea spp.	*Bougainvillea*
Callaeum macroptera	*Yellow Orchid Vine*
Unofficial Document	*Common Trumpet Creeper*
Carpobrotus chilensis	*Ice Plant*
Carpobrotus edule	*Hottentot Fig*
Cephalophyllum 'Red Spike'	*Red Spike Ice Plant*
Cissus trifoliata	*Grape Ivy*
Clematis drummondii	*Virgin's Bower*
Dalea greggii	*Trailing Dalea*
Drosanthemum speciosum	*Dewflower*
Fatshedera lizei	Aralia Ivy
Ficus pumila	Creeping Fig
Gazania rigens	*Trailing Gazania*
Gazania rigens 'Sun Gold'	Gazania
Gelsemium sempervirens	Yellow Flowering Jessamine
Hedera canariensis	Algerian Ivy
Hedera helix	English Ivy
Kennedia nigricans	*Black Yellow Vine*
Lantana montevidensis	Trailing Purple Lantana
Liriope muscari	Lilyturf
Mesembryanthemum crystallinum	*Common Ice Plant*
Ophiopogon japonicus	Mondo Grass
Osteospermum fruticosum	Trailing African Daisy
Plumbago auriculata	Cape Plumbago
Podranea ricasoliana	*Pink Trumpet Vine*
Rhynchosia texana	*Rosary Bead Vine*
Rosa banksiae	*Lady Bank's Rose*
Rosemarinus officinalis 'Prostratus'	*Dwarf Rosemary*
Ruellia brittoniana 'Katie'	Katie Ruellia
Salvia sp. 'Quicksilver'	Quicksilver Sage
Santolina chamaecyparissus	*Lavender Cotton*
Santolina virens	*Green Santolina*
Schizachyrium scoparium	Little Bluestem
Sedum spp.	Stonecrop
Solanum jasminoides	*Potatoe Vine*
Stachys byzantina	Lamb's Ears

19991071208

Caterpillar Property

LANDSCAPE PLANT PALETTE

Trachelospermum asiaticum	Asiatic Jasmine
Vinca major	Vinca
Wedelia trilobata	Wedelia

ACCENTS

Unofficial Document

Aloe barbadensis *Aloe Vera*	
Aloe marlothii	
Aloe saponaria	*Aloe*
Aloe striata	*Coral Aloe*
Aspidistra elatior	Cast-iron Plant
Cereus hildmannianus	*Hildmann's Cereus*
Cereus hildmannianus v. monstrose	Curiosity Plant
Cereus peruvianus	Night Blooming Cereus
Chamaerops humilis	*Mediterraean Fan Palm*
Cycas revoluta	Sago Palm
Cyperus alternifolius	Umbrella Plant
Dietes bicolor	Fortnight Lily
Dioon edule	Mexican Sago
Philodendron selloum	Selloum Philodendron
Sanseveria spp.	Mother-in-law's Tongue

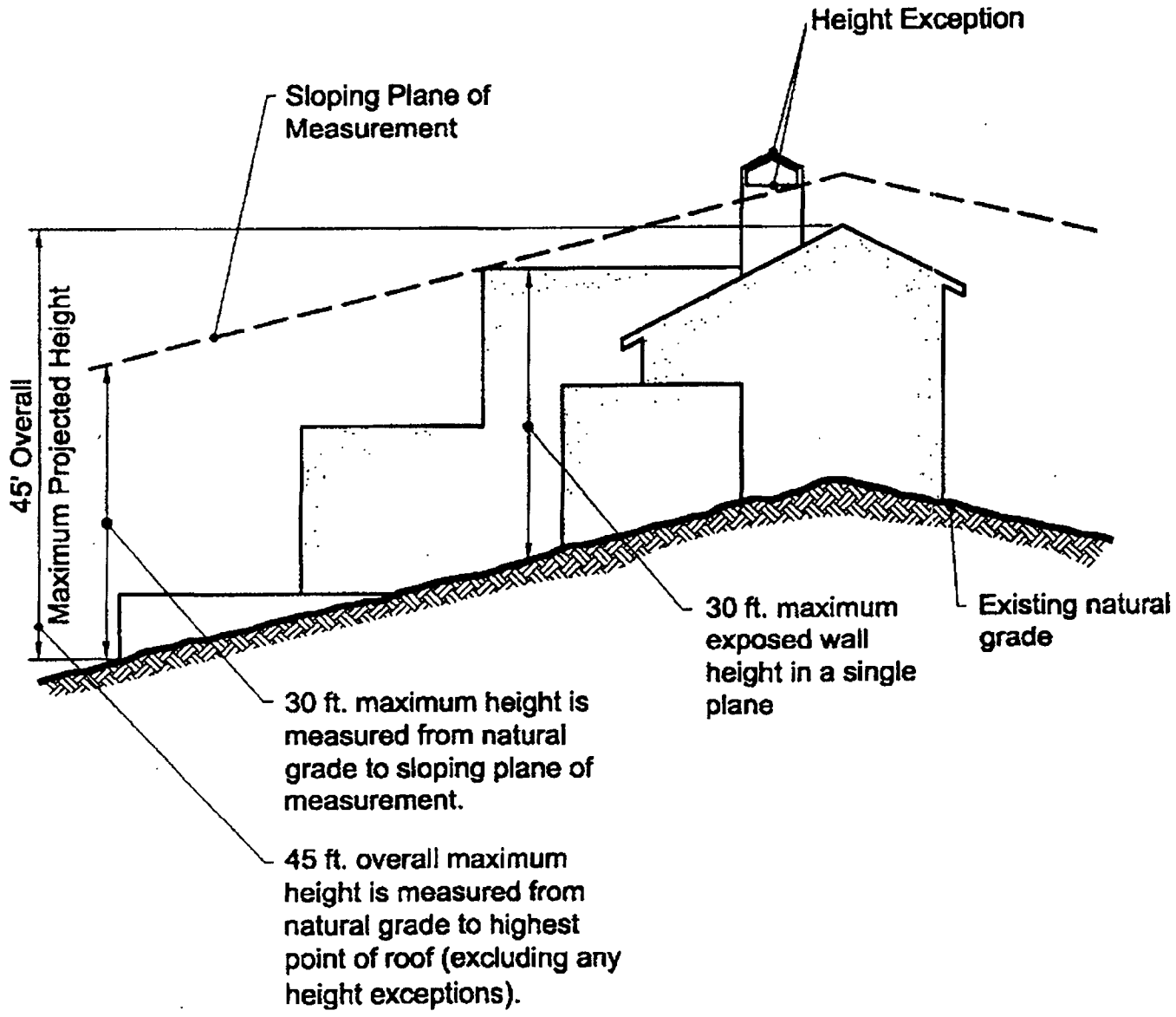
TURF USED IN ACTIVE AREAS

Unofficial Document

EXHIBIT N
HILLSIDE HEIGHT MEASUREMENT

EX Unofficial Document

Hillside Height Measurement

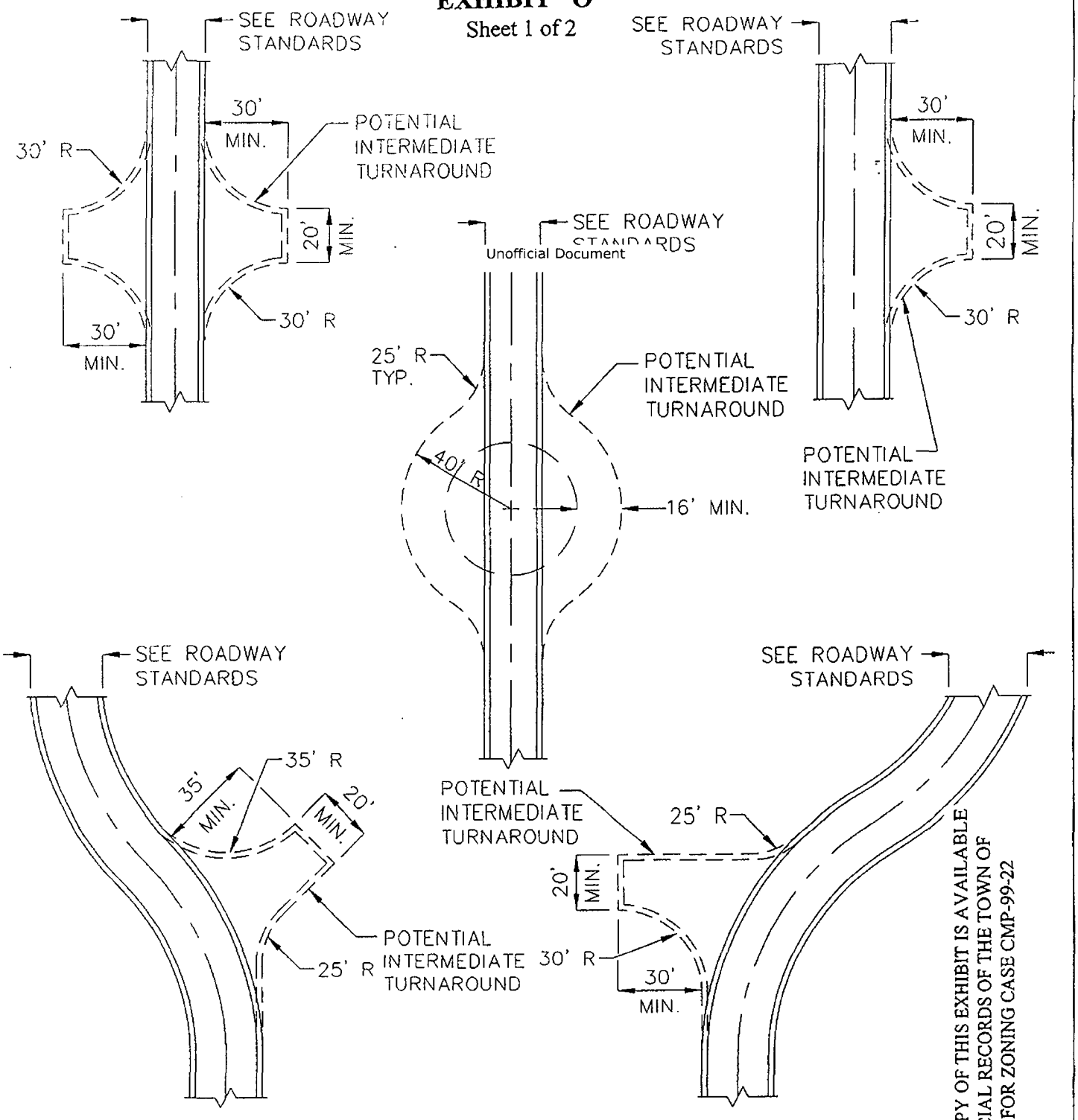


Unofficial Document

EXHIBIT O
TURNAROUNDS

EXHIBIT "O"

Sheet 1 of 2



Unofficial Document

INTERMEDIATE TURNAROUND

DEVELOPMENTAL STANDARDS
INTERMEDIATE TURNAROUNDS
CATERPILLAR PROPERTY
BUCKEYE, ARIZONA

DMB

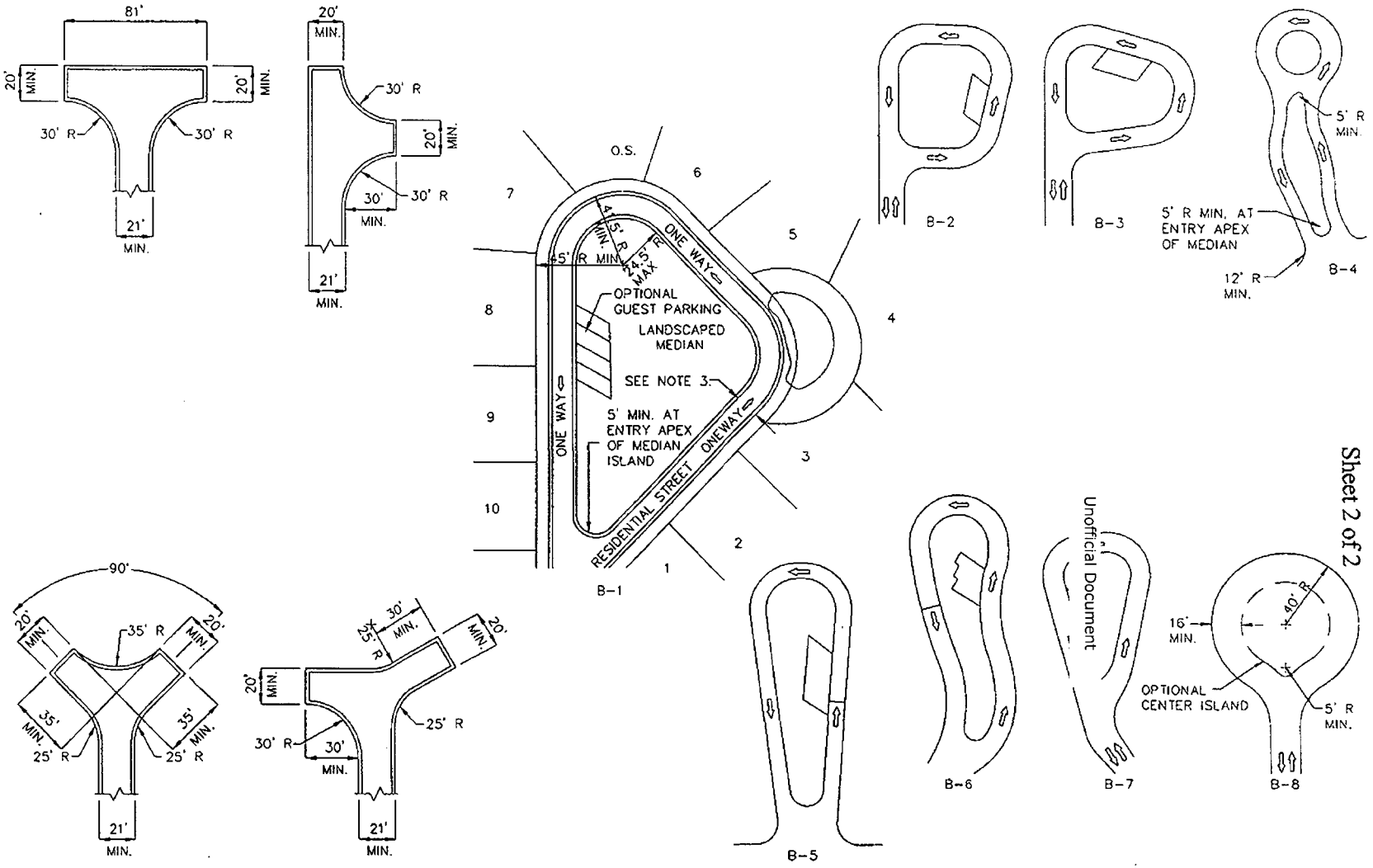
A FULL SIZE COPY OF THIS EXHIBIT IS AVAILABLE IN THE OFFICIAL RECORDS OF THE TOWN OF BUCKEYE FOR ZONING CASE CMP-99-22

WOOD, PATEL & ASSOCIATES INC.
Civil Engineers, Hydrologist and Land Surveyors
(602) 234-1344

DMB

DEVELOPMENTAL STANDARDS
TYPICAL CUL-DE-SAC OPTIONS
CATERPILLAR PROPERTY
BUCKEYE, ARIZONA

EXHIBIT "O"
Sheet 2 of 2



Unofficial Document

HAMMERHEAD TURNAROUND VARIATIONS

NOTE:
SEE TYPICAL ROADWAY CROSS SECTIONS.
PROVIDE A MINIMUM 28' CLEAR EMERGENCY ACCESS.

A FULL SIZE COPY OF THIS EXHIBIT IS AVAILABLE IN THE OFFICIAL RECORDS OF THE TOWN OF BUCKEYE FOR ZONING CASE CMP-99-22

CIRCULAR TURNAROUND VARIATIONS

N.T.S.

1. GUEST PARKING IS TO BE PROVIDED IF THE LOT SIZES ARE LESS THAN 8,500 S.F., CALCULATED AT 0.5 SPACES PER UNIT THAT ACCESSES THE ONE-WAY LOOP.
2. ON-STREET PARKING IS PROHIBITED ON THE ONE WAY PORTION OF ROADWAYS. A 24" VEGETATION CLEAR-ZONE IS TO BE PROVIDED ON THE ISLAND PORTION MEASURED FROM BACK OF CURB
3. MAXIMUM OF 10 LOTS AND SHALL NOT EXCEED 500' IN TRAVELED LENGTH MEASURED AROUND THE LOOP. STREET WIDTH IS AS PER TYPICAL ROADWAY CROSS SECTIONS.
4. OPTIONAL ENHANCED PAVING MAY BE UTILIZED IN THE ONE-WAY LOOP AREAS.
5. ALL REQUIRED VIEW TRIANGLES WILL BE MAINTAINED AT ALL INTERSECTIONS.

WOOD, PATEL & ASSOCIATES INC.
Civil Engineers, Hydrologists and Land Surveyors
(602) 254-1544

19991071208

Unofficial Document

EXHIBIT P
CONCEPTUAL OUTLINE OF CC&Rs

EXHIBIT "P"
CONCEPTUAL OUTLINE
OF CC&Rs
(CONDITIONS, COVENANTS & RESTRICTIONS)

TABLE OF CONTENTS

Unofficial Document

RECITALS

1. DEFINITIONS

2. RIGHTS OF ENJOYMENT
   - 2.1 Member's Right of Enjoyment
   - 2.2 Delegation of Use
   - 2.3 Waiver of Use
   - 2.4 Use of Private Roadways for Access

3. MEMBERSHIP
   - 3.1 Classification of Memberships
   - 3.2 Regular Memberships
   - 3.3 Special Memberships
   - 3.4 Transfer of Memberships
   - 3.5 Maximum Number of Memberships

4. ASSOCIATION
   - 4.1 Purpose of Association
   - 4.2 Membership in Association
   - 4.3 Pledge of Voting Rights
   - 4.4 Assignment of Developer's Voting Rights
   - 4.5 Board of Directors
   - 4.6 Board's Determination Binding
   - 4.7 Approval of Members
   - 4.8 Additional Provisions in Articles and Bylaws
   - 4.9 Association Rules
   - 4.10 Indemnification
   - 4.11 Non-Liability of Officials
   - 4.12 Easements
   - 4.13 Accounting
   - 4.14 Records
   - 4.15 Managing Agent
   - 4.16 Developer's Control of Association

5. EASEMENTS
5.1 Blanket Easements
5.2 Use of Common Areas
5.3 Exclusive Use Rights
5.4 Pedestrian Access Easement
5.5 Developer Ease[illegible]
Unofficial Document
6. ASSESSMENTS
6.1 Creation of Lien and Personal Obligation
6.2 Purpose of Assessments
6.3 Regular Assessments
6.4 Special Assessments
6.5 Capital Improvement Assessments
6.6 Uniform Assessment
6.7 Exempt Property
6.8 Date of Commencement of Regular Assessments
6.9 Time and Manor of Payment; Late Charges and Interest
6.10 No Offsets
6.11 Homestead Waiver
6.12 Reserves
6.13 Subordination of Lien
6.14 Certificate of Payment
6.15 Enforcement of Lien
6.16 Pledge of Assessment Rights as Security
6.17 Exemption of Unsold Lots
6.18 Payment of Assessments and Rental to the Developer

7. INSURANCE
7.1 Authority to Purchase
7.2 Member's Responsibility
7.3 Coverage
7.4 Required Provisions
7.5 Non-Liability of Association/Board/President
7.6 Premiums
7.7 Insurance Claims
7.7 Benefit

8. DAMAGE AND DESTRUCTION OF COMMON AREAS
8.1 Duty of Association
8.2 Automatic Reconstruction
8.3 Vote of Members
8.4 Excess Insurance Proceeds

8.5 Use of Reconstruction Assessments
8.6 Contract for Reconstruction
8.7 Insurance Proceeds Trust

9. EMINENT DOMAIN
9.1 Definition Taking
9.2 Representation in Condemnation Proceedings
9.3 Award for Common Areas

10. MAINTENANCE, REPAIRS, AND REPLACEMENT
10.1 Owner's Responsibility
10.2 Maintenance of Common Areas
10.3 Right of Access

11. ARCHITECTURAL AND LANDSCAPE CONTROL
11.1 Appointment of Design Review Committee
11.2 Development Standards
11.3 General Provisions
11.4 Approval and Conformity of Plans
11.5 Non-Liability for Approval of Plans
11.6 Inspection and Recording of Approval
11.7 Reconstruction of Common Areas
11.8 Additional Powers of the Board
11.9 Varying Standards

12. USE AND OCCUPANCY RESTRICTIONS
12.1 Residential Use
12.2 Violation of Law or Insurance
12.3 Signs
12.4 Animals
12.5 Nuisances
12.6 Boats and Motor Vehicles
12.7 Lights
12.8 Antennas
12.9 Garbage
12.10 Mining
12.11 Safe Condition
12.12 Fires
12.13 Clothes Drying Area
12.14 No Further Subdivision; Compounds
12.15 No Obstructions to Drainage
12.16 Entrance Gates

Unofficial Document

12.17 Rental Lots
12.18 Enforcement
12.19 Modification

13. RIGHTS OF FIRST MORTGAGEES
13.1 General Provisions
13.2 Liability for Assessments
13.3 No Personal Liability
13.4 Enforcement After Foreclosure Sale
13.5 Exercise of Owner's Rights
13.6 Subject to Declaration

14. ANNEXATION OF ADDITIONAL PROPERTY
14.1 Development of the Project
14.2 Supplemental Declarations
14.3 Annexation Without Approval of Association
14.4 Annexation After Transition Date

15. EXEMPTION OF THE DEVELOPER FROM RESTRICTIONS

16. USE AND MANAGEMENT AGREEMENT; TRANSITION DATE; CONVEYANCE OF COMMON AREAS
16.1 Use and Management Agreement
16.2 Transition Date
16.3 Conveyance of Common Areas

17. COMMUNITY ASSOCIATIONS
17.1 General Provisions

18. REMEDIES
18.1 General Remedies
18.2 Expenses of Enforcement
18.3 Legal Action
18.4 Effect on Mortgage
18.5 Limitation on the Developer's Liability

19. AMENDMENT
19.1 Amendment to Declaration
19.2 Effect of Amendment
19.3 Amendment of Plat

19.4 Required Approvals
19.5 Developer's Right to Amend

Unofficial Document

20. GENERAL PROVISIONS

20.1 Notices
20.2 Captions and Exhibits; Construction
20.3 Severability
20.4 Rule Against Perpetuities
20.5 Mortgage of Lots
20.6 Fire Protection
20.7 Power of Attorney

21. RIGHTS AND OBLIGATIONS

SIGNATURE OF DEVELOPER

EXHIBITS

A - Legal Description of Parcel
B - Partial Summary of Use and Management Agreement

CONSENT AND RATIFICATION

Unofficial Document

19991071208

Unofficial Document

EXHIBIT Q
GENERAL ELEMENTS OF DESIGN REVIEW GUIDELINES

EXHIBIT "Q"
GENERAL ELEMENTS
OF
DESIGN REVIEW GUIDELINES

TABLE OF CONTENTS

Unofficial Document

1. **INTRODUCTION**

2. **CATERPILLAR OVERVIEW**

3. **COMMUNITY PLAN**

4. **SITE PLAN**
   - 4.1 Building Envelope and Setbacks
   - 4.2 Natural Area
   - 4.3 Transitional Area
   - 4.4 Private Area
   - 4.5 Site Work
   - 4.6 Grading and Drainage
   - 4.7 Access Drive
   - 4.8 On-Site Parking
   - 4.9 Utilities
   - 4.10 Walls and Fences
   - 4.11 Swimming Pools and Spas
   - 4.12 Sports/Tennis Courts
   - 4.13 Exterior Recreational or Play Equipment
   - 4.14 Basketball Hoops
   - 4.15 Address Identification
   - 4.16 Exterior Holiday Decorations
   - 4.17 Exterior Ornamentation
   - 4.18 Electrical Meters, Landscape Controls, CATV Equipment Boxes and Telephone Equipment Boxes
   - 4.19 Air Conditioning Equipment
   - 4.20 Propane Tanks
   - 4.21 Flag Poles and Exterior Sculpture

5. **ARCHITECTURAL DESIGN**
   - 5.1 Diversity
   - 5.2 Building Sizes
   - 5.3 Foundations
   - 5.4 Floor Plans
   - 5.5 Elevations

5.6 Heights and Massing
5.7 Scale and Proportion
5.8 Roof Design
5.9 Roof Top Equipment

5. ARCHITECTURAL DESIGN (continued)
5.10 Windows
5.11 Entrances
5.12 Porches, Front Courtyards, and Terraces
5.13 Columns
5.14 Chimneys
5.15 Garages and Driveways
5.16 Carports
5.17 Exterior Materials
5.18 Interior Lighting
5.19 Exterior Lighting
5.20 Color Palette
5.21 Unique Architectural Features

6. ARCHITECTURAL DETAILS
6.1 Exterior Hardware and Accessories
6.2 Skylights
6.3 Antennae and Satellite Dishes
6.4 Related Structures
6.5 Solar Design and Wind Turns
6.6 General Considerations
6.7 Signs

7. LANDSCAPE DESIGN
7.1 Planting Design
7.2 Landscape Materials
7.3 Walls
7.4 Berming
7.5 Water Features
7.6 Pools
7.7 Irrigation
7.8 Lighting
7.9 Maintenance

8. CONSTRUCTION REGULATIONS
8.1 OSHA Compliance
8.2 Construction Trailers
8.3 Trash Receptacles and Debris Removal

Unofficial Document

8.4 Sanitary Facilities
8.5 Construction Access
8.6 Vehicles and Parking Areas
8.7 Conservation of Native Landscape
8.8 Excavation Materials and Blasting
8.9 Dust and Noise Control
8.10 Material Deliveries
8.11 Firearms
8.12 Alcohol and Controlled Substances
8.13 Fires and Flammable Materials
8.14 Pets
8.15 Preservation of Property
8.16 Restoration of Property
8.17 Construction Signage
8.18 Daily Operation
8.19 Site Visitation

9. **DESIGN REVIEW PROCESS**
9.1 Design Review Process Overview
9.2 Pre-Design Meeting
9.3 Preliminary Design Submittal
9.4 Preliminary Design Review
9.5 Final Design Submittal
9.6 Site Inspection
9.7 Final Design Review
9.8 Re-Submittal of Plans
9.9 Pre-Construction Conference
9.10 Commencement of Construction
9.11 Inspections of Work in Progress
9.12 Subsequent Changes
9.13 Final Release
9.14 Nonwaiver
9.15 Right of Waiver
9.16 Exemptions
9.17 Design Review Fee and Deposit
9.18 Design Guidelines Violation Fines
9.19 Legal Authority
9.20 Statement of Non-Liability

APPENDIX A - Caterpillar Design Review Committee
APPENDIX B - Approved Plant List
APPENDIX C - Prohibited Plant List
APPENDIX D - Design Review Submittal Form
APPENDIX E - Design Review Submittal Checklist

Unofficial Document

AI Unofficial Document

The following documents are available in the official records of the Town of Buckeye for Zoning Case CMP-99-22

APPENDIX A - MASTER DRAINAGE PLAN
APPENDIX B - TRAFFIC ANALYSIS
APPENDIX C - MASTER POTABLE WATER PLAN
APPENDIX D - MASTER WASTEWATER PLAN

Exhibit C

Town Fees

A. Plan Review Fees.*

Plan Review Fees shall be paid to the Town on a per sheet basis for construction plans for all residential and commercial development. The Plan Review Fee shall apply per sheet for all paving, water, sewer, improvement, storm drain, reclaimed water, striping, traffic signal, grading, drainage, landscape, irrigation, street light, and all other construction plans. Cover sheets, typical sections, quantity sheets, special details, and index maps shall be counted towards the plan review fee calculation. Plan sheets containing standard notes and details as approved by the Town shall not be counted towards the Plan Review Fee calculation.

Paving, water, sewer, and storm drain plans shall be submitted at a horizontal scale of one (1) inch equals twenty (20) feet and a vertical scale of one (1) inch equals two (2) feet. Grading, drainage, and striping plans shall be submitted at a horizontal scale of one (1) inch equals forty (40) feet. The plan review fee shall include the first and second reviews, and thereafter all reviews will be billed at $100 per hour if such reviews are required because of Developer's actions or failure to act, but shall not be billed at all if such reviews are required to address issues that could have been raised as part of the first or second reviews. The Plan Review Fees shall be due and payable upon submittal of the plans. For standard review times, the first review period shall be no more than twenty-five (25) business days; the second review period shall be no more than fifteen (15) business days, and the third review period shall be no more than ten (10) business days. For expedited review times, the first review period shall be no more than fifteen (15) business days; and the second and the third review periods shall each be no more than ten (10) business days for the second review and five (5) business days for the third review. Developer may elect a standard or expedited review time at the time of plan submittal.

Plan Review Fee: $200/sheet.
Expedited Review Fee: $350/sheet.

B. Report Review Fees.*

Report Review Fees shall be paid to the Town on a per report basis for master plans, studies, and drainage reports for all residential and commercial developments. The Report Review Fee shall apply per each report for all drainage, water, wastewater, street and circulation, and environmental design master plans, studies, and reports. The Report Review Fee shall include the first and second reviews. Additional reviews shall be conducted at $100 per hour if such reviews are required because of Developer's actions or failure to act, but shall not be billed at all if such reviews are required to address issues that could have been raised as part of the first or second reviews. The Report Review Fees shall be due and payable upon submittal of the report. For standard review times, the first review period for any report submitted shall be no more than twenty-five (25) business days; the second review period shall be no more than fifteen(15) business days, and the third review period shall be no more than ten (10) business

days. For expedited review times, the first review period for any report submitted shall be no more than fifteen (15) business days; and the second and the third review periods shall each be no more than ten (10) business days for the second review and five (5) business days for the third review. Developer may elect a standard or expedited review time at the time of report submittal.

Report Review Fee: $600/report.
Expedited Review Fee: $800/report.

C. Preliminary Plat Fees.*

Initial Submittal Fee: $500.
Additional Fee: $10 per lot or tract included in preliminary plat.

D. Final Plat Fees.*

Initial Submittal Fee: $1,000.
Additional Fee: $10 per lot or tract included in final plat.

E. Development Site Plan Fees (for residential and commercial plans).*

Initial Submittal Fee: $100
Additional Fee: $50/acre.

F. Planning Unit Plan Fees.

In addition to Plan Review Fees and Report Review Fees, Developer shall pay development application fees for each planning unit submittal as provided below:

Planning Unit	Fee
I	$ 1,632.86
II	$ 2,992.86
III	$ 7,222.86
IV	$12,412.86
V	$20,712.86
VI	$32,802.85
VII	$11,222.85

* The Plan Review, Report Review, Preliminary Plat, Final Plat, and Development Site Plan Review Fees shall equal the amounts set forth in this Exhibit C for a period of five (5) years from the effective date of this Agreement. Beginning on the date that is five (5) years after the effective date of this Agreement, the Plan Review and Report Review Fees shall be subject to an annual adjustment in an amount equal to the amount of the CPI increase (consumer price index for all urban customers, all cities-all items, 1982-1984), but such adjustment shall not take into account any adjustments for that period of time prior to the date that is five (5) years after the effective date of this Agreement.

Exhibit D

Development Fees

The development fees applicable to the Property are as follows:

Residential Development Fees*

	Large Estate, Estate, Very Low, Low, Low/Medium, and Medium Residential	High Platted and High Development Site Plan Residential
	(per dwelling unit)	(per dwelling unit)
Transportation	$2,200	$ 1580
Water System	$1,250	$ 900
Water Resource	$1,200	$ 860
Wastewater System	$1,100	$ 800
Recreation	$ 100	$ 75
Police, Fire, and EMS	$ 150	$ 150
Total	$6,000	$4,365

Commercial and Resort Development Fees*

	Commercial (per square foot)	Resort (per unit)
Transportation	$0.78	$ 1580
Water System	$0.30	$1,125
Water Resource	$0.32	$1,080
Wastewater System	$0.30	$1,035
Recreation	$0	$0
Police, Fire, and EMS	$0.15	$0
Total	$1.85	$4,820

* The Development Fees shall equal the amounts set forth in this Exhibit D for a period of ten (10) years from the effective date of this Agreement. Beginning on the date that is ten (10) years after the effective date of this Agreement, all Development Fees shall be subject to an annual adjustment in an amount equal to the amount of the CPI increase (consumer price index for all urban customers, all cities-all items, 1982-1984), but such adjustment shall not take into account any adjustments for that period of time prior to the date that is ten (10) years after the effective date of this Agreement.

Exhibit E

Development (Impact) Fee Ordinance

General Guidelines

A. The primary purpose of adopting a Development (Impact) Fee Ordinance ("Ordinance") is to establish a financing mechanism to fund necessary public services/infrastructure improvements (the "Services/Infrastructure") provided to developments, consistent with the provisions of A.R.S. § 9-463.05.

B. The Town of Buckeye ("Town") will assume responsibility for the ownership, operation and maintenance of all completed public infrastructure comprising Services/Infrastructure that are the subject of an Ordinance, subject to any agreements requesting the developer(s) or property owners' association(s) to maintain and operate any Services/Infrastructure for such period of time as determined by the parties.

C. The Town acknowledges that a developer may fund the construction of Services/Infrastructure with its own monies. So long as the construction complies with applicable Town standards, the developer shall be entitled to a credit, dollar-for-dollar, against applicable development (impact) fees. In the event Services/Infrastructure comprising all or any portion of the Services/Infrastructure that are the subject of an Ordinance is competitively bid in accordance with the requirements of Title 34, the developer may be entitled to reimbursement of the applicable components of the development (impact) fees assessed pursuant to such Ordinance. In addition, the Town agrees that it may be in the public's interest and convenience to assign the construction bidding process to the developer (with the Town's supervision), subject to the following conditions: (i) the plans, specifications and the bidding and contract documents prepared by the developer shall be approved by the Town Manager or his/her designee, (ii) the developer shall advertise (with the Town's supervision) for bids for the construction of public infrastructure in conformance with the standard procedures and requirements of the Town with respect to its public works projects and the competitive bidding requirements under Title 34, and (iii) contracts for construction of the Services/Infrastructure shall be awarded to the lowest responsible bidder pursuant to the requirements of Title 34 as determined by the Town Manager or his/her designee in consultation with the developer.

D. The Town acknowledges that some public infrastructure comprising Services/Infrastructure, and that is funded through the payment of development (impact) fees under an Ordinance, may also serve to benefit other surrounding developments. In that event, the Town shall consider subjecting the other benefited developments to the assessment of development (impact) fees under such Ordinance in order to allow these other developments to pay their fair share of the costs.

E. Development (impact) fees assessed under an Ordinance shall be determined with reference to equivalent dwelling units ("EDUs"), a number that represents the demand that a

particular land use type places on each category of Services/Infrastructure compared to the demand created by a standard density detached single family dwelling unit on each such category. The number will be represented as a ratio determined by dividing an indicator of the non-residential demand by an indicator of the standard density detached single-family dwelling unit demand.

F. Categories of Services/Infrastructure for which development (impact) fees may be assessed under an Ordinance are: major streets, bridges, and other transportation facilities; recreational facilities (including neighborhood, community and district parks and related facilities and equipment, aquatic facilities, neighborhood, community, adult, teen, and multi-generational centers, and pedestrian paths and trails); wastewater system; water system; water resources; and police/fire/EMS.

G. Prior to assessment of a development (impact) fee, the Town shall approve a written report ("Report"), which shall include all documentation that supports the assessment of a new or increased development (impact) fee. The Report shall be prepared by or at the direction of the Town Manager. The Report shall describe the extent of the Services/Infrastructure needed to serve the anticipated future development of the development(s) under consideration consistent with the Town's general plan. The Report shall specify needs for each category of Services/Infrastructure. The needs for each category of Services/Infrastructure shall be based on the same standard of service being required within the remainder of the Town. Only those categories of Services/Infrastructure identified herein shall be included in any Report or shall be subject to the assessment of a development (impact) fee. The Report shall estimate the total cost for Services/Infrastructure made necessary by new development including land acquisition, studies leading to design, construction, financing and administrative costs, but shall not include costs for ongoing operation and maintenance, nor for replacement to the extent that replacement facilities do not increase service capacity. The Report shall include offsets against the total cost of Services/Infrastructure from alternative funding sources that can be used, or are reasonably anticipated to be used, to assist in the provision of Services/Infrastructure identified in the Report. These offsets shall include, e.g., a reduction for the initial value of bonds that can be supported with available revenues from secondary property taxes, Arizona Highway User Revenues, solid waste fees, sewer rate revenues, and water rate revenues.

H. Net costs for the Services/Infrastructure shall be calculated by reducing the total cost, as described above, by the offsets described above. The Report shall project the number of EDUs, excluding those for "public and quasi-public facilities" within the development(s) under consideration for assessment of a development (impact) fee. "Public and quasi-public facilities", as used herein, shall mean schools, hospitals, churches, cemeteries and public facilities such as community centers, libraries, and police and fire stations. Net costs for the Services/Infrastructure shall be allocated to EDUs, excluding those for public or quasi-public facilities, projected to be constructed within the development(s) under consideration for the assessment of development (impact) fees. The Report shall include an estimate of the timing of construction of public infrastructure comprising all or a portion of the necessary public services within the development(s) under consideration for assessment of development impact fees. The estimate shall be related to the rate of new development projected to occur within such development(s). The net cost per EDU may be reduced for a period of time not to exceed four

years for one or more categories of Services/Infrastructure, such reduction to be made pursuant to a phasing schedule included in the Report. The phasing schedule shall identify the date on which the full development (impact) fee shall be charged and the dates on which increases in the development (impact) fee shall take place prior to charging of the full development (impact) fee.

I. Each new development, except for public or quasi-public facilities, within the development(s) for which development (impact) fees have been established and assessed shall be assessed a uniform fee per EDU according to the following calculations: (a) determine the number of EDUs projected to be established within the particular new development; (b) calculate a preliminary uniform per-EDU cost by category of necessary public services for the particular new development by adding: the net cost of Services/Infrastructure per-EDU by category and any "Non-standard Costs" uniquely necessary to serve the new development. "Non-standard Costs", as used herein, shall mean those costs to provide Services/Infrastructure to a particular development that are in addition to the ordinary costs of those Services/Infrastructure due to unique conditions of the development project and not otherwise required by the infrastructure financing plan that is the subject of the applicable Report (such conditions including, but not limited to the type of development and the geophysical features of the development location). Thereafter, there shall be subtracted the following credits and offsets from the preliminary uniform per-EDU cost: the uniform amount per-EDU of credits including contributions, payments, construction or dedications made by the Developer and the value of offsets from funding sources attributable to the particular new development and specifically and historically dedicated to be used for the Services/Infrastructure needs of new development in development(s) subject to the Ordinance.

J. Any such Ordinance shall be administered by the Town Manager, or his/her designee. Development (impact) fees shall be paid at the time of the issuance of a building permit for the development. No building permit shall be issued until the applicable development impact fee (if any) has been paid. The development (impact) fee shall be assessed using the applicable development (impact) fee schedule in effect at the time the permit is issued. Any applicant for annexation, rezoning, subdivision or site plan approval by the Town who may be eligible for reimbursement or credits against a development (impact) fee otherwise assessable to the development may receive a fee determination from the Town Manager or his/her designee. The Town Manager or his/her designee shall establish procedures for calculation of the reimbursement or credits in estimating the development (impact) fee.

K. Development (impact) fees collected by the Town shall be placed in separate, interest-bearing accounts for each category of Services/Infrastructure within the land area that is the subject of the development (impact) fee. Development (impact) fees, and any interest thereon, collected shall be spent for Services/Infrastructure, including public infrastructure that provide a beneficial use to the development that paid the fee, and including services costs incurred in connection with the provision of such Services/Infrastructure.

Exhibit F

Community Facilities District Financing
General Guidelines

A. The primary purpose of forming a community facilities district ("CFD") is to establish a financing mechanism to finance, acquire, construct, operate and maintain public infrastructure that benefits the real property comprising the Caterpillar Project ("Project") and its ultimate users.

B. The public infrastructure and public infrastructure purposes anticipated to be financed by the CFD may include all public infrastructure and public infrastructure purposes allowable pursuant to A.R.S. § 48-701, et. seq. The Town of Buckeye ("Town") agrees to assume responsibility for the ownership, operation and maintenance of all completed public infrastructure acquired or constructed by the CFD subject to any agreements requesting Developer to maintain and operate any facility or improvement comprising all or a portion of such completed public infrastructure for such period of time as determined by the parties. Furthermore, the Town agrees to cooperate and pursue intergovernmental agreements with other public bodies, as applicable, to secure the ownership, operation, and maintenance of completed public infrastructure acquired or constructed with CFD funds that are typically not owned, operated, and maintained by the Town. Concurrently with the formation of any CFD, an election shall be held to, among other things, establish the initial authorization for the issuance of bonds by the CFD and the levy of an ad valorem tax, not exceeding $.30 per $100 of secondary assessed valuation, to pay for the administrative costs of the CFD and the operation and maintenance of CFD public infrastructure financed by or located within any CFD. In addition to any other agreements that may require Developer to pay for administration, operation and/or maintenance costs, in return for the Town's agreement to operate or maintain such public infrastructure and in return for the Town's agreement to administer the CFD, Developer agrees to approve, in any such election, the levy of an ad valorem tax to pay for the administrative, operation and maintenance costs of such public infrastructure, not to exceed $0.30 per $100 of secondary assessed valuation. When authorized by election, the CFD will levy an ad valorem tax of $0.30 per $100 of secondary assessed valuation to cover such costs.

C. The Town and Developer acknowledge that Developer may fund the construction of public infrastructure with its own monies and, if agreed to by the CFD, the CFD may use CFD funds (including the proceeds of the sale of CFD bonds) to acquire public infrastructure. Developer acknowledges that the construction of public infrastructure must comply with applicable Town standards, except as otherwise provided in this Agreement, so that the public infrastructure may be dedicated to the Town once acquired by the CFD. The acquisition price may include all allowable costs and expenses included under A.R.S. § 48-701, et. seq. provided, however the CFD will determine the acquisition price to be paid when it determines the amount of any CFD funding including the amount of any CFD bond issue. All construction of public infrastructure with CFD funds shall be competitively bid in accordance with the requirements of Title 34; in such event the Town agrees it may be in the public's interest and convenience to assign the construction bidding process to Developer (with the Town's supervision), subject to

the following conditions: (i) the plans, specifications and the bidding and contract documents prepared by Developer shall be approved by the Town's Public Works Department and/or (if applicable) the CFD engineer, (ii) Developer shall advertise (with the Town's supervision) for bids for the construction of the public infrastructure in conformance with the standard procedures and requirements of the Town with respect to its public works projects and the competitive bidding requirements under Title 34, and (iii) the contracts for construction of the public infrastructure shall be awarded to the lowest responsible bidder as determined by the CFD engineer in consultation with Developer.

D. The CFD may, in its sole discretion, issue bonds from time to time in one or more series to fund directly the acquisition or construction of public infrastructure. The Town agrees that any public infrastructure directly funded with CFD bonds that have been issued and sold will release Developer from having to post security or financial assurances (e.g., performance bonds) for public infrastructure to be acquired or constructed with CFD bond proceeds.

E. Generally, the boundary of the CFD is anticipated to encompass solely the boundaries of the Project. However, the Town and Developer understand that some of the public infrastructure funded through the CFD may also serve to benefit other surrounding developments, businesses and property owners. In that event, Developer, the CFD and the Town shall consider including the other benefited properties within the boundaries of the CFD in a manner that would allow these properties to pay their fair share of the cost to acquire or construct the applicable public infrastructure. Alternatively, Developer, at its option, may request the CFD and the Town, with the Town to approve at its discretion, the establishment of one or more separate cost reimbursement agreements or districts (or similar mechanisms) including such benefited property or other users benefited by the public infrastructure funded by the CFD. Proceeds from these separate cost reimbursement agreements, districts or mechanisms would be paid to reimburse the CFD for debt service and/or to pay CFD indebtedness, if the CFD funds the applicable public infrastructure, or to Developer if Developer funds the applicable public infrastructure. The Town shall undertake to amend its Code to provide for the creation of such reimbursement agreements or districts if such reimbursement agreements or districts are currently not provided for in the Town Code. In addition, the Town acknowledges that the Project is presently divided between the Ruth Fisher School District and the Litchfield/Agua Fria/Liberty/Buckeye School Districts and agrees to cooperate in the formation of CFDs and the issuance of bonds on terms and conditions, and subject to the limitations, set forth in paragraph H below.

F. The CFD may issue revenue bonds, general obligation bonds, and/or special assessment bonds from time to time to construct and/or acquire authorized public infrastructure. It is expected that CFD bonds issued from time-to-time will have a minimum term of 25 years. In the case of special assessment bonds, the CFD shall use its best efforts to implement the bond issue on the basis of a lien to market value ratio of 1 to 3 (33%), provided the issue is sold through a private non-rated offering to investors meeting the investor suitability standards established by the CFD. Market value as defined in this paragraph means the bulk or wholesale value of the property assuming that the public infrastructure to be constructed with CFD proceeds has been installed and is operational as of the date of the valuation. Additionally, in the case of special assessment bonds, Developer and/or other future property owners within the CFD, will have the ability to prepay their special assessment in whole or in part, on any interest payment date.

G. The CFD agrees to support the establishment of an Equivalent Tax Rate, for CFD debt service, of $5.30 per $100.00 of secondary assessed value. The term "Equivalent Tax Rate" shall mean the annual aggregate CFD tax levied by all CFDs, expressed as a function of dollars per $100 of secondary assessed valuation, established in order to pay debt service in respect of any outstanding CFD general obligation bonds, together with the aggregate annual operations and maintenance levy of up to $.30 per $100 of secondary assessed valuation for each CFD, combined with an amount derived by calculating the amount that, expressed as a function of dollars per $100 of secondary assessed valuation of the assessed property, would required to pay annual debt service in respect of any outstanding CFD special assessment bonds. By way of example, if the annual CFD tax levied in order to pay debt service in respect of outstanding CFD general obligation bonds is $3.50 per $100 of secondary assessed valuation, the annual operations and maintenance levy is $.30 per $100 of secondary assessed valuation and the amount derived by calculating the amount that, expressed as a function of dollars per $100 of secondary assessed valuation of the assessed property, would be required to pay scheduled annual debt service in respect of outstanding CFD special assessment bonds is $1.20 per $100 of secondary assessed valuation, the Equivalent Tax Rate would be $5.00 per $100 of secondary assessed valuation.

H. The Town acknowledges that the Project is presently divided between the Ruth Fisher School District and the Litchfield/Agua Fria/Liberty/Buckeye School Districts, and there presently exists a substantial disparity between the property tax rates (e.g. Ruth Fisher $5.8356 per $100 of assessed value and Litchfield Park $16.0260 per $100 of assessed value). If and to the extent a disparity continues to exist, the Town agrees to cooperate in the formation of two CFDs having boundaries that are coterminous, within the Project, with the boundaries of the Ruth Fisher School District (the "Ruth Fisher CFD") and the Litchfield/Agua Fria/Liberty/Buckeye School District (the "Other CFD"), respectively, insofar as such boundaries adjoin and/or intersect the Project. In such event, it is contemplated that bonds issued by the Ruth Fisher CFD may result in an "Equivalent Tax Rate" (as defined in paragraph G below) that exceeds $5.30 per $100 of secondary assessed valuation on property in the Ruth Fisher CFD so long as the following condition is satisfied: (i) the resulting Equivalent Tax Rate in the Ruth Fisher CFD will not (or, in the feasibility study prepared in connection with the issuance of such bonds, is reasonably projected to not) exceed $7.30 per $100 of secondary assessed valuation, following stabilization; and (ii) the "Average Equivalent Tax Rate" in respect of assessed property within the Project, overall, does not exceed $5.30 per $100 of secondary assessed valuation (such average to be determined by averaging the Equivalent Tax Rates in the two CFDs, with such average weighted and adjusted to take into account the difference between the amount of the total secondary assessed valuation of the assessed property located in the Ruth Fisher CFD and the amount of the total secondary assessed valuation of assessed property located in the Other CFD, respectively). If only one CFD is formed that includes the Project, it is contemplated that bonds could be issued with respect to portions of the Project lying within the boundaries of the Ruth Fisher School District upon the same terms and conditions as if two CFDs had been formed in the manner described in the foregoing provisions of this paragraph. Alternatively, if one CFD is formed that includes the entire Project, the Town will cooperate in the formation of a second CFD overlaying the portion of the Project lying within the boundaries of the Ruth Fisher School

District and in the issuance of CFD Bonds by such CFD with respect to portions of the Project included therein, upon the same terms and conditions as if two separate, non-overlapping CFDs had been formed in the manner described in the foregoing provisions of this paragraph.

I. It is contemplated that Developer will advance funds related to the formation of the CFD and for public infrastructure purposes. After bond proceeds are used to pay the actual direct costs of financing, acquiring or constructing public infrastructure, bond proceeds may be used to reimburse Developer for costs incurred and directly related to the planning and engineering of the public infrastructure, or for other public infrastructure purposes permitted by the CFD and allowed pursuant to A.R.S. § 48-701, et. seq.

J. At any time after the formation of the CFD and until such time as Developer owns less than twenty five percent (25%) of the Property by acreage, Developer shall have the sole right to initiate any application, including submitting to the CFD Board any feasibility study, concerning the construction, acquisition, and/or financing public infrastructure or public infrastructure purposes. After such time, the CFD Board on its own initiative may consider applications or feasibility studies not submitted by Developer.

Exhibit G

Dispute Resolution/Remedies

A. The dispute resolution process ("Process") and remedies set forth herein shall not apply to an action by the Town to condemn or acquire by inverse condemnation all or any portion of the Property, and in the event of any such action by the Town, Developer shall have all rights and remedies available to it at law or in equity.

B. If an event of default is not cured within the Cure Period, the non-defaulting party may institute the Process by providing written notice initiating the Process ("Initiation Notice") to the defaulting party.

C. Within fifteen (15) days after delivery of the Initiation Notice, each party shall appoint one person to serve on an arbitration panel ("Panel"). Within twenty-five (25) days after delivery of the Initiation Notice, the persons appointed to serve on the Panel shall themselves appoint one person to serve as the third member of the Panel. The third person selected shall function as the Chairman of the Panel.

D. The parties agree that the remedies available for award by the Panel shall be limited to specific performance, declaratory relief, and injunctive relief.

E. The parties have structured this Process with the goal of providing for the prompt and efficient resolution of all disputes falling within the purview of this Process. To that end, either party can petition the Panel for an expedited hearing if circumstances justify it. Such circumstances shall be similar to what a court would view as appropriate for injunctive relief or temporary restraining orders. In any event, the hearing of any dispute not expedited will commence as soon as practicable, but in no event later than forty-five (45) days after selection of the Chairman. This deadline can be extended only with the consent of both parties to the dispute, or by decision of the Panel upon a showing of emergency circumstances.

F. The Chairman will conduct the hearing pursuant to the Center For Public Resources' Rules for Non-Administered Arbitration of Business Disputes then in effect. The Chairman shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with the deadlines provided herein, and the parties' objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of privileged materials or information. The Chairman upon proper application shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary or sensitive materials or information from public disclosure or other misuse. Any party may make application to the Maricopa County Superior Court to have a protective order entered as may be appropriate to confirm such orders of the Chairman.

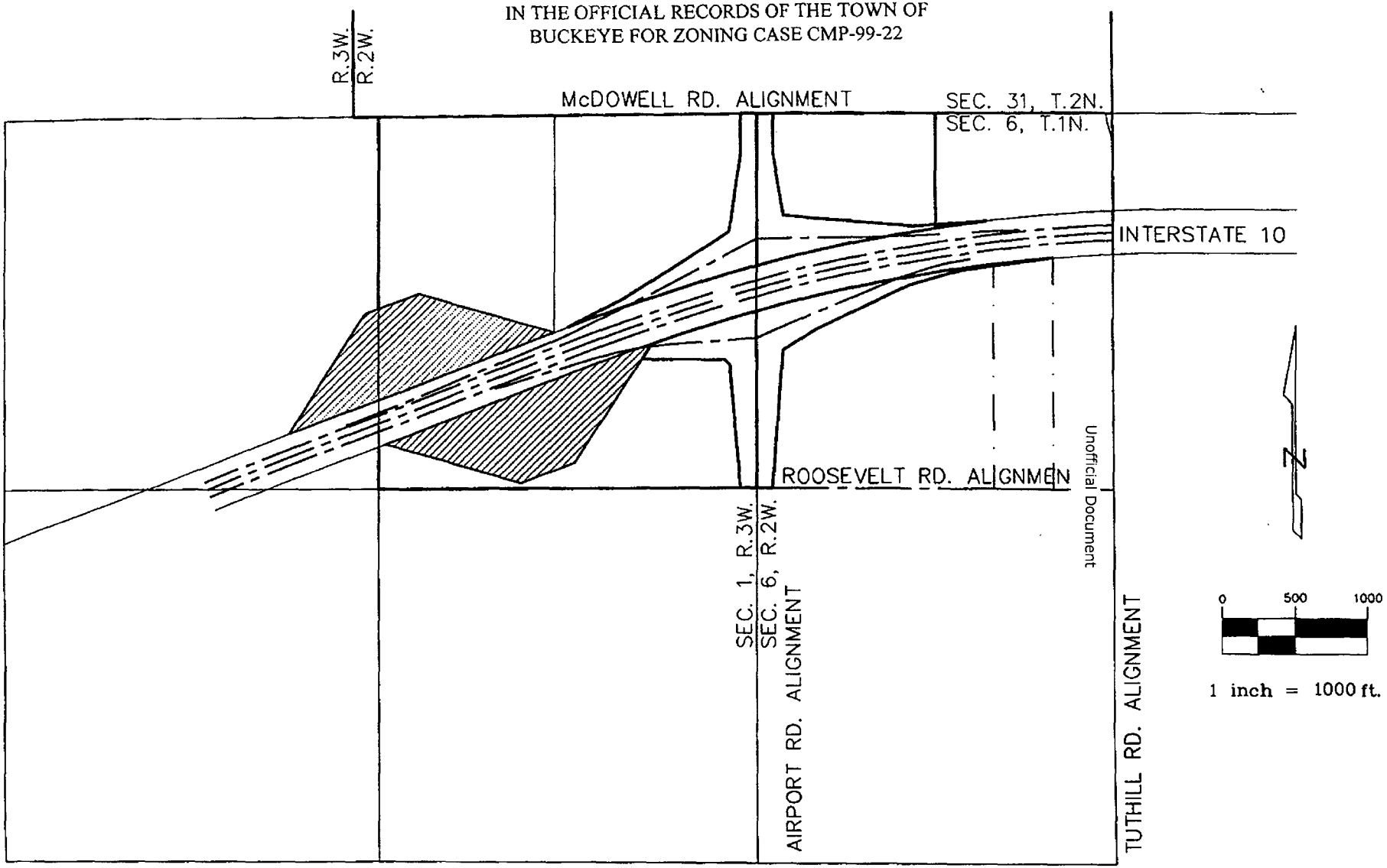
G. In order to effectuate the parties' goals, the hearing, once commenced, will proceed from business day to business day until concluded, absent a showing of emergency circumstances. Except as otherwise provided herein, the Process shall be governed by the Uniform Arbitration Act as enacted in Arizona at A.R.S. § 12-1501 *et seq.*

H. The Panel shall, within fifteen (15) days from the conclusion of any hearing, issue its decision. The decision shall be rendered in accordance with the Agreement and the laws of the State of Arizona.

I. Either party may appeal the decision of the Panel to the Maricopa County Superior Court ("Court") for a de novo review of the issues decided by the Panel, if such appeal is made within thirty (30) days after the Panel issues its decision. Except as provided in Paragraphs A and I of this Exhibit G, the parties agree that the remedies available for award by the Court shall be limited to specific performance, declaratory relief, and injunctive relief. The decision of the Panel shall be binding on both parties until the Court renders a binding decision. If the non-prevailing party in the Process fails to appeal to the Court within the timeframe set forth herein, the decision of the Panel shall be final and binding. If one party does not comply with the decision of the Panel during the pendency of the action before the Court or otherwise, then the other party shall be entitled to exercise all rights and remedies that may be available under law or equity, including without limitation the right to institute an action for money damages related to the default that was the subject of the Panel's decision and the provisions of this Exhibit G shall not apply to such an exercise of rights and remedies.

J. All fees and costs associated with any Process before the Panel, including without limitation the fees of the Panel, other fees, and the prevailing party's attorneys' fees, expert witness fees and costs, will be paid by the non-prevailing party. The determination of prevailing and non-prevailing parties, and the appropriate allocation of fees and costs, will be included in the decision by the Panel. Similarly, all fees and costs associated with an appeal to the Court or any appellate court thereafter, including without limitation, the prevailing party's attorneys' fees, expert witness fees and costs, will be paid by the non-prevailing party. The determination of prevailing and non-prevailing parties, and the appropriate allocation of fees and costs, will be included in the decision by the Court.

A FULL SIZE COPY OF THIS EXHIBIT IS AVAILABLE
IN THE OFFICIAL RECORDS OF THE TOWN OF
BUCKEYE FOR ZONING CASE CMP-99-22



DMB

EXHIBIT "H"
ADOT SURPLUS PROPERTY
CATERPILLAR PROPERTY
BUCKEYE, ARIZONA

WOOD, PATEL & ASSOCIATES INC.
Civil Engineers, Hydrologist and
Land Surveyors
(602) 234-1344

19991071208

VERRADO

MAP OF UNDERSTANDING



*ALL AREAS ARE APROXIMATE

04MAR24

The information contained in this graphic has been supplied in whole or in part by the Client and/or their consultants and may have been altered in whole or in part by Espiritu Local Incorporated at the request of the Client. Drawings and Specifications as instruments of service are the property of Espiritu Local Incorporated and may not be reproduced or used for any purpose without the written permission of Espiritu Local Incorporated.

DMB 1867



VILLAGE DISTRICT PARK FIRE STATION

VERRADO | VILLAGE DISTRICT

0' 80' NORTH

ESPIRITU LOCI
The Spirit of the Place

29SEP23

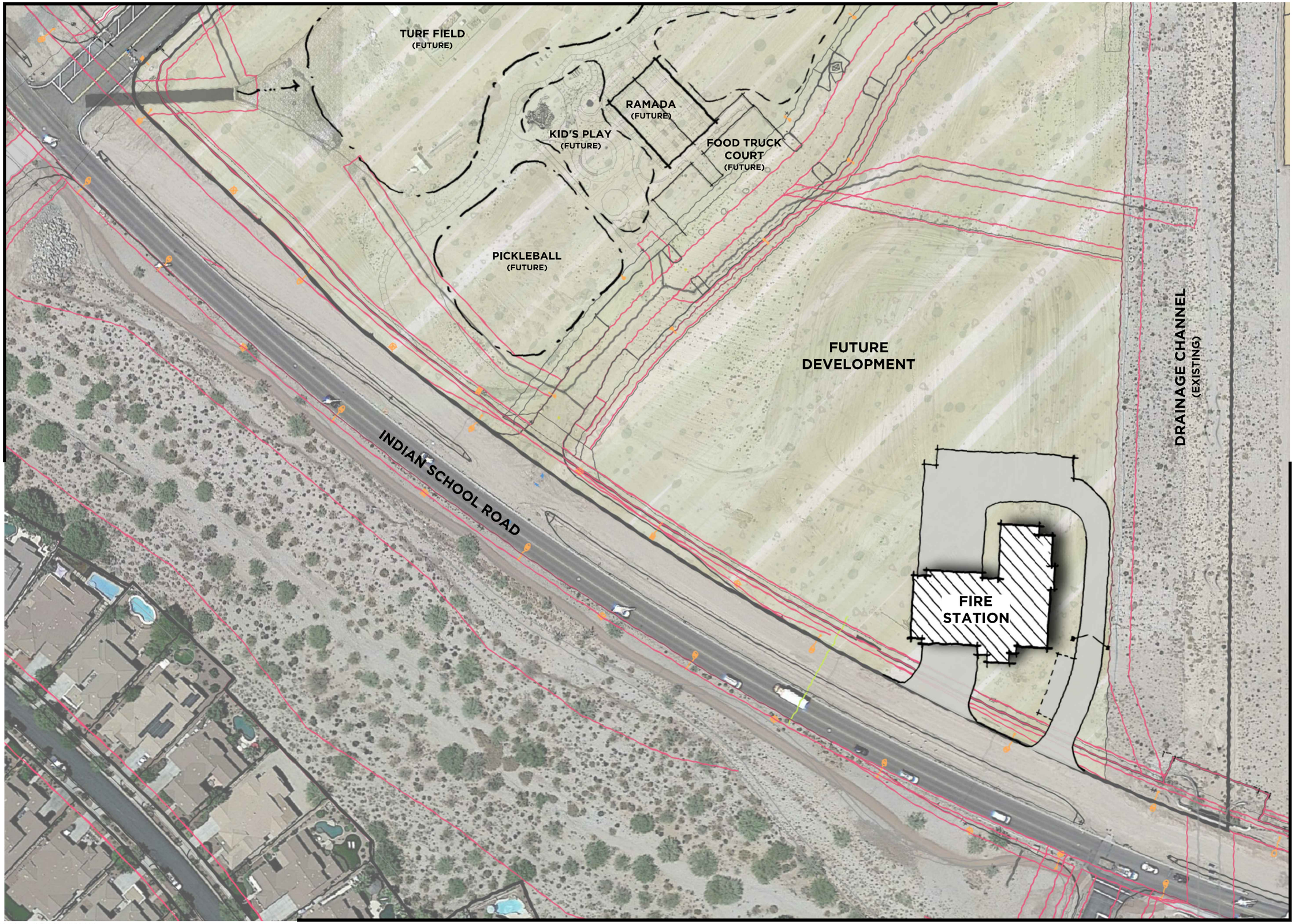
A

1868

© 2023 Espiritu Loci

The information contained in this graphic has been supplied in whole or in part by the Client and/or their consultants and may have been altered in whole or in part at the request of the Client. The drawings and information depicted hereon are conceptual only and are not intended to represent final architecture, planning, or design concepts. We do not represent, warrant, or guarantee that such information is true or that it accurately reflects existing or future development. © 2023 Espiritu Loci Incorporated

FILE PATH Q:\VERRADO\PM-4\EAST\DISTRICT PARK\FIRE STATION\ISP\ELI



VILLAGE DISTRICT PARK FIRE STATION

VERRADO | VILLAGE DISTRICT

0' 40' NORTH

ESPIRITU LOCI
The Spirit of the Place

29SEP23

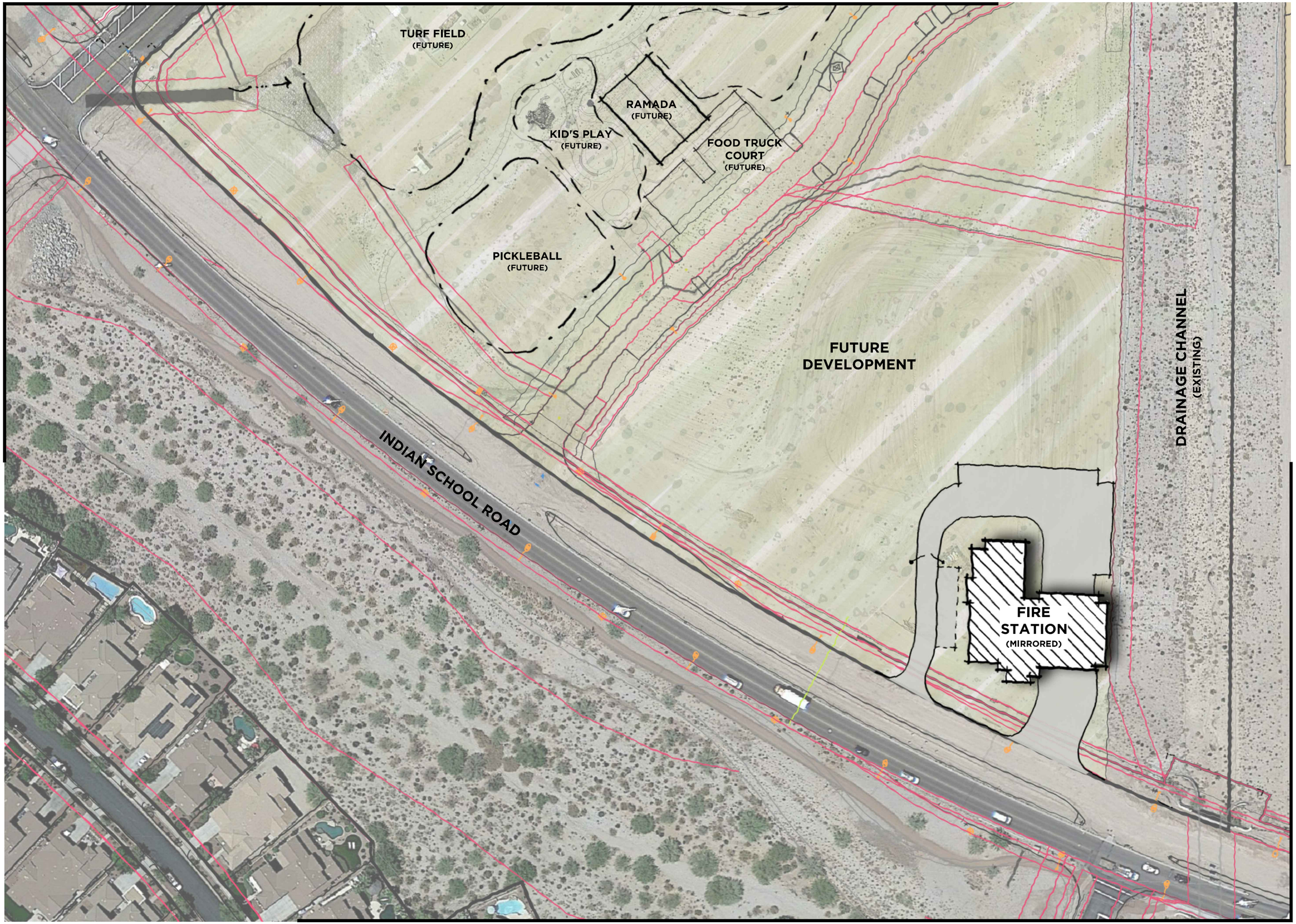
A

1869

© 2023 Espiritu Loci

The information contained in this graphic has been supplied in whole or in part by the Client and/or their consultants and may have been altered in whole or in part at the request of the Client. The drawings and information depicted hereon are conceptual only and are not intended to represent final architecture, planning, or design concepts. We do not represent, warrant, or guarantee that such information is true or that it accurately reflects existing or future development. © 2023 Espiritu Loci Incorporated

FILE PATH Q:\VERRADO\PM-4\EAST\DISTRICT PARK\FIRE STATION\ISP\ELI



VILLAGE DISTRICT PARK FIRE STATION

VERRADO | VILLAGE DISTRICT

0' 40' NORTH

ESPIRITU LOCI
The Spirit of the Place

29SEP23

A2

1870

© 2023 Espiritu Loci

The information contained in this graphic has been supplied in whole or in part by the Client and/or their consultants and may have been altered in whole or in part at the request of the Client. The drawings and information depicted hereon are conceptual only and are not intended to represent final architecture, planning, or design concepts. We do not represent, warrant, or guarantee that such information is true or that it accurately reflects existing or future development. © 2023 Espiritu Loci Incorporated

FILE PATH Q:\VERRADO\PH-4\EAST\DISTRICT PARK\FIRE STATION\ESP\ELI

MEMORANDUM OF UNDERSTANDING
DMB / CITY OF BUCKEYE
FIRE STATION SITE

This Memorandum of Understanding ("**MOU**") is made and entered into as of _____, ("**Effective Date**") by and between DMB White Tank, LLC, an Arizona limited liability company ("**DMB**"), and the City of Buckeye, Arizona, an Arizona municipal corporation (the "**City**") (collectively, the "**Parties**"). By signing below, DMB and the City mutually agree to the following:

1. In satisfaction of the requirements of Section 2.12 (f) of the Pre-Annexation and Development Agreement entered into on November 24, 1999 between the City and DMB and recorded in the Records of the Maricopa County Recorder as Document Number 99-1071208 ("**PADA**"), DMB shall dedicate and convey title – free of monetary liens - consisting of 1.5 acres of real property (the "**Site**") to serve as a location for a future fire station , as reflected in a commitment for policy of title insurance approved by the City. The proposed Site is located at the northwest corner of Indian School Road and Tuthill Wash as generally depicted on the attached exhibit entitled "**Map of Understanding**". It is acknowledged that upon conveyance of this Site, DMB has satisfied any and all required obligations pertaining to provision of fire facilities for the Verrado Master Planned Community, including the conveyance of land, capital contributions or any expenses related to operations and maintenance of such facilities; provided, however, the City is not hereby assuming or agreeing to pay, perform and discharge any other liability or liabilities of DMB set forth in the PADA.

   The Parties shall reasonably cooperate to mutually agree upon final Site legal description, based on the City's site planning requirements, no later than October 31, 2024.

2. DMB shall deliver a mass graded Site to the City in a compacted, engineered fill condition to ensure the City has sufficient soil on the Site to perform finish grading and drainage with the City's onsite work. The Site is to be rough graded within +/- 0.2' of existing high curb along the Indian School Rd. frontage. The City is to perform their own soil/compaction testing prior to the start of fire station construction.

3. With exception to Paragraph 2 above, the City shall provide all site planning, engineering and construction of offsite and onsite work to be performed at the City's expense. The City shall provide site planning and building design development documentation to DMB as a courtesy and to allow DMB to make any reasonable design requests to the City that relate to appearance and aesthetics

4. The City acknowledges that, at the City's request, DMB offered a site which is located at the southwest corner of Verrado Way and Highlands Park Drive, intended to be conveyed to the City during DMB's development of the Highlands Phase 1 subdivision: Parcel 502-92-737 per the County's Assessors records (the "**Highlands Site**"). Notwithstanding communications between the City and DMB to utilize the Highlands Site for a fire station, the City determined that the Highlands Site is not suitable for a permanent fire station.

DMB is left with an unsubdivided/un-platted parcel/tract of land which DMB calculates as an opportunity cost of 3 lots at 50' x $2,500/ff = $375,000. The City agrees to allow and to facilitate such parcel to be subdivided/replatted in the future for two to three residential home sites, subject to typical minimum development standards in conformance with the Verrado Community Master Plan ("**CMP**") as may be amended from time to time, as required by the City, which includes public access, public utilities easements, and building, fire- and life-safety codes.

The City acknowledges that upon conveyance of the Site from DMB to the City, DMB's obligations under Section 2.12 (f) of the PADA have been satisfied; provided, however, the City is not hereby assuming or agreeing to pay, perform and discharge any other liability or liabilities of DMB set forth in the PADA. Site shall be conveyed to the City within sixty (60) days of mutual agreement of the Parties of Site legal description, satisfaction of Paragraph 2 and subject to delivery of a policy for title insurance. Upon conveyance of the Site, the City shall commence construction of the fire station facilities within twenty-four (24) months from the later of: (i) appropriation of funding, and (ii) approval by City Council, both of which must occur. The Parties understand and agree that there currently is no funding in place to construct and operate the permanent fire station. Parties further understand and agree that the inability of the City to construct and operate the permanent fire station will not restrict, delay or impede DMB in the development of any portion of the Verrado/Victory project consistent with the PADA and/or approved entitlements, whether based on emergency response time or otherwise.

5. Miscellaneous Provisions.

   a. All disputes, claims, and controversies between the Parties hereto arising out of or related to this MOU may only be brought in a court of competent jurisdiction in Maricopa County, Arizona. This MOU is governed by the laws of the State of Arizona.

   b. In the event of any claim, controversy or legal action including arbitration arises under this MOU, the prevailing Party will be entitled to recover from the non-prevailing Party its reasonable attorneys' fees, costs, and expenses.

   c. This MOU is subject to the cancellation provisions of Ariz. Rev. Stat. § 38-511.

   d. Time is of material importance to each of the provisions hereof.

   e. Notices and communications required by or concerning this MOU must be in writing and sent by certified mail, by courier, or by hand-delivery, addressed as follows:

City of Buckeye Dan Cotterman, City Manager 530 E Monroe Ave Buckeye AZ 85326	DMB White Tank, LLC Dan Kelly, General Manager 6263 N. Scottsdale Road, #330 Scottsdale, AZ 85250

With a copy to: City of Buckeye K. Scott McCoy, City Attorney 530 E Monroe Ave Buckeye AZ 85326	

Notice will be deemed received three business days after depositing into the mail, one business day after deposit with a courier, or on the same day as personal delivery. Change of address shall be given by written notice to the other Party.

f. All attachments to this MOU are incorporated herein by reference.

g. The Parties will execute any further instruments and perform any further act that is reasonably necessary to carry out the terms of this MOU.

h. The terms and conditions of this MOU are for the benefit of the Parties and there are no intended third-party beneficiaries under this MOU.

i. Each Party will be considered the drafter of this MOU and this MOU will not be construed against either Party as the drafter hereof.

[SIGNATURE PAGE TO FOLLOW]

DMB WHITE TANK, LLC, an Arizona limited liability company

By: DMB Associates, Inc., an Arizona corporation, its Manager

David Nilsen

Dave Nilsen, Vice President of Land Development

CITY OF BUCKEYE

Dan Cotterman, City Manager

ATTEST:

Lucinda Aja, City Clerk

RECOMMENDED:

William Kauppi

William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

K. Scott McCoy, City Attorney

Adobe Acrobat Sign Transaction Number: CBJCHBCAABAAwWu7nuKWCX7le IDsrN9IOqznbqoc

EXHIBIT A
TO
MEMORANDUM OF UNDERSTANDING
DMB / CITY OF BUCKEYE
FIRE STATION SITE

[MAP OF UNDERSTANDING]

VERRADO

MAP OF UNDERSTANDING



*ALL AREAS ARE APROXIMATE

04MAR24

The information contained in this graphic has been supplied in whole or in part by the Client and/or their consultants and may have been altered in whole or in part by Espiritu Local Incorporated. Drawings and Specifications as instruments of service are the property of Espiritu Local Incorporated and may not be reproduced or used for any purpose without the written permission of Espiritu Local Incorporated.

CITY OF BUCKEYE
Regular Council Meeting
COUNCIL ACTION REPORT

MEETING DATE: 09/03/24	**AGENDA ITEM:** 4.S. CIP - No. 100680 Blue Horizons Fire Station #707 - APS Utility Easement Agreement
DATE PREPARED: 08/29/24	**DISTRICT NO.:** 5
STAFF LIAISON: Steve Riley, Construction Project Manager, sriley@buckeyeaz.gov, (623) 687-8442	
DEPARTMENT: Engineering	**AGENDA ITEM TYPE:** Consent Agenda Items / New Business

ACTION/MOTION: (This language identifies the formal motion to be made by the Council)
Council to take action on the grant of a utility easement, as set forth in the Utility Easement Agreement between the City of Buckeye, an Arizona municipal corporation, and Arizona Public Service Company (APS), an Arizona corporation; and authorize the City Manager to execute and deliver said Agreement on behalf of the City of Buckeye.

SUMMARY

PROJECT DESCRIPTION:
CIP No. 100680 Blue Horizons Fire Station #707 requires the installation and connection of electrical lines to APS to ensure its full operational capability. This includes constructing, reconstructing, replacing, repairing, operating, and maintaining electrical lines and associated facilities and fixtures necessary for the transmission and distribution of electricity to, through, across, and beyond the property. Additionally, it encompasses the installation, operation, and maintenance of telecommunication wires, cables, conduits, fixtures, and facilities for the sole use of APS to supplying electricity. This is a crucial measure for the project's overall operation and functionality.

BENEFITS:
A fully operational fire station ensures rapid emergency response times, enhancing community safety and potentially saving lives and property during fires and other emergencies. Reliable power enables the station to maintain essential communication systems, operate emergency medical equipment, and support the overall readiness of firefighting personnel.

FUTURE ACTION:
Delivery of a complete and constructed Fire Station #707.

FINANCIAL IMPACT STATEMENT:
$1 from project funds.

CURRENT FISCAL YEAR TOTAL COST:
$1 from project funds.

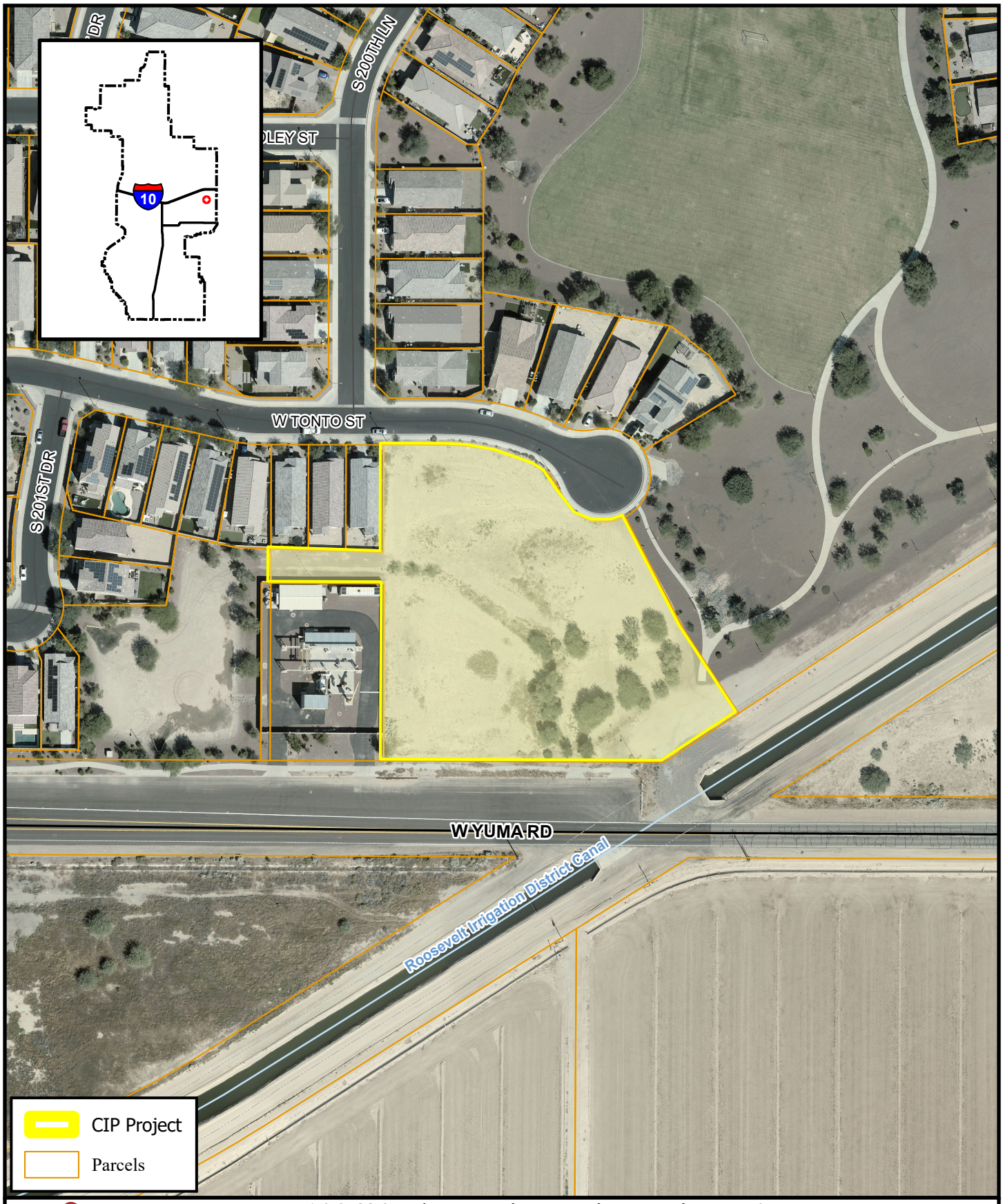
BUDGETED:
Yes

FISCAL YEAR:
FY25

FUND/DEPARTMENT:

50212140-543122

Items related to a project or facility location must include an attached vicinity map for Council Review.
ATTACHMENTS:
CIP100680_BlueHorizonsFireStation707_8x11.pdf
CIty of Buckeye APS Easement - APN 502-35-371B - WA759369 - Partially Executed.pdf



CIP 100680 Blue Horizons Fire Station #707

BUCKEYE, AZ

While every effort has been made to ensure the accuracy of this information, the City of Buckeye makes no warranty, expressed or implied, as to its absolute accuracy and expressly disclaims liability for the accuracy thereof.

0 37.5 75 150 Feet

N

Date: 8/30/2023
Document Name: CIP Vicinity Maps

SW¼-SEC-8-1N-2W
APN 502-35-371B
BC-24-71
WA759369
JCN-SER

CITY OF BUCKEYE-APS
UTILITY EASEMENT

CITY OF BUCKEYE, a municipal corporation of the State of Arizona, (hereinafter called "Grantor"), is the owner of the following described real property located in Maricopa County, Arizona (hereinafter called "Grantor's Property"):

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

Grantor, for and in consideration of One Dollar ($1.00) and other valuable consideration, receipt of which is hereby acknowledged, does hereby grant and convey to **ARIZONA PUBLIC SERVICE COMPANY**, an Arizona corporation, (hereinafter called "Grantee"), and to its successors and assigns, a non-exclusive right, privilege, and easement, 8 feet in width or as further described in attached exhibits at locations and elevations, in, upon, over, under, through and across, a portion of Grantor's Property described as follows (herein called the "Easement Premises"):

SEE EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF

Grantee is hereby granted the right to: construct, reconstruct, replace, repair, operate and maintain electrical lines, together with appurtenant facilities and fixtures for use in connection therewith, for the transmission and distribution of electricity to, through, across, and beyond Grantor's Property; and install, operate and maintain telecommunication wires, cables, conduits, fixtures and facilities solely for Grantee's own use incidental to supplying electricity (said electrical and telecommunication lines, facilities and fixtures collectively herein called "Grantee Facilities"). Grantee Facilities shall consist of underground electric lines and appurtenant facilities including pad mounted equipment, the locations of which are set forth in Exhibit "B." In no event may any overhead electric lines and associated overhead equipment be installed unless in an emergency to restore power. Grantee shall at all times have the right of full and free ingress and egress to and along the Easement Premises for the purposes herein specified.

Grantee is hereby granted the right, but not the obligation, to trim, prune, cut, and clear away trees, brush, shrubs, or other vegetation on, or adjacent to, the Easement Premises whenever in Grantee's judgment the same shall be necessary for the convenient and safe exercise of the rights herein granted.

Grantor shall not locate, erect or construct, or permit to be located, erected or constructed, any building or other structure or drill any well within the limits of the Easement Premises; nor shall Grantor plant or permit to be planted any trees within the limits of the Easement Premises without the prior written consent of Grantee. However, Grantor reserves all other rights, interests and uses of the Easement Premises that are not inconsistent with Grantee's easement rights herein conveyed and which do not interfere with or endanger any of the Grantee Facilities, including, without limitation, granting others the right to use all or portions of the Easement Premises for utility or roadway purposes and constructing improvements within the Easement Premises such as paving, sidewalks, landscaping, driveways, and curbing. Notwithstanding the foregoing, Grantor shall not have the right to lower by more than one foot or raise by more than two feet the surface grade of the Easement Premises without the prior written consent of Grantee, and in no event shall a change in the grade compromise Grantee's minimum cover requirements or interfere with Grantee's operation, maintenance or repair.

Grantee shall not have the right to use the Easement Premises to store gasoline or petroleum products, hazardous or toxic substances, or flammable materials; provided however, that this prohibition shall not apply to any material, equipment or substance contained in, or a part of, the Grantee Facilities, provided that Grantee must comply with all applicable federal, state and local laws and regulations in connection therewith. Additionally, the Easement Premises may not be used for the storage of construction-related materials or to park or store construction-related vehicles or equipment except on a temporary basis to construct, reconstruct, replace, repair, operate, or maintain the Grantee Facilities.

Grantor shall maintain clear areas that extend: 1) 3 feet from and around all edges of all switching cabinet pads and 2 feet from and around all edges of all transformer pads and other equipment pads, and 2) a clear operational area that extends 10 feet immediately in front of all transformer, switching cabinet and other equipment openings, and 3) a 6 feet by 6 feet hot-stick operating area off the front left corner of all transformers, all as shown on Exhibit "B" attached hereto and made a part hereof. No obstructions, trees, shrubs, large landscape rocks, fences, fixtures, or permanent structures shall be placed by Grantor within said clear areas; nor shall Grantor install landscape irrigation or sprinkler systems within said clear areas. Landscape irrigation or sprinkler systems installed adjacent to the clear areas shall be installed and maintained so that the transformers, switching cabinets or any other equipment do not get wet by spray or irrigation.

By accepting and utilizing this easement, Grantee agrees that following any installation, excavation, maintenance, repair, or other work by Grantee within the Easement Premises, the affected area will be restored by Grantee to as close to original condition as is reasonably practicable, at the expense of Grantee; and that Grantee shall indemnify Grantor, to the extent required by law, for any loss, cost or damage incurred by Grantor as a result of any negligent installation, excavation, maintenance, repair or other work performed by Grantee within the Easement Premises.

Grantee shall exercise reasonable care to avoid damage to the Easement Premises and all improvements thereon and agrees that following any installation, excavation, maintenance, repair, or other work by Grantee within the Easement Premises, the affected area, including without limitation, all pavement, landscaping, cement, and other improvements permitted within the Easement Premises pursuant to this easement will be restored by Grantee to as close to original condition as is reasonably possible, at the expense of Grantee.

Grantor reserves the right to require the relocation of Grantee Facilities to a new location within Grantor's Property; provided however, that: (1) Grantor pays the entire cost of redesigning and relocating Grantee Facilities; and (2) Grantor provides Grantee with a new easement in a form and location acceptable to Grantee and at no cost to Grantee. Upon the acceptance by Grantee of a new easement and after the relocation of Grantee Facilities to the new easement area, Grantee shall abandon its rights to use the Easement Premises granted in this easement. The easement granted herein shall not be deemed abandoned except upon Grantee's execution and recording of a formal instrument abandoning the easement.

If any of Grantee's electric facilities in this easement are not being used or are determined not to be useful, Grantor may request that the facilities that are no longer needed be removed and that portion of the easement be abandoned. Grantee will execute and record a formal instrument abandoning the easement, or a portion thereof. Any facilities that are determined to still be needed for Grantee's electrical system can be relocated pursuant to the above relocation requirements.

Grantee shall not have the right to transfer, convey or assign its interests in this easement to any individual, corporation, or other entity (other than to an affiliated entity of Grantee or an entity that acquires from Grantee substantially all of Grantee's electric distribution facilities within the area of Grantor's Property) without the prior written consent of Grantor, which consent shall not be unreasonably withheld. Grantee shall notify Grantor of the transfer, conveyance or assignment of any rights granted herein.

The covenants and provisions herein set forth shall extend and inure in favor and to the benefit of, and shall be binding on the heirs, administrators, executors, successors in ownership and estate, assigns and lessees of Grantor and Grantee.

[THE REST OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the Parties have caused this Utility Easement to be executed by their respective duly authorized representatives this _____ day of _____, 2024.

GRANTOR: **CITY OF BUCKEYE,** an Arizona Municipal corporation _____ Eric Orsborn, Mayor	
ATTEST: _____ Lucinda J. Aja, City Clerk **APPROVED AS TO FORM:** _____ K. Scott McCoy, City Attorney	

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

On this _____ day of_____, 2024, before me personally appeared _____

_____, as Mayor of the City of Buckeye, an Arizona municipal corporation whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he signed this document.

Notary Seal:

_____
Notary Public

GRANTEE: **ARIZONA PUBLIC SERVICE COMPANY**, an Arizona corporation Suzanne Trevino, Supervisor, Right of Way Services	

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

On this 21st day of August, 2024, before me personally appeared Suzanne Trevino, as Supervisor, R.O.W. of Arizona Public Service Company, an Arizona corporation whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he signed this document.

Notary Seal:

Notary Public

CHERYL ELLARS
Notary Public - Arizona
Maricopa County
Commission # 642491
My Comm. Expires Dec 8, 2026

EXHIBIT "A"

LEGAL DESCRIPTION OF GRANTOR'S PROPERTY AS RECORDED IN INSTRUMENT NUMBER 20110399496 M.C.R.

Legal description of Fire Station Site

Tract M of Parcel 5 of Blue Horizons, according to the Final Plat for Parcel 5 of Blue Horizons recorded in Book 822 of Maps, Page 4, official records of Maricopa County, Arizona;

EXCEPTING therefrom the following described property:

A parcel of land situated in a portion of Tract L and Tract M as shown on the Plat of Blue Horizons Parcel 5, recorded at Book 822 of Maps, Page 4, Maricopa County Recorder's Office, Maricopa County, Arizona and also being a portion of the Southwest quarter of Section 8, Township l North, Range 2 West of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, more particularly described as follows:

Beginning at the southerly most common corner of said Tract L. and Tract M;

thence North 89°44' 13" West along the southerly line of said Tract L, a distance of 10.00 feet to a point on a line parallel with and 10.00 feet westerly of the easterly line of said Tract L;

thence North 00°15'47" East along said parallel line, a distance of 189.59 feet to a point on a line parallel with and 189.59 feet northerly of the southerly line of Tract L;

thence South 89°44' 13" East along said parallel line, a distance of 131.30 feet to a point on a line parallel with and 121.30 feet easterly of the westerly line of said Tract M;

thence South 00°15'47" West along said parallel line, a distance of 189.59 feet to a point on the southerly line of Tract M;

thence North 89°44'13" West along said southerly line, a distance of 121.30 feet to the point of beginning and the southerly most common corner of said Tract M and Tract L.

June 4, 2024

EXHIBIT "B"

ARIZONA PUBLIC SERVICE JOB #WA759369

A Utility Easement situated within the Southwest quarter of Section 8, Township 1 North, Range 2 West of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at the Southwest corner of Tract M, BLUE HORIZONS PARCEL 5, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 822 of Maps, Page 4;

THENCE North 00 degrees 15 minutes 47 seconds East, along the West line of said Tract M, a distance of 189.59 feet to the Northwest corner of that parcel of land described in Document #2009-1012781 of the Maricopa County Recorder's office, conveyed to the Town of Buckeye and the POINT OF BEGINNING of this Utility Easement description;

THENCE continuing North 00 degrees 15 minutes 47 seconds East, along the West line of said Tract M, a distance of 8.00 feet;

THENCE departing the West line of said Tract M, South 89 degrees 44 minutes 13 seconds East, a distance of 125.09 feet;

THENCE North 47 degrees 16 minutes 39 seconds East, a distance of 97.56 feet;

THENCE North 89 degrees 59 minutes 51 seconds East, a distance of 85.73 feet;

THENCE South 68 degrees 11 minutes 31 seconds East, a distance of 38.27 feet;

THENCE North 89 degrees 59 minutes 51 seconds East, a distance of 12.19 feet;

THENCE South 00 degrees 00 minutes 09 seconds East, a distance of 18.25 feet;

THENCE South 89 degrees 59 minutes 51 seconds West, a distance of 15.33 feet;

THENCE North 00 degrees 00 minutes 09 seconds West, a distance of 10.89 feet;

THENCE North 68 degrees 11 minutes 31 seconds West, a distance of 36.54 feet;

THENCE South 89 degrees 59 minutes 51 seconds West, a distance of 81.06 feet;

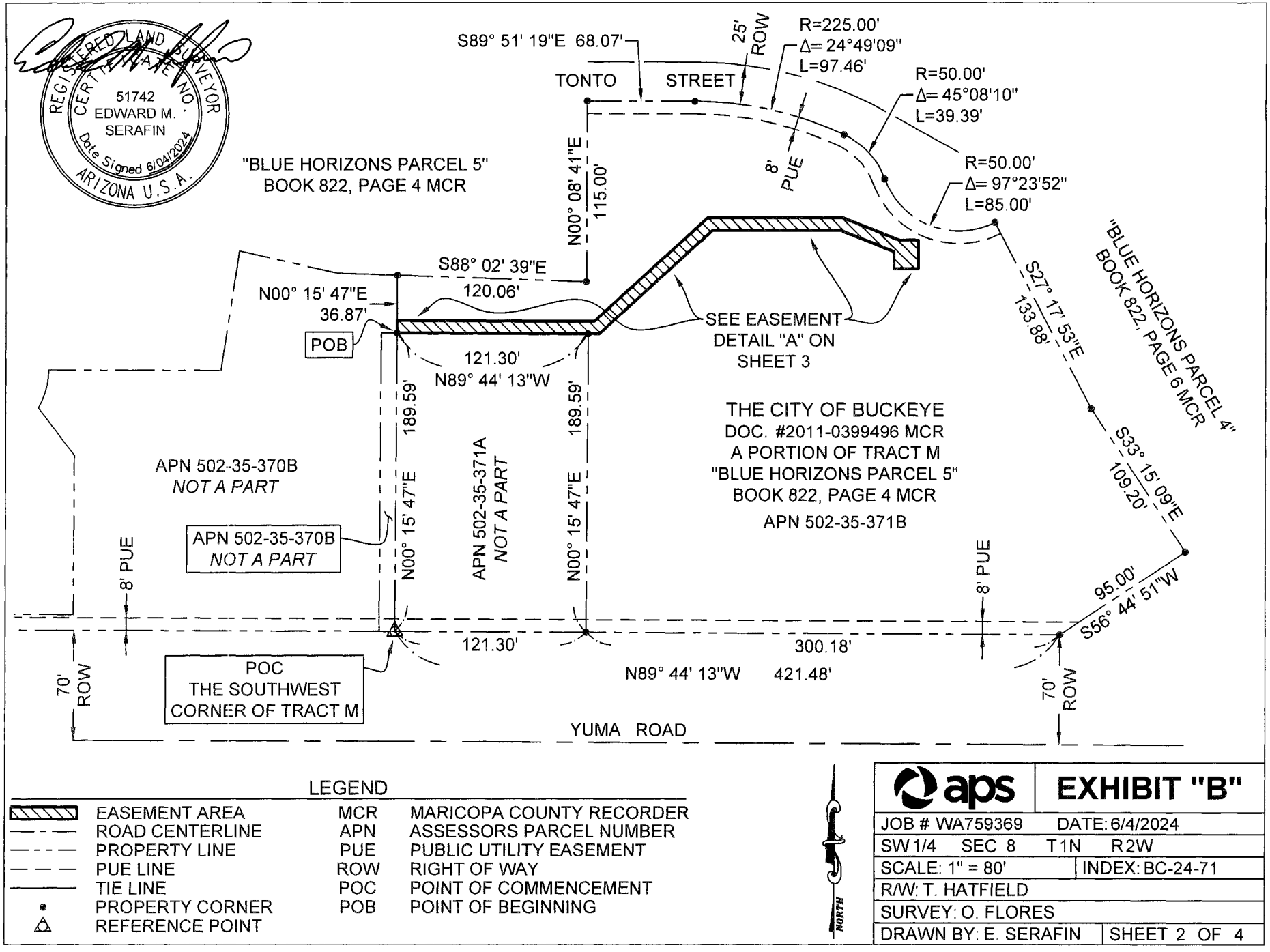
THENCE South 47 degrees 16 minutes 39 seconds West, a distance of 97.58 feet;

THENCE North 89 degrees 44 minutes 13 seconds West, a distance of 6.94 feet to the Northeast corner of said Town of Buckeye parcel;

THENCE North 89 degrees 44 minutes 13 seconds West, along the North line of said parcel, a distance of 121.30 feet to the POINT OF BEGINNING.

Contains an area of 3028.52 square feet, more or less.



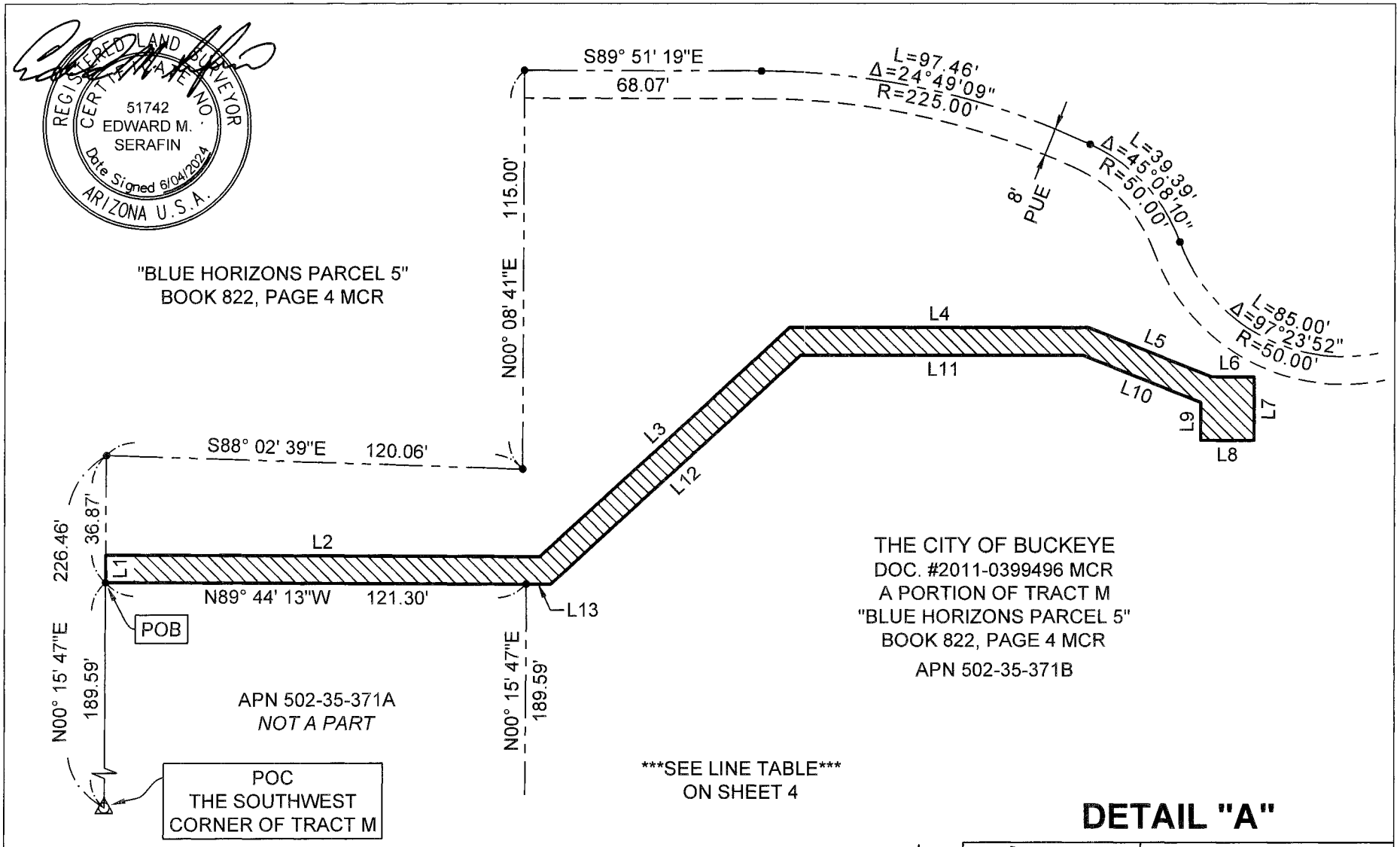


LEGEND

	EASEMENT AREA	MCR	MARICOPA COUNTY RECORDER
	ROAD CENTERLINE	APN	ASSESSORS PARCEL NUMBER
	PROPERTY LINE	PUE	PUBLIC UTILITY EASEMENT
	PUE LINE	ROW	RIGHT OF WAY
	TIE LINE	POC	POINT OF COMMENCEMENT
•	PROPERTY CORNER	POB	POINT OF BEGINNING
△	REFERENCE POINT		

NORTH

aps	EXHIBIT "B"
JOB # WA759369	DATE: 6/4/2024
SW 1/4 SEC 8 T1N R2W	
SCALE: 1" = 80'	INDEX: BC-24-71
R/W: T. HATFIELD	
SURVEY: O. FLORES	
DRAWN BY: E. SERAFIN	SHEET 2 OF 4



DETAIL "A"

LEGEND

▨	EASEMENT AREA	MCR	MARICOPA COUNTY RECORDER
—·—	ROAD CENTERLINE	APN	ASSESSORS PARCEL NUMBER
—··—	PROPERTY LINE	PUE	PUBLIC UTILITY EASEMENT
— — —	PUE LINE	ROW	RIGHT OF WAY
———	TIE LINE	POC	POINT OF COMMENCEMENT
•	PROPERTY CORNER	POB	POINT OF BEGINNING
△	REFERENCE POINT		

NORTH

aps **EXHIBIT "B"**

JOB # WA759369	DATE: 6/4/2024
SW 1/4 SEC 8 T1N R2W	
SCALE: 1" = 40'	INDEX: BC-24-71
R/W: T. HATFIELD	
SURVEY: O. FLORES	
DRAWN BY: E. SERAFIN	SHEET 3 OF 4

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N00°15'47"E	8.00'
L2	S89°44'13"E	125.09'
L3	N47°16'39"E	97.56'
L4	N89°59'51"E	85.73'
L5	S68°11'31"E	38.27'
L6	N89°59'51"E	12.19'
L7	S00°00'09"E	18.25'
L8	S89°59'51"W	15.33'
L9	N00°00'09"W	10.89'
L10	N68°11'31"W	36.54'
L11	S89°59'51"W	81.06'
L12	S47°16'39"W	97.58'
L13	N89°44'13"W	6.94'



aps	EXHIBIT "B"
JOB # WA759369	DATE: 6/4/2024
SW 1/4 SEC 8	T1N R2W
SCALE: NONE	INDEX: BC-24-71
R/W: T. HATFIELD	
SURVEY: O. FLORES	
DRAWN BY: E. SERAFIN	SHEET 4 OF 4