



City of Avondale

City Council Online Meeting

Monday, November 16, 2020

Mayor and Council

Kenneth Weise, Mayor

Pat Dennis, Vice Mayor

Tina Conde, Council Member | Bryan Kilgore, Council Member

Veronica Malone, Council Member | Curtis Nielson, Council Member

Mike Pineda, Council Member

Administration

Charles A. Montoya, City Manager

Gina Montes, Assistant City Manager

Tracy Stevens, Deputy City Manager | Cherlene Penilla, Deputy City Manager

Nicholle Harris, City Attorney | Marcella Carrillo, City Clerk

Online Meeting

Join the meeting and view presentations: <https://avondaleaz.zoom.us/j/3083557784>

Using a Mobile Device? Download the Zoom Cloud Meeting App

Join the meeting with audio only: Call 301-715-8592 (meeting ID: 308 355 7784)



City Council Online Meeting
Notice & Agenda
Monday, November 16, 2020

To join the meeting and view presentations, visit <https://avondaleaz.zoom.us/j/3083557784>

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Request to Speak: Anyone wishing to address the Council should submit a Request to Speak through email to CityClerk@AvondaleAZ.gov prior to the start of the meeting.

REGULAR MEETING

6:00 PM

CALL TO ORDER BY MAYOR

PLEDGE OF ALLEGIANCE & MOMENT OF REFLECTION

1. ROLL CALL AND STATEMENT OF PARTICIPATION BY THE CITY CLERK

2. UNSCHEDULED PUBLIC APPEARANCES

(Limit three minutes per person. Please state your name.)

3. RECOGNITION ITEMS

a. PROCLAMATION - HONORING SERGEANT JEREMY ROJAS ON THE OCCASION OF HIS RETIREMENT

City Council will present a Proclamation honoring Sergeant Jeremy Rojas for twenty years of dedicated service to the City of Avondale.

b. PROCLAMATION - HONORING LIEUTENANT MICHAEL SGRILLO ON THE OCCASION OF HIS RETIREMENT

City Council will present a Proclamation honoring Lieutenant Michael Sgrillo for twenty-seven years of dedicated service to the City of Avondale.

c. INTRODUCTION OF NEW EMPLOYEES

Police Officers

- Richard Miranda
- Jeffrey Feldpausch
- Fritzerald Mendiola
- Bethany Rendon
- Graciela Carrillo
- Derek Rogers

Municipal Security Officers

- Steve Guthrie
- Eric Ramirez

4. CONSENT AGENDA

Items on the consent agenda are of a routine nature or have been previously studied by the City Council at a work session. They are intended to be acted upon in one motion. Council members may pull items from consent if they would like them considered separately.

a. MID-YEAR POSITION ADDITIONS AND VARIOUS BUDGET ADJUSTMENTS

City Council will consider a request to: (a) authorize six new, full-time equivalent (FTE) positions to include three Community Service Officers; one Recreation Coordinator; one Recreation Programmer; and one Destination Sales Manager; (b) authorize a budget adjustment from the General Fund contingency to fund the positions; and (c) authorize a budget amendment from the General Fund contingency to fund an increase in the processing fees for credit card payments the City receives. The Council will take appropriate action.

b. FIRST AMENDMENT TO CONTRACT FOR SERVICES - AREA AGENCY ON AGING FISCAL YEAR 2020-2021

City Council will consider a request to approve an amendment to the current contract with Area Agency on Aging (AAA) for fiscal year 2020-2021 to receive additional funding in the amount of \$17,000 for the Home Delivered Meal Program and authorize the City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action

c. CONSTRUCTION MANAGER AT RISK AGREEMENT WITH WILLMENG CONSTRUCTION, INC. FOR THE VAN BUREN FIRE STATION

City Council will consider a request to enter into a Construction Manager at Risk (CMAR) Agreement with Willmeng Construction, Inc. for Pre-Construction and Construction Services of the Van Buren Fire Station. The Pre-construction contract, in the amount not to exceed \$80,005, is accounted for in the total project budget of \$12.5 million approved at the November 2, 2020 Council Meeting. The agreement will be amended to include the Guaranteed Maximum Price (GMP) for the full construction. The total amount shall not exceed the budget previously approved by Council. This action will authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take the appropriate action.

d. RESOLUTION NO. 1073-1120 - AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY AND TRELIS FOR HOME COMMUNITY HOUSING DEVELOPMENT ORGANIZATION FUNDS

City Council will consider a request to adopt Resolution 1073-1120 approving an amendment to an Intergovernmental Agreement with Maricopa County and Trellis for HOME Community Housing Development Organization (CHDO) funds, and authorize the Mayor, City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

e. RESOLUTION 1074-1120 – GRANT ACCEPTANCE OF AN URBAN AREA SECURITY INITIATIVE GRANT FROM THE ARIZONA DEPARTMENT OF HOMELAND SECURITY

City Council will consider a request to adopt Resolution 1074-1120, authorizing the acceptance of an Urban Area Security Initiative Grant from the Arizona Department of Homeland Security (AZDOHS) relating to the Terrorism Liaison Officer sustainment and enhancement, and authorize the Mayor, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

f. RESOLUTION 1075-1120 – INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PHOENIX FOR PARTICIPATION IN THE ARIZONA INTERNET CRIMES AGAINST CHILDREN TASK FORCE

City Council will consider a request to adopt Resolution 1075-1120, authorizing an Intergovernmental Agreement with the City of Phoenix relating to participation in the Arizona Internet Crimes Against Children Task Force (ICAC Task Force) and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

g. RESOLUTION 1076-1120 - AMENDMENTS TO THE PERSONNEL POLICIES AND PROCEDURES, CHAPTER 6 EMPLOYEE BENEFITS

City Council will consider a request to adopt Resolution 1076-1120, approving the proposed amendments to the Personnel Policies and Procedures, Chapter 6 Employee Benefits and authorize the City Manager, City Attorney, and City Clerk to execute the necessary documents. The Council will take appropriate action.

h. RESOLUTION 1077-1120 - CANVASS OF VOTES FOR THE NOVEMBER 3, 2020 SPECIAL ELECTION

City Council will consider a request to adopt Resolution 1077-1120 canvassing the results of the November 3, 2020 Special Election and authorize the Mayor, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

i. ORDINANCE 2043-1120 - CHAPTER 23 CODE AMENDMENT REGARDING SPEED LIMITS ON RESIDENTIAL AND COMMERCIAL STREETS

City Council will consider a request to adopt Ordinance 2043-1120, amending Chapter 23, Section 23-15 relating to speed limits on residential and commercial streets by assigning a speed limit of 40 mph to Avondale Boulevard between Lower Buckeye Road and Weir Avenue, allowing for future speed limit changes to be approved administratively and authorize the Mayor, or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

j. ORDINANCE 2041-1120 - GRANTING AN EASEMENT TO THE UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF RECLAMATION (BOR)

City Council will consider a request to adopt Ordinance 2041-1120 granting an easement to the United States Department of the Interior Bureau of Reclamation (BOR) and its assigns in connection with the 107th Avenue and McDowell Road Intersection Improvement Project and authorize the Mayor or City Manager, and City Clerk to execute the necessary documents. The Council will take appropriate action.

k. ORDINANCE 2042-1120 - ABANDONMENT OF A ROADWAY EASEMENT AT THE BLVD

City Council will consider a request to adopt Ordinance 2042-1120 authorizing the abandonment of a roadway easement generally located north of Van Buren Street and east of Avondale Boulevard, and authorize the Mayor, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

l. FINAL PLAT FOR PARK AVENUE EAST AT THE BLVD - APPLICATION PL-20-0237

City Council will consider a request to approve a Final Plat for Park Avenue East at The BLVD, approximately 12.99 acres of City-owned property located at the southeast corner of Park Avenue and Dale Earnhardt Drive. The proposed Final Plat consolidates six (6) city-owned parcels into single parcel and dedicates an 8-foot public utility easement (PUE) along Van Buren Street. The Council will take appropriate action.

m. GUARDIAN SELF STORAGE – MINOR LAND DIVISION – APPLICATION PL-19-0209

City Council will consider a request by Philip Gollon, Arc Services Inc. (on behalf of property owner GSA Avondale LLC) for approval of a Minor Land Division (MLD). The site is located at the northeast corner of 119th Avenue and McDowell Road. The proposed MLD dedicates right-of-way and easements on both 119th Avenue and McDowell Road. The Council will take appropriate action.

n. RESOLUTION 1078-1120 - GRANT ACCEPTANCE FROM THE GOVERNOR'S OFFICE OF HIGHWAY SAFETY FOR "BUCKLE UP ARIZONA...IT'S THE LAW!" ENFORCEMENT CAMPAIGN

City Council will consider a request to adopt Resolution 1078-1120 authorizing the acceptance of a grant provided by the Governor's Office of Highway Safety (GOHS) in the amount of \$3,000, which will support the Police Department's funding of Arizona's safety belt and child passenger safety laws through overtime expenses and authorize the Mayor, the City Attorney and the City Clerk to execute the necessary documents. The Council will take appropriate action.

o. RESOLUTION 1079-1120 - GRANT ACCEPTANCE FROM THE GOVERNOR'S OFFICE OF HIGHWAY SAFETY FOR OCCUPANT PROTECTION AWARENESS

City Council will consider a request to adopt Resolution 1079-1120 authorizing the acceptance of a grant provided by the Governor's Office of Highway Safety (GOHS) in the amount of \$10,494 for project funding of occupant protection education and awareness and the purchase of child safety seats and pool noodles throughout the City and authorize the Mayor, the City Manager, the City Attorney and the City Clerk to execute the necessary documents. The Council will take appropriate action.

5. ADJOURNMENT

Council Members of the City of Avondale will attend either in person or by telephone conference call. Individuals with special accessibility needs, including sight or hearing impaired, large print, or interpreter, should contact the City Clerk at 623-333-1200 or TDD 623-333-0010 at least two business days prior to the Council Meeting.

Los miembros del Concejo de la Ciudad de Avondale participaran ya sea en persona o por medio de llamada telefonica. Personas con necesidades especiales de accesibilidad, incluyendo personas con impedimentos de vista u oido, o con necesidad de impresion grande o interprete, deben comunicarse con la Secretaria de la Ciudad at 623-333-1200 o TDD 623-333-0010 cuando menos dos dias habiles antes de la junta del Concejo.

CITY COUNCIL REPORT

SUBJECT: Proclamation - Honoring Sergeant Jeremy Rojas on the Occasion of his Retirement

MEETING DATE: 11/16/2020

TO: Mayor and Council

FROM: Dale Nannenga, Chief of Police, 623-333-7207

THROUGH: Gina Montes, Assistant City Manager, 623-333-1012

STRATEGIC PLAN:

PURPOSE:

City Council will present a Proclamation honoring Sergeant Jeremy Rojas for twenty years of dedicated service to the City of Avondale.

BACKGROUND:

Sergeant Jeremy Rojas began his career with the City of Avondale on April 10, 2000. Sergeant Jeremy Rojas has served in many areas of the Avondale Police Department to include, Patrol Officer, School Resource Officer, Tactical Team Officer, Community Action Team Officer, Field Training Officer, and most recently Patrol Sergeant.

DISCUSSION:

The City of Avondale wishes to express its appreciation for the hard work, dedication and years of service and to honor Sergeant Jeremy Rojas on the occasion of his retirement after twenty years of exemplary service to the citizens of Avondale.

BUDGET IMPACT:

None

RECOMMENDATION:

Staff recommends City Council present a Proclamation honoring Sergeant Jeremy Rojas for twenty years of dedicated service to the City of Avondale.

Contact person for document distribution:

City of Avondale
Proclamation

Proclamation Honoring Sergeant Jeremy Rojas

November 16, 2020

A proclamation of the council of the City of Avondale, Arizona, honoring Sergeant Jeremy Rojas for his twenty years of leadership and dedicated service to the Avondale community.

WHEREAS, Sergeant Jeremy Rojas answered the call to law enforcement, serving from April 10, 2000 to April 10, 2020.

WHEREAS, he has served in many areas of the Avondale Police Department to include, Patrol Officer, School Resource Officer, Tactical Team Officer, and most recently Patrol Sergeant; and

WHEREAS, fellow employees have embraced Sergeant Jeremy Rojas as a friend; and

WHEREAS, Sergeant Jeremy Rojas has demonstrated integrity and professionalism to all customers and has faithfully served the City during periods of transition and growth; and

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, that the City of Avondale hereby wishes to express its sincere gratitude and appreciation to Sergeant Jeremy Rojas for his twenty years of leadership and dedication to the Valley.

Mayor

ATTEST:

City Clerk

CITY COUNCIL REPORT

SUBJECT: Proclamation - Honoring Lieutenant Michael Sgrillo on the Occasion of his Retirement

MEETING DATE: 11/16/2020

TO: Mayor and Council

FROM: Dale Nannenga, Chief of Police, 623-333-7207

THROUGH: Gina Montes, Assistant City Manager, 623-333-1012

STRATEGIC PLAN:

PURPOSE:

City Council will present a Proclamation honoring Lieutenant Michael Sgrillo for twenty-seven years of dedicated service to the City of Avondale.

BACKGROUND:

Lieutenant Michael Sgrillo began his career with the City of Avondale on August 5, 1993. Lieutenant Michael Sgrillo has served in many areas of the Avondale Police Department to include, Patrol Officer, Detective, Detective Sergeant, Patrol Sergeant, Criminal Investigations Lieutenant, Professional Standards Lieutenant, Communications Lieutenant, Detention Lieutenant, Tactical Team Lieutenant, Acting Assistant Police Chief; and most recently a Lieutenant overseeing a Patrol Bureau.

DISCUSSION:

The City of Avondale wishes to express its appreciation for the hard work, dedication and years of service and to honor Lieutenant Michael Sgrillo on the occasion of his retirement after twenty-seven years of exemplary service to the citizens of Avondale.

BUDGET IMPACT:

None

RECOMMENDATION:

Staff recommends City Council present a Proclamation honoring Lieutenant Michael Sgrillo for twenty-seven years of dedicated service to the City of Avondale.

Contact person for document distribution:

City of Avondale *Proclamation*

Proclamation Honoring Lieutenant Michael Sgrillo

November 16, 2020

A proclamation of the council of the City of Avondale, Arizona, honoring Lieutenant Michael Sgrillo for his twenty-seven years of leadership and dedicated service to the Avondale community.

WHEREAS, Lieutenant Michael Sgrillo answered the call to law enforcement, serving from August 5, 1993 to October 2, 2020.

WHEREAS, he has served in many areas of the Avondale Police Department to include, Patrol Officer, Detective, Detective Sergeant, Patrol Sergeant, Patrol Lieutenant, CIB Lieutenant, PSB Lieutenant, Communications Lieutenant, Detention Lieutenant, Tactical Team Lieutenant, Acting Assistant Police Chief; and most recently Lieutenant overseeing the Patrol; and

WHEREAS, fellow employees have embraced Lieutenant Michael Sgrillo as a friend; and

WHEREAS, Lieutenant Michael Sgrillo has demonstrated integrity and professionalism to all customers and has faithfully served the City during periods of transition and growth; and

WHEREAS, Lieutenant Michael Sgrillo supported the men and women of the Avondale Police Department by engaging officers and staff with crisis intervention

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, that the City of Avondale hereby wishes to express its sincere gratitude and appreciation to Lieutenant Michael Sgrillo for his twenty-seven years of leadership and dedication to the Valley.

Mayor

ATTEST:

City Clerk

CITY COUNCIL REPORT

SUBJECT: Mid-Year Position Additions and Various Budget Adjustments

MEETING DATE: 11/16/2020

TO: Mayor and Council

FROM: Marshall Pimentel, Management Analyst, (623) 333-1027

THROUGH: Gina Montes, Assistant City Manager, (623) 333-1012

STRATEGIC PLAN:

PURPOSE:

City Council will consider a request to: (a) authorize six new, full-time equivalent (FTE) positions to include three Community Service Officers; one Recreation Coordinator; one Recreation Programmer; and one Destination Sales Manager; (b) authorize a budget adjustment from the General Fund contingency to fund the positions; and (c) authorize a budget amendment from the General Fund contingency to fund an increase in the processing fees for credit card payments the City receives. The Council will take appropriate action.

BACKGROUND:

Position Request - Police Department

The Police Department seeks additional staffing to enhance community outreach efforts and allow Sworn Police Officers to more quickly respond to high priority calls for service. The hiring of three Community Service Officers would supply technical and administrative support to uniformed officers, provide a non-police presence for low-risk, non-violent calls for service, and give the Police Department additional resources to assist with neighborhood concerns, community events, crime prevention efforts, and homeless outreach activities.

Position Request - Parks & Recreation

With the reduced scope of events due to the COVID-19 pandemic, and the desire to bring event coordination activities in-house in FY 2022, this is an excellent opportunity to begin that transition early and realize a cost savings. By coordinating events directly, the city will have more control over their structure, costs, and personnel, resulting in higher quality events for Avondale residents and visitors. Dedicated special event staff will also allow the Parks & Recreation Department to manage unique events such as the NASCAR Watch Party, State of the City, and groundbreaking and dedication events.

Position Request - Economic Development

The Civic Center Annex Building will include a new conference center available for various special events including conferences, business meetings, and weddings. In order to proactively pursue potential opportunities for the space, Economic Development would like to hire a Destination Sales Manager that will be hired one year prior to the completion of the building. This position will foster business relationships, develop marketing

programs, and conduct booking outreach. Additionally, they will support Phoenix Raceway and local entertainment venues to further establish Avondale as a tourist destination.

Contingency Request – Finance and Budget

The Finance and Budget Department seeks a mid-year adjustment of \$220,000 during FY2021 for increased credit card processing fees in the Revenue Division due to an increase in the number and amount of payments received from credit cards.

DISCUSSION:

Position Request - Police Department

Community Service Officers perform a variety of tasks in direct support of law enforcement activities such as responding to Police dispatched calls for service, conducting investigations, and writing reports for calls on which Police presence is not required like minor vehicle collisions, parking violations, and petty crimes. They will work with Police Officers and other city staff investigating various crimes, directing traffic, locating abandoned vehicles, identifying parking violations and assisting stranded motorists. Each Community Service Officer will be assigned to different Patrol Squads for the best coverage during the busiest times for calls for service.

Position Request - Parks & Recreation

The Recreation Coordinator would take the lead on event coordination including, but not limited to, event layout, street closures, ordering of equipment and supplies, scheduling of staff, partnerships, volunteer coordination, sponsorships, vendors, permits, marketing, and interdepartmental communication. The Recreation Programmer would assist the Recreation Coordinator with the above tasks, focusing on sponsorships and event marketing.

Position Request - Economic Development

The Destination Sales Manager will be responsible for executing Avondale's Tourism Plan. The position will facilitate an active relationship with the City's hotels, restaurants, entertainment venues, and attractions. Their primary responsibilities include marketing the City's tourism assets, booking City-owned conference centers and venues, and working with regional and national meeting/event planners to attract activities that increase hotel room nights and customer traffic to Avondale restaurants.

Contingency Request – Finance and Budget

The City is charged a processing fee when a customer makes a payment by credit card. The pandemic has dramatically increased the use of credit cards and processing fees. Specifically, the fees related to development-related activity have increased from less than \$500 per month to over \$16,000 per month. Additionally, fees associated with Parks & Recreation and utilities have increased. Overall, the fees are expected to exceed the budgeted amount by \$220,000 in FY2021. Staff recommends increasing the budget rather than passing the costs to customers, since the latter option would increase the credit card fee rate the City pays to receive utility payments.

BUDGET IMPACT:

The projected cost for the mid-year positions requested and the necessary equipment for the positions in FY2021 is \$377,100 and the on-going costs of the positions is projected at \$480,200. The increase in credit card processing fees is projected at \$220,000. The Parks and Recreation positions will be offset by savings in the special event budget starting in FY2022. The budget for these items will be transferred from General Fund contingency, which is backed by existing fund balance in the General Fund.

RECOMMENDATION:

Staff recommends Council authorize 6.0 new, full-time equivalent (FTE) positions including three Community

Service Officers; one Recreation Coordinator, one Recreation Programmer; and one Destination Sales Manager and approve a budget amendment from the General Fund contingency to fund the positions and to increase the budget for credit card processing fees.

Contact person for document distribution:

CITY COUNCIL REPORT

SUBJECT: First Amendment to Contract for Services - Area Agency on Aging Fiscal Year 2020-2021

MEETING DATE: 11/16/2020

TO: Mayor and Council

FROM: Christopher Lopez, Neighborhood and Family Services Director, 623-333-2711

THROUGH: Cherlene Penilla, Deputy City Manager, (623) 333-2214

STRATEGIC PLAN:

PURPOSE:

City Council will consider a request to approve an amendment to the current contract with Area Agency on Aging (AAA) for fiscal year 2020-2021 to receive additional funding in the amount of \$17,000 for the Home Delivered Meal Program and authorize the City Manager and City Clerk to execute the necessary documents. The Council will take appropriate action

BACKGROUND:

The City of Avondale has been contracted by Area Agency on Aging (AAA) to provide meals and activities for active adults and disabled individuals for more than thirty (30) years. AAA funding supplements active adult services and programming provided to eligible residents targeted in the Avondale, Goodyear, and Litchfield Park areas. These services include the congregate meals program, home delivered meals program, multipurpose center operations program and transportation program.

DISCUSSION:

As a result of the COVID-19 pandemic, the City of Avondale has experienced an increase in home delivered meal clients and food costs. AAA has made additional funds available to address this issue and support Avondale in providing vital services to one of our most vulnerable populations. The City of Avondale will receive additional funds from AAA in the amount of \$17,000 for the purchase of Home Delivered Meal Materials and Supplies to accommodate increased service needs related to the COVID-19 Pandemic.

BUDGET IMPACT:

The additional funding will be provided by AAA to assist with increased program costs. This will require a transfer of expenditure appropriations from the grant contingency account 209-5300-00-6990 to provide the expenditure authority for these funds. There is no match required.

RECOMMENDATION:

Staff recommends that City Council approve an amendment to contract #2021-07-AVO and authorize the Mayor, City Manager and City Clerk to execute the necessary documents.

Contact person for document distribution:

Contract #2021-07-AVO

AMENDMENT 1

Contract for Services Between

**Area Agency on Aging, Region One, Incorporated AND
1366 E. Thomas Road, Suite 108
Phoenix, Arizona 85014
602-264-2255 fax: 602-230-9132**

**City of Avondale
11465 W. Civic Center Drive
Avondale, Arizona 85323
623-333-2705 fax: 623-333-0270
EIN 86-6000233**

EFFECTIVE DATE OF THIS AMENDMENT: October 1, 2020

PURPOSE OF THE AMENDMENT:

1. Increase Area Agency funding for Home-Delivered Meals by \$17,000 from \$170,279 to 187,279 for the purchase of Home-Delivered Meal Materials & Supplies due to increased service needs related to the COVID-19 Pandemic.

EXCEPT PROVIDED HEREIN, ALL TERMS AND CONDITIONS OF THE ORIGINAL CONTRACT AS HERETOFORE CHANGED AND/OR AMENDED REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, the parties enter into this Contract:

**AREA AGENCY ON AGING,
REGION ONE, INCORPORATED**

City of Avondale

Signature and Date

**Mary Lynn Kasunic, President & CEO
Area Agency on Aging, Region One**

Signature and Date

Charles Montoya, City Manager

City of Avondale ATTEST:

City Clerk

CONTRACT SUMMARY
FIXED PRICE WITH PRICE ADJUSTMENT

CONTRACT #: 2021-07-AVO

CONTRACTOR: City of Avondale

Document ***Amendment 1***

Contract Term July 1, 2020 to June 30, 2021

Contract Payment Ceiling for All Services: TOTAL: **\$ 363,934**

CONTRACT OPERATING BUDGET

REVENUE	Congregate Meals	Home Delivered Meals	Multipurpose Operations	Transportation
Area Agency	101,586	187,279	12,000	63,069
Project Income	10,200	750	-	13,001
Non-Fed Inkind	-	-	-	-
Non-Fed Cash	42,044	85,472	105,338	72,411
Other Federal	-	-	-	-
TOTAL	153,830	273,501	117,338	148,481
EXPENSES				
Personnel	67,241	127,795	75,538	83,350
ERE	23,850	37,850	20,950	16,650
Prof&Outside	-	-	800	-
Travel	-	14,400	-	29,104
Space	7,500	4,700	13,500	-
Equipment	-	-	-	-
Materials/Supl	45,300	73,600	2,100	-
Operating Svc	9,939	15,156	4,450	19,377
Indirect	-	-	-	-
TOTAL	153,830	273,501	117,338	148,481
Units	17,000	17,000	3,500	13,700
Unit Rate	\$ 9.05	\$ 16.09	\$ 33.53	\$ 10.84

COMMUNICATION PAGE
(not an integral page of the Contract)

10/14/20

EMAILED TO:

cmontoya@avondaleaz.gov

elutz@avondaleaz.gov

CITY COUNCIL REPORT

SUBJECT: Construction Manager at Risk Agreement with Willmeng Construction, Inc. for the Van Buren Fire Station

MEETING DATE: 11/16/2020

TO: Mayor and Council

FROM: Kevin Murphy, Development and Engineering Services Director, 623-333-4011

THROUGH: Tracy Stevens, Deputy City Manager, (623) 333-1014

STRATEGIC PLAN:

PURPOSE:

City Council will consider a request to enter into a Construction Manager at Risk (CMAR) Agreement with Willmeng Construction, Inc. for Pre-Construction and Construction Services of the Van Buren Fire Station. The Pre-construction contract, in the amount not to exceed \$80,005, is accounted for in the total project budget of \$12.5 million approved at the November 2, 2020 Council Meeting. The agreement will be amended to include the Guaranteed Maximum Price (GMP) for the full construction. The total amount shall not exceed the budget previously approved by Council. This action will authorize the Mayor or City Manager and City Clerk to execute the necessary documents. The Council will take the appropriate action.

BACKGROUND:

Council has directed City Staff to move forward with Pre-Construction of a Fire Station on City owned property at Van Buren Street and 127th Avenue to meet the growth needs in the City's central area. This project includes the Pre-Construction of a fire station from Conceptual Design through Final Design and construction. The project is approximately 19,000 square foot, single story station and will be designed and constructed with three (3) bays on an approximately 2.5-acre portion of the City's property. Construction of the fire station will be completed through the Construction Manager At Risk (CMAR) project delivery method.

DISCUSSION:

A Request for Statement of Qualifications of firms interested in providing CMAR services for the Fire Station was released on August 12, 2020 with final submittals due September 22, 2020. The submittals were reviewed by a panel, and the proposals were ranked based on the criteria outlined in the request for statements of qualifications (RFQ). Oral Interviews of the three firms that had the highest ranking submittals were conducted by the same review panel members on October 6, 2020. Through this qualification process, Willmeng Construction, Inc. was selected to provide CMAR services.

The Fire Station Project elements will include:

1. Community Room and Lobby for public service programs such as blood pressure checks, school programs, educational tours, way finding, neighborliness, etc.
2. Company Quarters initially planned to house one four-person crew with facilities planned for a total staffing of 10 to 12 which will include:

- Captain's offices plus an office for a fire inspector or other staff (i.e. a police office)
- Crew office
- Large kitchen and dining area
- Training room / day room
- Ten (10) to twelve (12) sleeping rooms
- Exercise room
- Men's and women's locker rooms
- Adequate storage, janitorial and telecommunication space
- Laundry room and a turn-out room

3) Apparatus space to be designed and constructed with three (3) 80' bays.

PROPOSED SCHEDULE:

Contract Award: November 16, 2020

Start Design: November 2020

Complete Design/Begin Construction: April 2021

Project Completion: February 2022

STRATEGIC PLAN ALIGNMENT

Initiative: Foster Sustainable Community Development

Goal: Maintain and Expand Quality Infrastructure and Improve Connectivity to City Amenities

Objective: Procure and Work with a Consultant to perform the Architectural and Engineering Design of the Fire Station Project and using the Construction Manager at Risk Project Delivery Method

BUDGET IMPACT:

The total project budget of \$12.5 million was approved at the November 2, 2020 Council Meeting and Pre-Construction and Construction Services by CMAR is accounted for in the approved project budget.

RECOMMENDATION:

Staff is requesting that the City Council approve CMAR Agreement with Willmeng Construction, Inc. for Pre-Construction and Construction Services of the Fire Station Project and authorize the Mayor or City Manager and City Clerk to execute the contract documents.

Contact person for document distribution:

**CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND
WILLMENG CONSTRUCTION, INC.**

THIS CONSTRUCTION MANAGER AT RISK AGREEMENT (this “Agreement”) is made as of the date signed below, by and between the City of Avondale, an Arizona municipal corporation (the “City”), and Willmeng Construction, Inc., an Arizona corporation (the “Construction Manager”), for design phase review and complete construction services related to the construction of a Permanent Fire Station (the “Project”), and other items as deemed necessary by the City (the Services”). The City and the Construction Manager are referred to herein individually as a “Party” and collectively as the “Parties.”

**ARTICLE 1
GENERAL**

1.1 Project Summary. The Construction Manager shall perform all pre-construction services set forth in Article 2 below (the “Pre-Construction Services”) and, subject to Section 1.2 below, management and construction services set forth in Article 4 below (the “Construction Services”) (the Pre-Construction Services and the Construction Services are collectively referred to as the “Services”), including providing all material, equipment, tools and labor necessary to complete the Work (as defined below) described herein and reasonably inferable from the Contract Documents (as defined below), including the upgrades and improvements to be encompassed in the Project. The Construction Manager will also coordinate with and provide comments to Perlman Architects of Arizona, Inc. (the “Project Designers”) to ensure that the Project design is constructible within the established budget.

1.2 Phased Agreement. The Services contemplated by this Agreement shall be carried out in several distinct phases. The initial Services shall be to provide Pre-Construction Services including (A) such services as applicable pursuant to Section 2.1 below, (B) review of the Project Designers’ Construction Documents pursuant to Section 2.2 below and (C) the Pre-Construction Phase General Services, pursuant to Section 2.3 below (the “Pre-Construction Phase General Services”). The Construction Manager shall be compensated on an hourly basis, at the agreed-upon hourly rates and a stipulated not-to-exceed total fee, for the Pre-Construction Services as set forth in Section 7.1 below, provided that such services may extend through the construction phase for various components of the Project. At the point in the Pre-Construction Services as determined by the City, the City may, in its sole discretion, request that the Construction Manager submit a proposal for a guaranteed maximum price (“GMP”) for construction of the Project, which may be submitted as a single GMP or as multiple GMPs at the City’s sole discretion. The Construction Manager shall prepare and submit the GMP Proposals pursuant to Article 3 below. If the City and the Construction Manager agree upon the respective GMP Proposals, the Construction Manager shall furnish, with respect to each GMP Proposal (A) such services as applicable pursuant to Section 2.1 below and (B) the Construction Services set forth in Article 4 below. If the City and the Construction Manager cannot, after good faith efforts, agree on the GMP, the City may, in its

sole discretion, terminate this Agreement (subject to the terms and conditions set forth in Section 12.2 below).

1.3 Definitions.

A. “Additional Services” means services not initially included as part of the Work, but which are later identified as necessary or desirable by the City, as more fully described in Section 4.17 below.

B. “Applicable Law” means any law, rule, code, regulation, requirement, action, determination, guideline, or order of, or any legal entitlement issued by, any governmental body having jurisdiction, applicable or relating to the design, permitting, construction, equipping, financing, ownership, possession, or any other transaction or matter contemplated hereby relating to the design and construction of the Project.

C. “Change Directive” means a written order prepared and signed by the City and the Construction Manager, approving a change in the Work that does not require an adjustment in the Contract Price or the Contract Time.

D. “Change Order” means a contract amendment issued after execution of this Agreement or future GMP Amendments signed by the City, Construction Manager and other parties, as may be required or appropriate, agreeing to an addition, deletion or revision in the scope of Work, an adjustment to the Contract Price, an adjustment to the Contract Time or other modifications to Contract terms.

E. “City’s Contingency” means a fund used at the discretion of the City, usually for costs that result from City-directed changes to cover any increases in Project costs that result from City-directed changes or unforeseen Site conditions. City’s Contingency as defined herein shall govern any GMP Assumptions and Clarifications.

F. “Construction Documents” means the plans, Specifications and drawings prepared by the Project Designers after correcting for permit review requirements, and as approved by the City Manager or authorized designee. The Construction Documents, once approved by the City as 100% complete, shall be attached hereto as Exhibit A and incorporated herein by reference.

G. “Construction Fee” means the portion of Construction Manager’s compensation not related to Direct Construction Costs, as set forth in Subsection 3.4 below.

H. “Contract Documents” means all of the following:

1. Change Orders and written amendments to this Agreement, including the amendments, if any, relating to the respective GMPs (the “GMP Amendments”), signed by both the City and the Construction Manager, attached hereto as Exhibit B and incorporated herein by reference.

2. This Agreement.

3. The Construction Documents.
4. The Construction Manager's Guaranteed Maximum Price Proposals (the "GMP Proposals"), attached hereto as Exhibit C and incorporated herein by reference, including but not limited to:
 - a. The Construction Manager's proposed scope of services and fee breakdown for each GMP Proposal (the "Scope").
 - b. The Master Schedule relating to the applicable Scope developed in accordance with Subsection 2.3(C) below and updated as set forth in this Agreement, attached hereto as Exhibit D and incorporated herein by reference.
5. The City's Request for Qualifications (the "RFQ") attached hereto as Exhibit E and incorporated herein by reference.
6. The Construction Manager's response to the City's RFQ attached hereto as Exhibit F and incorporated herein by reference.

In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the order in which they are listed above.

I. "Contract Price" means the total compensation to be paid to the Construction Manager, as more fully described in Article 7 below.

J. "Contract Time" means the Days, as set forth in Article 6, indicating the period of time, including authorized adjustments, allotted in the Contract Documents to achieve Substantial Completion of the Work.

K. "Cost Model" means the detailed cost information for the Project as described in Subsection 2.3(D) below.

L. "Cost of the Work" means the portion of Direct Construction Costs necessarily incurred by the Construction Manager in the proper performance of the Work as more specifically set forth in Section 3.3(B) below.

M. "Critical Path" means the sequence of activities from the start of the Work to Substantial Completion of the Project for which any delay in the completion of these activities will delay achieving Substantial Completion.

N. "Day(s)" means calendar day(s) unless otherwise specifically noted in the Contract Documents.

O. "Differing Site Conditions" means concealed or latent physical conditions or subsurface conditions at the Site that (1) materially differ from the conditions indicated in the Contract Documents or (2) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized in the area of the Site as inherent in the Work.

P. “Direct Construction Costs” means General Conditions Costs and Cost of the Work as set forth in Section 3.3 below.

Q. “Environmental Conditions” means collectively, Hazardous Materials and Underground Storage Tanks.

R. “Environmental Damages” means all claims, judgments, damages, losses, penalties, fines, liabilities, encumbrances, liens, costs and expenses of investigation and defense of any claim, including, without limitation, attorney’s fees, that are incurred at any time as a result of the existence of Environmental Conditions upon, about or beneath the Project Site or migrating or threatening to migrate to or from the Site, and including, without limitation:

1. Damages for personal injury, or injury to property or to natural resources occurring upon or off the Site.

2. Fees incurred for the services of attorneys, consultants, the Construction Manager, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Environmental Conditions or violation of Environmental Requirements.

3. Liability to any third party or governmental agency or political subdivision to indemnify such party, agency or political subdivision for costs expended in connection with the items listed in Subsections 1.3(R)(1) and (2) above.

S. “Environmental Requirements” means all applicable laws, statutes, regulations, rules, ordinances, common law codes, licenses, permits, orders and similar items of all governmental agencies or other instrumentalities of the United States, the State of Arizona, Maricopa County and all applicable, judicial, administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation:

1. (a) Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) (42 U.S.C. § 9601, *et seq.*), as amended by the Superfund Amendments and Reauthorization Act of 1986, and as further amended from time to time, and regulations promulgated thereunder; (b) defined as a “regulated substance” within the meaning of Subtitle I of the Resource Conservation and Recovery Act (“RCRA”) (42 U.S.C. § 6691 *et seq.*), as amended from time to time, and regulations promulgated thereunder; (c) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1321), as amended from time to time, and the regulations promulgated thereunder, or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317), as amended from time to time, and the regulations promulgated thereunder; (d) the Clean Air Act (42 U.S.C. § 7401 *et seq.*), as amended from time to time, and regulations promulgated thereunder; (e) regulated under the Toxic Substances Control Act (15 U.S.C. § 2601, *et seq.*); (f) Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 *et seq.*); (g) the Solid Waste Disposal Act (42 U.S.C. § 6901 *et seq.*), as amended from time to time, and regulations promulgated thereunder; or (h) defined as

“hazardous”, “toxic”, or otherwise regulated, under any Environmental Requirements adopted by the state in which the Site is located, or its agencies or political subdivisions.

2. Asbestos or asbestos-containing materials.

3. All requirements, including but not limited to, those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Materials into the air, surface water, ground water or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials.

4. All requirements pertaining to the protection of the health and safety of employees or the public.

T. “Final Completion” means completion of the Project, including Punch List items, by the Construction Manager in accordance with the Contract Documents, certified to the City by the Construction Manager and confirmed by the City’s contract administrator.

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

V. “General Conditions Costs” means a portion of the costs incurred by Construction Manager during the construction phase, as set forth in Section 3.3(A) below.

W. “Hazardous Materials” means any substance as defined under Environmental Requirements including:

1. The presence of which requires notification, investigation or remediation under federal, state or local law, statute, regulation, ordinance, order, action, policy or common law.

2. Which is or becomes defined as a “hazardous waste”, “hazardous substance”, pollutant or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto.

3. Which is petroleum, petroleum products, including crude oil or any fraction thereof not otherwise designated as a “hazardous substance” under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons; and, ethanol, methyl tertiary butyl ether or derivatives or constituents of or vapors from any of the foregoing.

4. Which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority or instrumentality of the United States or the State of Arizona.

5. The presence of which on the Project Site causes or threatens to cause a nuisance upon the Project Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Project Site.

6. The presence of which on adjacent properties could constitute a trespass by the Construction Manager or the City.

X. “Master Schedule” is defined as set forth in Subsection 2.3(C) below.

Y. “Project Record Document(s)” means the document(s) created pursuant to Section 4.12.

Z. “Punch List” means that list of items provided by City to the Construction Manager at the time of Substantial Completion indicating items to be completed or corrected, including the time for completion or correction by the Construction Manager after Substantial Completion.

AA. “Shop Drawings” means drawings, diagrams, schedules and other data specially prepared for the Work by the Construction Manager or a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

AB. “Site” means the land or premises on which the Project is located.

AC. “Specifications” means the part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

AD. “Subcontractor” means a person or entity employed or engaged by the Construction Manager or any person or entity directly or indirectly in privity with the Construction Manager to perform any portion of the Work. The term Subcontractor does not include any separate contractor employed by the City.

AE. “Substantial Completion” means construction has been completed in accordance with the Contract Documents to the extent that the City can use or occupy the entire Project, or the designated portion of the Project for the use intended without any outstanding, concurrent construction at the Site, except as may be required to complete or correct Punch List items.

AF. “Underground Storage Tank” shall have the definition assigned to that term by § 9001 of RCRA, 42 U.S.C. § 6991, as amended, and also shall include: (1) any tank of 1,100 gallons or less capacity used for storing motor fuel; (2) any tank used for storing heating oil for consumption on the premises where stored; (3) any tank used for storing waste oil; (4) any septic tank; and (5) any pipes with oil dispensers connected to items listed in clauses 1.3(AA)(1) and 1.3(AA)(2) above.

AG. The “Work” means, collectively, the (1) Preconstruction services set forth in Article 2 below, (2) Review of Construction Documents and design remedies set forth in Section 2.2 below, (3) Pre-construction Phase General Services set forth in Section 2.3 below, (4) Construction Services provided in accordance with Article 4 below, if applicable, (5) Additional Services that may be provided pursuant to an approved Change Directive or Change Order in accordance with Article 8 below and (6) other services that are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

1.4 Cooperative Relationship. The City and the Construction Manager agree to proceed with the Project on the basis of trust, good faith and fair dealing, and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner, but without sacrificing quality. The City and the Construction Manager agree to consider design modifications and alternative materials or equipment if necessary to permit the Project to be constructed by the dates of Substantial Completion and Final Completion, as established by the mutually-agreed-upon Master Schedule attached hereto.

1.5 City Representations.

A. Project Designer Selection. The City has contracted separately with the Project Designers to provide engineering and design for the Project.

B. City’s Project Manager. City has either designated a City staff member to act as City’s Project Manager and/or has contracted separately with a person, firm or corporation to act as City’s Project Manager. The City’s Project Manager has no design responsibilities of any nature. None of the activities of City’s Project Manager supplant or conflict with the design, budget, or any other services and responsibilities furnished by the Construction Manager, the Project Designers or sub-consultants. All instructions by the City relating to this Agreement will be issued or made through the City’s Project Manager. All communications and submittals of Construction Manager to the City shall be issued or made through the City’s Project Manager unless the City or the City’s Project Manager shall otherwise direct. The City’s Project Manager shall not unreasonably withhold approval for the Construction Manager to communicate directly with other City officials or the Project Designers. Throughout the term of this Agreement the City’s Project Manager shall have the authority to establish procedures, consistent with this Agreement, to be followed by the Construction Manager and to call periodic conferences to be attended by the Construction Manager and the Construction Manager’s Subcontractors.

C. Limited Project Management. None of the City’s project management activities are intended to supplant or conflict with the design, budget, or any other services and responsibilities customarily furnished by the Construction Manager or its Subcontractors, except as otherwise specifically modified by this Agreement.

D. No Third Party Relationships. The Construction Manager assumes responsibility to City for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any level of Subcontractor, including but not limited to any third-party beneficiary rights. Nothing contained

in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against the City or the Construction Manager.

E. Requests for Information. The City shall examine requests for information/direction submitted by the Construction Manager and shall render decisions thereto promptly. The City shall furnish required information and approvals and perform its responsibilities and activities in a timely manner to facilitate orderly progress of the Work (1) in cooperation with the Construction Manager, (2) consistent with this Agreement and (3) in accordance with the planning and scheduling requirements and budgetary restraints of the Project as determined by the City.

F. Notice to Construction Manager of Defect. If the City, or other delegated representative, observes or otherwise becomes aware of any fault or defect in the Project or nonconformity with the Contract Documents, the delegated representative shall provide notice to the City and upon receipt the City shall give written notice thereof to the Construction Manager.

G. Approvals. The City shall secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the Project.

H. Communication. The City, its representatives and consultants shall communicate with the Subcontractors only through the Construction Manager unless otherwise directed or permitted by the Construction Manager.

I. Notices. The City shall send to the Construction Manager, and shall require the Project Designers to send to the Construction Manager, copies of all notices and communications sent to or received by the City or the Project Designers relating to the Construction Manager's Services with respect to the Project.

1.6 Construction Manager Representations.

A. Standards. The Construction Manager shall provide the professional management and construction services for the Project in accordance with the terms and conditions of this Agreement. The Construction Manager covenants with the City to furnish its skill and judgment with due care and in accordance with the highest standards of its profession and with Applicable Law in effect on the date of this Agreement or as subsequently amended.

B. Subcontractor Selection Program. In conjunction with its response to the City's RFQ, the Construction Manager submitted to the City a written procedure in conformance with ARIZ. REV. STAT. § 34-601 *et seq.*, as amended, for qualifications-based selection of Subcontractors to be utilized in completion of the Project (the "Subcontractor Selection Program"), which is attached hereto as Exhibit G and incorporated herein by reference. The Construction Manager shall conduct a telephone and correspondence campaign to attempt to create interest among Subcontractors. The Construction Manager shall develop and coordinate procedures to provide answers to Subcontractors' questions. The Construction Manager shall use best efforts to utilize minority business enterprises, woman business enterprises and local contractors or suppliers. The Construction Manager shall ensure that each Subcontractor has secured the required business licenses, permits, insurance and bonds. The Construction Manager shall be solely responsible for ensuring that (1) the Subcontractor Selection Program is in conformance with

Applicable Law and (2) all Subcontractors are selected in accordance with the Subcontractor Selection Program. The Construction Manager shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees for, from and against all claims, damages, losses and expenses (including, but not limited to, attorney fees, court costs and the cost of appellate proceedings) relating to, arising out of, or alleged to have resulted from the Construction Manager's failure to appropriately select its Subcontractors. Additionally, as part of the Construction Manager's submittal of any GMP Proposal under this Agreement, the Construction Manager shall utilize the Subcontractor Selection Program to meet its requirements under Section 3.7 below.

C. Key Personnel. The Construction Manager shall provide to the City a list of the proposed key project personnel of the Construction Manager and its Subcontractors to be assigned to the Project. This list shall include such information on the professional background of each of the assigned individuals as may be requested by the City. Such key personnel and consultants shall be satisfactory to the City and shall not be changed except with the consent of the City. The Construction Manager will maintain an adequate number of competent and qualified persons, as determined by the City, to ensure acceptable and timely completion of the Services described in this Agreement. If the City objects, with reasonable cause, to any of the Construction Manager's staff, the Construction Manager will take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace with new personnel with qualifications acceptable to the City. Additionally, the City shall have the right to request that the Construction Manager personnel be removed from the Project if, in the City's sole discretion, such personnel are detrimental to the Project delivery process. Upon receipt of such request, the Construction Manager shall remove such personnel unless the Construction Manager can provide the City with sufficient documentation to prove it is commercially impractical to replace the personnel with similarly qualified personnel. The City's approval of substituted personnel shall not be unreasonably withheld.

D. Site Conditions. The Construction Manager represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work related to the Project, and that it has investigated and satisfied itself as to the general and local conditions and constraints that are applicable to the Work such as (1) conditions bearing on transportation, disposal, handling and storage of materials, (2) the availability of labor, water, power and roads, (3) normal weather conditions, (4) observable physical conditions at the Site, (5) the surface conditions of the ground and subsurface conditions investigated per Article 2.1.A and (6) the character of equipment and facilities needed prior to and during the performance of the Work. To the extent the Construction Manager encounters subsurface or concealed conditions that differ materially from those which could reasonably have been determined from a Site surface and subsurface investigation per Article 2.1.A by the Construction Manager on the date of this Agreement or from those ordinarily found to exist and generally recognized as inherent in the activities of the character provided in the Contract Documents, then the Construction Manager shall give notice to the City promptly before conditions are disturbed and in no event later than seven Days after the first observance of the conditions if a Change Order is contemplated by the Construction Manager due to such conditions. Such materially different conditions, if discovered after a GMP is approved, may entitle the Construction Manager to an equitable adjustment in the applicable GMP or schedule pursuant to the Change Order provisions set forth in Article 8 below.

1.7 City and Subcontractors. The City will require the Construction Manager to contract directly with such Subcontractors as may be necessary for construction or supply of the Project. All such contracts shall be issued consistent with (A) the applicable provisions of this Agreement and (B) Applicable Law, including, but not limited to, the requirements of ARIZ. REV. STAT. § 34-603(N) relating to inclusion of the Project's physical location in all subcontracts.

1.8 Construction Manager to Other Project Participants. In providing the Services described in this Agreement, the Construction Manager shall endeavor to maintain a working relationship with the Project Designers. The Construction Managers cost estimating, constructability analysis and design collaboration are critical to the successful design within the existing budget. The Project Designers are solely responsible for the Project design and shall perform in accordance with their respective agreements with the City. Nothing in this Agreement shall be construed to mean that the Construction Manager is responsible for the design of the Project or that the Construction Manager assumes any of the contractual or customary responsibilities or duties of the Project Designers or any other persons or parties not specified by this Agreement; provided, however, that the Construction Manager shall provide comment and input as described above and as with respect to the Project Designers' designs as set forth in Section 2.2 below.

1.9 Data Confidentiality.

A. Data Defined. As used in this Agreement, "data" means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the Construction Manager in the performance of this Agreement.

B. Confidentiality. The Parties agree, subject to Arizona public records law, that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the Construction Manager in connection with the Construction Manager's performance of this Agreement is confidential and proprietary information belonging to the City.

C. Use of Data. The Construction Manager will not divulge data to any third party without prior, written consent of the City. The Construction Manager will not use the data for any purposes except to perform the Services required under this Agreement. These prohibitions will not apply to any of the following data, provided the Construction Manager has first given the required notice to the City:

1. Data that was known to the Construction Manager prior to its performance under this Agreement, unless such data was acquired in connection with work performed for the City.

2. Data that was acquired by the Construction Manager in its performance under this Agreement, and which was disclosed to the Construction Manager by a third party, who to the best of the Construction Manager's knowledge and belief, had the legal right to make such disclosure and the Construction Manager is not otherwise required to hold such data in confidence.

3. Data that is required to be disclosed by the Construction Manager by virtue of law, regulation, or court order.

D. Disclosure Notice. In the event the Construction Manager is required or requested to disclose data to a third party, or any other information to which the Construction Manager became privy as a result of any other contract with the City, the Construction Manager will first notify the City as set forth in this section of the request or demand for the data. The Construction Manager will timely give the City sufficient facts, such that the City can have a meaningful opportunity to either first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.

E. Return After Completion. The Construction Manager, unless prohibited by law, within 10 Days after completion of services for a third party on real or personal property owned or leased by the City, will promptly deliver, as set forth in this Section, a copy of all data to the City. All data will continue to be subject to the confidentiality requirements of this Agreement.

F. Construction Manager Responsible. The Construction Manager assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this Section are violated by the Construction Manager, its employees, agents or Subcontractors. For the purposes of seeking injunctive relief, it is agreed that a breach of this Section will be deemed to cause irreparable harm that justifies injunctive relief in court.

ARTICLE 2 PRE-CONSTRUCTION SERVICES

2.1 Design Phase Services.

A. Discovery. The CMAR shall review the Phase I Report, the Geotechnical report, the site concept diagram, utilities information and other information available for the selected site. After reviewing the available documentation and information, the CMAR shall perform a site visit to confirm the site feasibility. The CMAR shall perform subsurface investigation of utilities utilizing, including but not limited to, potholing, utility locating detection, video camera, ground penetrating radar, etc. of existing utilities impacted by project. Any findings or site attributes that may impact the construction and occupation of the Permanent Fire Station shall be reported to the City.

B. Collaboration. The CMAR's collaboration with the design team is critical to the success of the design and the resulting construction and as such shall be provided by the CMAR in a constructive and cooperative fashion.

C. Constructability Analysis. The CMAR shall provide design review and evaluation of systems, components, finishes and features as necessary to optimize the design and achieve the quality, safety and environmental goals within the project budget.

D. Estimating Notice; Permitting. The CMAR shall provide costs estimates based on the documents and specifications provided by the Design consultant weekly, or at the time of or as a result of substantive design changes.

E. City Indemnity. To the extent that the Construction Manager or the Subcontractors are not in violation of Subsection 2.1(L) below and to the extent sufficient appropriations are made pursuant to Section 14.18 below, the City shall indemnify, defend and hold harmless the Construction Manager, the Subcontractors, and the directors, officers, agents and employees of each (the “Construction Manager Indemnitees”), for, from and against any Environmental Damages asserted against or sustained by such parties as a result of any of the Construction Manager Indemnities being deemed or determined to be a generator, arranger, owner, operator, treater, storer, transporter or disposer of, or otherwise responsible for, any such Environmental Conditions.

F. Hazardous Materials. The Construction Manager shall not bring Hazardous Materials to the Site, and shall not include Hazardous Materials in any construction materials, unless permitted by Environmental Requirements. The Construction Manager shall comply, and shall cause the Subcontractors to comply, with all Environmental Requirements regarding the generation, handling, storage, treatment and disposal of Hazardous Materials.

G. Construction Manager Indemnity. The Construction Manager shall indemnify, defend and hold harmless the City, its agents, representatives, officers and employees for, from and against any Environmental Damages asserted against or sustained by such parties as a result of any violation by the Construction Manager or the Subcontractors of any Environmental Requirements arising out of Subsection 2.1(L) above.

2.2 Review of Construction Documents; Design Remedies.

A. Program Evaluation. The Construction Manager will provide to the City a written evaluation of the City’s proposed Project and Project budget, with recommendations as to the appropriateness of each, and an analysis as to how each contribute to successfully achieving the City’s goal for the Project.

B. Design Document Review. The Construction Manager shall assist the City in reviewing the Construction Documents for clarity, consistency, constructability and coordination among the various contractors. The Construction Manager’s first review of the Construction Documents shall occur at the 15% stage of the design for each component of the Project as designated by the City and shall be ongoing until 100% plans are final and complete for all phases of the Project. If the Construction Manager recognizes that portions of the Construction Documents are (1) in violation of Applicable Law or (2) in any way inadequate to achieve the intended result of the Project, the Construction Manager shall immediately notify the City in writing, describing the apparent violation or inadequacy.

1. The Construction Manager will periodically evaluate the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design, and other factors that may impact the Cost Model, GMP Proposals and/or the Master Schedule.

2. The Construction Manager will identify those additional surface and subsurface investigations that are required to provide the necessary information for the Construction Manager to construct the Project. After completion of pre-construction services, the Construction Manager may provide additional investigations to improve the adequacy and completeness of the Site condition information and data made available with the Construction Documents. The Construction Manager will be responsible for the time and cost required to obtain such additional investigations, except as otherwise provided by specific Additional Services.

3. The Construction Manager will meet with the Project team as required to review designs during their development. The Construction Manager will thoroughly familiarize itself with the evolving documents through conceptual design, preliminary design, and development of the Construction Documents (detailed design). The Construction Manager will proactively advise the Project team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and, labor and material availability. The Construction Manager will also advise the Project team on proposed Site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the Construction Documents. The Construction Manager will recommend cost effective alternatives.

C. Constructability and Bidability Reviews. The Construction Manager will conduct constructability and bidability reviews of the Construction Documents. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents, especially those related to clarity, consistency, and coordination of Work of Subcontractors and suppliers. The Construction Manager shall provide the City with a written report containing, at a minimum, (i) a summary of the research and analysis conducted, (ii) a detailed description of any constructability issues or challenges and (iii) recommendations for correcting any constructability issues or challenges.

1. Constructability Review. The Construction Manager will evaluate whether (a) the Construction Documents are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the Construction Documents, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions, (f) sequences of Work required by or inferable from the Construction Documents are practicable, and (g) the design has taken into consideration, efficiency issues concerning access and entrance to the Site, laydown and storage of materials, staging of Site facilities, construction parking, and other similar pertinent issues.

2. Bidability Review. The Construction Manager will check cross-references and complementary Project drawings and sections within the Construction Documents and evaluate whether (a) the plans and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well or otherwise,

in similar installations, (c) the design provides as-built data, (d) Specifications include alternatives in the event a requirement cannot be met in the field, (e) and the Project is likely to be subject to Differing Site Conditions considering the data on subsurface conditions, physical conditions of existing surface and subsurface facilities and physical conditions of underground utilities made available by the design or resulting from conditions inherent to work similar to the Work.

3. Reports. The results of the reviews will be provided to the City in written reports clearly identifying all discovered discrepancies and inconsistencies in the Project, plans and Specifications with notations and recommendations made on the plans, Specifications and other Construction Documents. If requested by the City, the Construction Manager will meet with the City's Project Manager and Project Designers to discuss any findings and to review reports.

D. Notification of Variance or Deficiency. Construction Manager is responsible for assisting the Project Designers in ascertaining that the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the Construction Manager recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations it will promptly notify the Project Designers and City in writing, describing the apparent variance or deficiency.

E. Value Analysis. The Construction Manager shall make recommendations to the City and the Project Designers with respect to constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction and separation of the Project into contracts for various categories of the Work. Construction Manager shall evaluate all design options to provide value analysis services and cost savings recommendations to the City. The Construction Manager shall consider options most effective in first costs as well as long term operational costs and life cycle costs when evaluating each design option. The Construction Manager shall submit to the City and Project Designers (1) written cost studies, (2) cost-benefit evaluations of each cost studies, (3) a formal report to the design team, (4) a final written analysis study document and (5) a tracking report for the increases or decreases in Project cost due to value engineering or scope changes. The City will decide which alternatives will be incorporated into the Project. The Project Designers will have full responsibility for the incorporation of the alternatives into the Contract Documents. The Construction Manager will include the cost of the alternatives into the Cost Model and any GMP Proposals.

F. Certification. At the completion of its review of the Construction Documents for each phase of the Project, the Construction Manager shall certify, without assuming engineering responsibility therefore, that the Construction Documents are sufficient and complete to build the respective portion of the Project within (1) the time available before the respective Substantial Completion date and (2) the Project budget. The Construction Manager's assistance in reviewing the Project design, Construction Documents and in making recommendations as provided herein is only for the purpose of providing advice to the City. Nothing in this Subsection shall relieve the Project Designers of their respective responsibility for the Construction Documents.

G. Construction Manager Not Responsible for Design. Notwithstanding the foregoing, the Construction Manager is not responsible for providing, nor does the Construction Manager control, the Project design and contents of the Construction Documents. By assisting with the reviews described herein, the Construction Manager is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Project design and Construction Documents.

2.3 Pre-Construction Phase General Services.

A. Personnel; Project Meetings; Project Analysis. The Construction Manager will meet with the City, the Project Designers and all the other Project stakeholders to fully understand the program, the Construction Documents and all other aspects of the Project. The Construction Manager shall attend the regularly scheduled meetings with the City and the Project Designers to advise the City on matters of Site use, improvements, selection of materials, building methods, construction details, building systems, equipment, phasing and sequencing.

1. The Construction Manager will provide pre-construction services, described herein, in a proactive manner and consistent with the intent of the most current Construction Documents. The Construction Manager will promptly notify the City in writing whenever the Construction Manager determines that any Construction Documents are inappropriate for the Project and or cause changes in the scope of Work requiring an adjustment in the Cost Model, Master Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.

2. The Construction Manager, when requested by the City or at its own initiative, if sanctioned by the City, will attend, make presentations and participate as may be appropriate in public agency and/or community meetings, germane to the Project. The Construction Manager will assist the Project Designers in the preparation of drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or appropriate in any such public agency meetings.

B. Construction Management Plan.

1. Preparing Plan. The Construction Manager will prepare a construction management plan (the "Management Plan"), that will detail, but not necessarily be limited to, the Construction Manager's determinations concerning: (a) Project milestone dates and the Master Schedule, including the broad sequencing of the design and construction of the Project; (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities; (c) alternate strategies for fast-tracking and/or phasing the construction; (d) separate bidding documents/packages and strategies for the early procurement of long-lead equipment and/or materials; (e) the number of separate subcontracts to be awarded to Subcontractors and suppliers for the Project construction; (f) permitting strategy; (g) safety and training programs; (h) construction quality control; (i) the Project Cost Model and basis of the model; (j) a matrix summarizing each Project team member's responsibilities and roles related to the Services; and (k) construction security.

2. Maintaining Plan. The Contract Manager shall keep the Management Plan current throughout the pre-construction services phase so that the Management Plan is ready for implementation at the start of the construction phase. The update/revisions will take into account: (a) revisions in Construction Documents; (b) the Construction Manager's examination of the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the City, Project Designers or the Construction Manager; (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and rights-of-way; (d) the fast-tracking (if any) of the construction, or other chosen construction delivery methods; (e) the requisite number of separate bidding documents to be advertised; (f) the status of the procurement of long-lead time equipment and/or materials; and (g) funding issues identified by the City.

C. Schedule Development. In accordance with the Management Plan, the Construction Manager shall prepare a master schedule for the Project (the "Master Schedule"). In preparing the Master Schedule, the Construction Manager shall establish: (i) detailed Critical Path Method ("CPM") schedules for the pre-construction/design phase and the construction phase of the Project with concurrence of the City and the Project Designers, (ii) monitor the Project schedules during the pre-construction phase and ensure that the Master Schedule is updated as necessary and advise the City of any schedule deficiencies. The Construction Manager shall utilize Microsoft Project scheduling software to prepare, provide and maintain the detailed CPM schedules unless the City requests use of a different scheduling product.

1. Each Project team member is responsible for its compliance with the Master Schedule requirements. The Construction Manager will update and maintain the Master Schedule on behalf of and to be used by the Project team based on input from other team members. The Master Schedule will be consistent with the most recent revised/updated Management Plan. The Master Schedule will be presented in graphical and tabular reports as agreed upon by the Project team. The Master Schedule will include all tasks and deliverables required by each member of the Project team to identify long lead items, real property transactions, utility relocation activity, permitting requirements, etc. If Project phasing as described below is required, the Master Schedule will indicate milestone dates for the phases. The Master Schedule's activities will directly correlate with the Schedule of Values (as defined in Subsection 2.3(D)(4) below). The Master Schedule shall include resource loading for manpower and cash flow. The manpower loading shall include the daily manpower required to complete the task as shown on the Master Schedule.

2. The Construction Manager will include and integrate in the Master Schedule the services and activities required of the City's Project Manager, Project Designers and Construction Manager, including all construction phase activities. The Master Schedule will detail activities to the extent required to show: (a) the coordination between conceptual design, schematic design, and development of the Construction Documents (detailed design), (b) separate long-lead procurements, (c) permitting issues, (d) land and right-of-way acquisition, if any, (e) bid packaging strategy and awards to Subcontractors and suppliers, (f) major stages of construction, (g) start-up, and (h) occupancy of the completed Work by the City. The Master Schedule will include, by

example and not limitation, proposed activity sequences and durations for design, procurement, construction and testing activities, milestone dates for actions and decisions by the Project team, preparation and processing of Shop Drawings and samples, delivery of materials or equipment requiring long-lead time procurement, milestone dates for various construction phases, total Float for all activities, relationships between the activities, City's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates for Substantial Completion and when the Work would be ready for final acceptance.

3. The Master Schedule will be updated and maintained by the Construction Manager with assistance from the Project team throughout the pre-construction services phase such that it will not require major changes at the start of the construction phase to incorporate Construction Manager's plan for the performance of the construction phase Work. The Construction Manager will provide updates and/or revisions to the Master Schedule for use by the Project team, whenever required, but no less often than monthly; provided, however, that no such changes shall alter the date of Substantial Completion without the City's prior, written approval. The Construction Manager will include with such submittals a narrative describing its analysis of the progress achieved versus that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.

4. Prior to transmitting Contract Documents to Subcontractors, the Construction Manager shall prepare a pre-proposal construction schedule for each part of the Project and make the schedule available to the Subcontractors. The Construction Manager shall provide a copy of the Master Schedule to the Subcontractors. As part of the notice of award by the Construction Manager to each Subcontractor, the Construction Manager shall inform each Subcontractor of the requirements for the preparation of the Master Schedule. Each Subcontractor shall prepare its own Subcontractor construction schedule in accordance with the requirements of the Contract Documents.

D. Cost Models; Cost Estimates and Schedule of Values. The Construction Manager shall provide the City with detailed cost information for all aspects of the Project. Each cost model will contain a detailed estimate of the direct cost (including materials, labor and equipment) pertaining to each aspect of the Project along with the cost of the contract bonds, the cost of the Project's required insurance, the cost of all applicable taxes, Construction Manager's general conditions, Construction Manager's fee and the amount of Construction Manager's Contingency and shall be consistent with such requirements as determined by the City or the Project Designers. The individual aspect cost models shall be collectively referred to as the "Cost Model."

1. As soon as practical during the conceptual design phase, the Construction Manager will review all available information regarding the design and scope of the Project, and based on the Construction Manager's experience in performing similar work, develop a Cost Model for review and approval by the City. Once approved by the City, the Cost Model will be continually updated and kept current as the design progresses throughout the pre-construction phase until a final GMP for the entire Project is established. The Cost Model will be the Construction Manager's best representation of the

complete functional Project's construction costs. The Construction Manager will communicate to the Project team any assumptions made in preparing the Cost Model. The Cost Model will support the Construction Manager's construction cost estimates and may be broken down initially as dictated by the available information. The Cost Model will also include allowances as agreed to by the Project team, including but not limited: (a) allowances for potential additional quantities and/or additional Work that the City may require, and (b) any costs related to investigations described in Subsection 2.1.

2. After receipt of the Project Designers' most current documents from certain specified design milestones, the Construction Manager will provide a detailed written report to the Project team regarding the impact of and changes to the Cost Model based on the Construction Manager's review of Construction Documents made available at the specified design milestone. The City's Project Manager, Project Designers and the Construction Manager will reconcile any disagreements on the estimate to arrive at an agreed upon estimate for the construction costs based on the scope of the Project through that specified design milestone. The design milestones applicable to this paragraph are: conceptual design completion, schematic design completion, and detailed design completion at 30%, 60%, 90% and 100%. If no consensus is reached, the City will make the final determination. If the Project team requires additional updates of the Cost Model beyond that specified in this Subsection, the Construction Manager will provide the requested information in a timely manner.

3. If, at any point, the estimate submitted to the City exceeds previously-accepted estimates or other key aspects of the Cost Model or the City's Project budget, the Construction Manager will make appropriate recommendations to the City's Project Manager and Project Designers on means/methods, materials, and/or other design elements that it believes will reduce the estimated construction costs, (without altering the City's basic program) such that it is equal to or less than the established Project budget.

4. Near completion of the 60% detailed design review and included with the associated report, the Construction Manager will also submit to the City for review and approval a "Schedule of Values" which complies with the following requirements. The Schedule of Values will highlight significant variances from any previously submitted preliminary Schedule of Values. The Schedule of Values will be directly related to the breakdowns reflected in the Management Plan and the Construction Manager's Cost Model. In addition, the Schedule of Values will: (a) detail unit prices and quantity take-offs, (b) segregate Work covered by any changes to construction phase Work already in progress, (c) reconcile used and remaining Construction Manager's Contingency (as defined in Subsection 3.3(D)(1) below) allowance, (d) detail all other allowances and unit price Work shown and specified in the detailed Construction Documents and (e) material and equipment costs, labor costs, General Conditions costs, hourly labor rates, payment for pre-construction services and total cost. Labor costs in the Schedule of Values will include employee benefits, payroll taxes and other payroll burdens. The total cost for any portion of the Work to be performed by Subcontractors will include Subcontractor overhead and profit.

5. The Construction Manager will submit to the City a final Schedule of Values based on the 100% detailed design set of Construction Documents for the entire Project or any portion thereof, which final Schedule of Values will also be included in any proposed GMP(s).

6. Upon request by the City, the Construction Manager will submit to the City a cash flow projection for the Project based on the current updated/revised Master Schedule and the anticipated level of payments for the Construction Manager during the pre-construction and construction phases. In addition, if requested by the City and based on information provided by the City, the Construction Manager will prepare a cash flow projection for the entire Project based on historical records for similar types of projects to assist the City in the financing process.

E. Traffic Control/Sequencing Plans. The Construction Manager shall provide the City with (1) a detailed traffic control plan, in accordance with Subsection 4.5(R) below and (2) construction sequencing plans. Upon approval by the City, the traffic control plan and the construction sequencing plan shall be attached hereto as Exhibit H, and incorporated herein by reference.

F. Phasing; Long Lead Procurement. The Construction Manager shall review the Construction Documents and make recommendations to the City with respect to the phase issuance of the Construction Documents to facilitate phased construction of the Work, if appropriate. The Construction Manager will take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost. The Construction Manager may also recommend to the City and to the Project Designers a list and a schedule for purchasing items necessary for the Project which may require substantial lead time for procurement (the "Long Lead Items"), which may be separately procured by the City or included as a separate GMP in this Agreement, at the discretion of the City. The Construction Manager shall make such adjustments to the Master Schedule as necessary to accommodate the procurement process for the Long Lead Items. Upon purchase, the Construction Manager shall safeguard the Long Lead Items until installed as part of the Project.

G. Other Deliverables; Pre-Construction Progress Payments. The Construction Manager shall provide the City with written plans for the pre-qualification of Subcontractors (according to the Subcontractor Selection Program), subcontract bid packages, project safety, quality control, owner training and commissioning. The Construction Manager will prepare and submit monthly pay applications to the City for work performed during the specific payment period for the pre-construction phase of the Project.

ARTICLE 3

GUARANTEED MAXIMUM PRICE PROPOSAL

3.1 GMP Submittal Process. At the stage of the pre-construction phase services as determined by the City, the Construction Manager shall, if requested by the City, submit a GMP

Proposal, which shall be the sum of the estimated Cost of the Work relating to completion of the Scope for the Project and the Construction Fee relating to the Project based upon the most-current version of the Cost Model. Each GMP Proposal shall include, in the Cost of the Work, those taxes that are applicable at the time the GMP is established. Each GMP is the total cost of the applicable portion of the Project including the cost of labor, equipment, supplies, materials, services and allowances to complete the applicable portion of the Project. The cost data is directly correlated to the specific Construction Documents in existence at the time each GMP Proposal is prepared. The assumptions used in the preparation of the GMP Proposal shall be identified by the Construction Manager as part of the GMP Proposal. In submitting this proposal, Construction Manager represents that:

A. Document Review. Construction Manager has examined and carefully studied the Contract Documents for the construction phase, including all addenda.

B. Site Visit. Construction Manager has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, performance and furnishing of the Work.

C. Laws and Regulations. Construction Manager is familiar with and is satisfied as to all Applicable Laws that may affect cost, progress, performance and furnishing of the Work, including, but not limited to, ARIZ. REV. STAT. § 42-5075(P), which applies to the Project contemplated within this Agreement.

D. Reports; Subsurface Conditions. Construction Manager has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site which have been identified in the Contract Documents for the construction phase. Construction Manager acknowledges that such new reports may not be complete for Construction Manager's purposes. Construction Manager acknowledges that City and Project Designers do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents for the construction phase with respect to underground facilities at or contiguous to the Site. Construction Manager has obtained and carefully studied (or assumes responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and underground facilities) at or contiguous to the Site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Construction Manager and safety precautions and programs incident thereto. Construction Manager does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the determination of this GMP Proposal for performance and furnishing of the Work in accordance with the times, price and other terms and conditions of the Contract Documents for the construction phase.

E. Work by Others. Construction Manager is aware of the general nature of Work to be performed by City and others at the Site that relates to Work for which the GMP Proposal is submitted as indicated in the Contract Documents for the construction phase.

F. Conditions and Plans Correlated. Construction Manager has correlated the information known to Construction Manager, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents for the construction phase and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents for the construction phase.

G. Inconsistencies Resolved. Construction Manager has given Project Designers written notice of all conflicts, errors, ambiguities or discrepancies that Construction Manager has discovered in the Contract Documents for the construction phase and the written resolution thereof by Project Designers is acceptable to Construction Manager, and the Contract Documents for the construction phase are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which the GMP Proposal is submitted.

H. No Improper Actions. The proposal is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Construction Manager has not directly or indirectly induced or solicited any person, firm or corporation to refrain from proposing; and Construction Manager has not sought collusion to obtain for itself any advantage over any other contractor or over the City.

3.2 Acknowledged Construction Documents. The Construction Manager, in preparing any GMP Proposal, will obtain from the Project Designers three sets of signed, sealed, and dated Construction Documents (including all addenda). The Construction Manager will prepare its GMP Proposal in accordance with the City's requirements and the most-current completed Construction Documents at that time. The Construction Manager will mark the face of each document of each set upon which its GMP Proposal is based. The Construction Manager will send one set of those documents to the City's Project Manager, keep one set and return the third set to the Project Designers.

3.3 Direct Construction Costs. Direct Construction Costs means the sum of the amounts that the Construction Manager actually and necessarily incurs constructing the Work in strict compliance with the Contract Documents. Direct Construction Costs include only the cost categories set forth in this Article and does not include the Pre-Construction Phase Fees or the Construction Phase Fees unless specifically noted.

A. General Conditions Costs. Construction Manager is entitled to receive reimbursement for the actual cost of the allowable General Conditions items incurred between issuance of the applicable Notice to Proceed and 30 days after the date scheduled for Substantial Completion. Construction Manager is entitled to reimbursement for General Conditions Costs incurred before receipt of the Notice to Proceed, or after Substantial Completion, only with prior written approval of the City. "Allowable General Conditions Cost Line Items" are identified below and in Exhibit I, attached hereto and incorporated herein by reference. These items shall be included in the General Conditions Cost amount shown as a line item in the applicable GMP Proposal and as detailed on the Schedule of Values. Items not specifically included below or in Exhibit I will not be allowed as a General Condition Costs.

1. Personnel costs, which include wages paid for Construction Manager's hourly employees and salaries of Construction Manager's salaried personnel when (a) stationed at the field office located at the Site and working on matters directly related to the Project, in whatever capacity employed; (b) engaged on the road expediting the production or transportation of material and equipment; and (c) performing functions directly related to the Work from the principal or branch office. The project manager's salary may be included in the General Conditions Costs only when the project manager is directly managing the Project. Personnel costs also include the cost of all employee benefits and taxes including but not limited to, unemployment compensation, Social Security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Construction Manager's standard personnel policy. All personnel costs are subject to audit to determine the actual cost of the wages, salaries and allowable employer contributions incurred by the Construction Manager for services performed for the Project.

2. Reasonable transportation, travel and hotel expenses of the Construction Manager's personnel incurred in connection with the Work.

3. Costs of long-distance telephone calls, telegrams, postage, package delivery and courier service, hardwired telephone service, and reasonable expenses of Construction Manager's jobsite office if incurred at the Site and directly and solely in support of the Work.

4. Costs of materials, supplies, temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Site by Construction Manager, if such items are fully consumed in the construction of the Work and are included in the list of Allowable General Conditions Cost Line Items set forth in Exhibit I. Cost for used items shall be based on fair market value and may include transportation, installation, and minor maintenance costs, and removal costs. If an item is not fully consumed in the construction of the Work, its recoverable cost under this Contract shall be based on the original cost of the item less its fair market salvage value.

5. Rental charges for temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Site by Construction Manager, provided they are included in the list of Allowable General Conditions Cost Line Items set forth in Exhibit I and the City has approved the rentals and the rental rates in advance and in writing. Rental rates may include transportation, installation, and minor maintenance costs, and removal costs. For tools, machinery or construction equipment rented directly from the Construction Manager, the rental rate, including freight and delivery costs and all operating expenses except labor, shall be approved in advance by the City and shall be in accordance with either the "Rental Rate Blue Book for Construction Mobilization Costs" published by Primedia, latest edition, or the most-recent rates provided by Equipmentwatch.com, but no higher than the prevailing competitive rates for rental of similar equipment in the Project vicinity.

6. The aggregate rental cost of any item charged to the City shall not exceed 75% of the purchase price and maintenance cost of the item. If the anticipated

aggregate rental cost for an item of equipment exceeds 75% of the purchase and maintenance price, Construction Manager shall purchase the equipment and turn it over to the City upon final completion of the Work or, at the City's option, credit the City with the fair market resale value of the item.

7. Permit and inspection fees paid by Construction Manager where the City is exempt will not be reimbursed by the City.

8. Cost of premiums for normal and customary Construction Manager's Subcontractor default insurance at the rate of 1.25% of the cost of subcontracts and Subcontractor's liability, workman's compensation and builders risk insurance as required pursuant to Article 10 below, which shall be identified as separate line items within the applicable GMP. If the Construction Manager intends to utilize Subcontractor Liability Wrap-up Coverage (Z-25), it will be reimbursed at the rate of 1.5% of the Subcontract amount, and credited from the Subcontractor bids. Commercial General Liability Insurance shall be reimbursed at the rate of 1.1% of the applicable GMP amount; Builders Risk Insurance shall be reimbursed at the rate of 0.47% of the applicable GMP amount; Performance and Payment Bonds shall be reimbursed at 0.76% of the applicable GMP amount. All amounts shall be identified as separate line items within the applicable GMP.

9. Cost of bond premiums to the extent directly attributable to the Project.

10. Governmental transaction privilege sales and use taxes directly attributable to the General Conditions Items that are not subject to exemption, in the form and at the rates legally enacted on the date of the first GMP, whether such taxes are effective or scheduled to go into effect. Such taxes paid on materials or services that were entitled to tax exemption will not be reimbursed by the City as Direct Construction Costs.

B. Cost of the Work. Construction Manager is entitled to receive payment for the actual cost of the allowable Cost of the Work items incurred after receipt of the City's written Notice to Proceed with the Construction Phase Work through Final Completion of the Project. Construction Manager is not entitled to reimbursement for Cost of the Work costs incurred before receipt of the City's written Notice to Proceed. Cost of the Work includes the following:

1. Costs of materials, supplies and equipment purchased directly by the Construction Manager and incorporated into or consumed in the performance of the Work, including transportation charges, to the extent such costs of materials, supplies and equipment are not included in the General Conditions Costs.

2. Costs of removal and disposal in accordance with all applicable laws and regulations of Site debris, non-hazardous substances and waste materials, if not otherwise included in General Conditions.

3. Payments made by Construction Manager to Subcontractors and their vendors or suppliers for the subcontract work in accordance with the Construction

Documents and the requirements of the subcontracts with the Subcontractors, vendors or suppliers.

4. Payments earned by Construction Manager for self-performed subcontract work, other than General Conditions work, in accordance with the Construction Documents and the terms of this Contract and approved by the City.

5. Fees and expenses for design services procured by the Construction Manager related to necessary modifications to the Construction Documents.

6. Intellectual property royalties and licenses for items specifically required by the Construction Documents which are, or will be, incorporated into the Work.

7. All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office at the Site.

8. All water, power and fuel costs necessary for the Work.

9. Costs incurred due to an emergency affecting the safety of persons and/or property, excluding such costs related to the negligence or willful acts of the Construction Manager or any person or entity for whom the Construction Manager is responsible.

10. All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Contract Price as set forth in Article 7 below, which are reasonably inferable from the Contract Documents as necessary to produce the intended results, subject to the maximum price limitation established by the respective GMP.

11. Costs related to the Construction Manager's safety program related to the Project.

C. Exclusions from General Conditions Costs and Cost of the Work. The General Conditions Costs and Cost of the Work shall not include the following:

1. Any professional fees paid by the City to the Project Designers or other consultants retained directly by the City.

2. Any costs paid directly by the City to Subcontractors or suppliers retained directly by the City and outside the scope of all GMPs.

3. Any additional service costs as defined herein.

4. Any other costs not within the control of the Construction Manager or identified as being not within any GMP.

5. Any fees paid to the Construction Manager except those fees that may be paid to Construction Manager for Pre-construction Phase Services above.

D. Construction Manager's Contingency.

1. The GMP Proposal may include an amount (the "Construction Manager's Contingency") to be used to cover cost growth during the Project for costs that result from Project circumstances. Construction Manager's Contingency as defined herein shall govern any GMP Assumptions and Clarifications in the Direct Construction Costs of the Project identified through the refinement, development and completion of the Construction Documents or procurement of the Work. The Construction Manager's Contingency shall be negotiated between the Parties and it shall reflect the risk inherent in the state of completion of the Construction Documents at the time the GMP Proposal is submitted.

2. Any re-allocation of funds from the Construction Manager's Contingency to cover increases in the Direct Construction Costs must be approved by the City in advance and in writing, which approval shall not to be unreasonably withheld. In written requests to use the Construction Manager's Contingency, the Construction Manager shall provide detailed documentation of the scope of work affected and the basis for any increases in costs resulting in the need to use Construction Manager's Contingency funds.

3. As the Construction Documents are finalized and the buyout of the Work progresses the Construction Manager's Contingency amount shall be reduced by mutual agreement of the City and Construction Manager. The buyout shall occur within the first 20% of the construction duration for each Notice to Proceed issued for construction. Construction Manager shall submit open book buyout detail with each Pay Application for approval of application. Should savings occur after the buyout stage, such savings, and related reductions to the Construction Manager's Contingency amount, will be retained by the City.

E. Calculation Methods; Audits.

1. The City and the Construction Manager understand and agree that any GMP agreed to under this Project will be administered as a measured quantity/unit price guaranteed not-to-exceed contract. This not-to-exceed amount is defined by the individual work items and their associated competitively bid and/or negotiated unit prices plus negotiated on-site general conditions, fee structures, markups and Construction Manager's Contingency. Final contract price/payout will be based on field measured final completed quantities, approved unit prices and approved Change Directives and Change Orders. Furthermore, the term "actual cost" is defined as the final negotiated unit prices (costs) mutually agreed to by the City and Construction Manager. The City and the Construction Manager understand and agree that individually priced, "self-performed" items may include the cost associated with the risk of delivering the work.

2. The City and the Construction Manager understand and agree that the City, its authorized representatives, and/or the appropriate federal or state agencies may audit the Construction Manager's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate any GMP, and including, but not limited to, self-performed items, qualifications-only selected Subcontractor items, Change Orders, use of allowance funds and use of Construction Manager's Contingency funds. The City and its authorized representatives shall have access, during normal working hours, to all necessary Construction Manager and Subcontractor facilities, and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with the provisions of this Subsection. The City shall give Construction Manager or Subcontractor reasonable advance notice of intended audits.

F. Discounts. All discounts for prompt payment shall accrue to the City to the extent such payments are made directly by the City. To the extent payments are made with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

3.4 Construction Fee. The "Construction Fee" is the maximum amount payable to the Construction Manager for any cost or profit expectation incurred in the performance of the Work that is not specifically identified as being eligible for reimbursement by the City elsewhere in this Agreement. The Construction Fee includes, but is not limited to, the following items.

A. Profit. All profit, profit expectations and costs associated with profit sharing plans such as personnel bonuses, incentives, and rewards; company stock options; or any other like expenses of the Construction Manager, which shall not exceed 7.5% of the total applicable GMP amount, excluding Construction Manager's Contingency.

B. Salaries. Salaries of Construction Manager's officers, project manager(s), estimators, schedulers and all other employees not stationed at the Project site and performing services directly related to the Project.

C. Overhead. Any and all overhead, labor or general expenses of any kind unless specifically allowed under General Conditions. These costs include, but are not limited to: costs for the purchase, lease, rental, allowance or maintenance of vehicles, radios/communication equipment, jobsite computers, copiers and other business equipment, specialized telephone systems and cellular/digital phones; home office operations and support staff (i.e. accounting, purchasing); trade or professional association dues; costs for hiring and/or relocation of any of the Construction Manager's personnel; and travel, per diem and subsistence expense of Construction Manager, its officers or employees except as specifically allowed under General Conditions, which shall not exceed 5.0% of the total applicable GMP amount, excluding Construction Manager's Contingency.

D. Financial Costs. Any financial costs incurred by the Construction Manager including the cost of capital or interest on capital, regardless of whether it is related to the Project, and costs associated with construction warranty reserves.

E. Professional Fees. Any legal, accounting, professional or other similar costs incurred by the Construction Manager, including costs incurred in connection with the prosecution or defense any dispute, mediation, arbitration, litigation or other such proceeding related to or arising from the Project.

F. Taxes. Any Federal and/or State income and franchise taxes paid by Construction Manager. Any levies, assessments, fines, penalties, sanctions or other impositions made by any governmental body against Construction Manager.

G. Damages and Related Costs. Any cost arising out of a breach of this Agreement or the fault, failure or negligence of Construction Manager, its Subcontractors, or any person or entity for whom they may be liable. These costs include, without limitation: costs to remedy defective, rejected, or nonconforming work, materials or equipment; costs due to failure to coordinate the Work or meet CPM schedule milestones; costs arising from Construction Manager's contractual indemnification obligations; liquidated or actual damages imposed by the City for failure to complete the Work within the Contract Time; costs due to the bankruptcy or insolvency of any Subcontractor; and damage or losses to persons or property.

H. Insurance Deductibles. The cost of any and all insurance deductibles payable by the Construction Manager and costs due to the failure of Construction Manager or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.

I. Costs in Excess of GMP. Any and all costs that would cause the Guaranteed Maximum Price to be exceeded.

J. Other Unidentified Costs. Any and all costs not specifically identified as an element of the Direct Construction Costs.

3.5 Competitive Bidding and Sub-Bids.

A. Subcontractor Selection. The Construction Manager will develop Subcontractor interest, submit the names of a minimum of three qualified Subcontractors for each trade in the Project for approval by the City and solicit bids for the various Work categories. If there are not three qualified Subcontractors available for a specific trade, the Construction Manager will request approval by the City's Project Manager to submit less than three names. No change in the City approved Subcontractors will be allowed without prior, written approval by the City.

B. City Objections. If, prior to receipt of sub-bids or prior to award of Subcontractors or suppliers, the City objects to any nominated Subcontractor or supplier or to any self-performed Work for good reason, the Construction Manager will nominate a substitute Subcontractor or supplier, preferably if such option is still available, from those who submitted sub-bids for the Work affected. Once such substitute Subcontractors and suppliers are consented to by the City, the Construction Manager's proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.

C. Documents; Pre-bid Conference. The Construction Manager will distribute Construction Documents, and when appropriate, conduct a pre-bid conference with prospective Subcontractors.

D. Subcontractor Bid Submittal. The Construction Manager, at the required time, will close the bidding and collect all sub-bids received within the prescribed deadline for receipt of sub-bids. Promptly, after the closing of sub-bids, the Construction Manager will (in the presence of the City's Project Manager and Project Designers) open and read all properly and timely submitted sub-bids. The Construction Manager will submit a completed Sub-Bid tabulation form to the City's Project Manager within a reasonable time after the closing of the sub-bid opening proceedings.

E. Subcontractor Bid Evaluation. The Construction Manager, upon opening of sub-bids will evaluate them including, but not limited to, the evaluation of lower tier Subcontractors, Subcontractor qualification submittals and prospective suppliers selected by each apparent low sub-bidder. The Construction Manager will resolve any sub-bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.

F. Notice of Intent for Subcontracts. Within 15 Days after sub-bid opening, the Construction Manager will deliver to the City's Project Manager a written notice of intent to award subcontracts, itemizing the Subcontractors and suppliers selected by the Construction Manager. The notice of intent to award subcontracts will detail (1) for each Subcontract the amount of the sub-bid and the corresponding Subcontractor or supplier, (2) the sum of sub-bids received for all intended Subcontract, (3) trade work that the Construction Manager intends to self-perform, if any.

G. Pre-award Conference. Promptly after receipt of the notice of intent to award subcontracts, the City will conduct a pre-award conference with the Construction Manager and other Project team members. At the pre-award conference, the Construction Manager will (1) review the nominated slate of Subcontractors and suppliers and discuss any concerns with or objections that the City has to any nominated Subcontractor or supplier; (2) discuss City concerns relating to any proposed self-performed Work; (3) review the Construction Manager's proposed Contract Price for the Work during the construction phase; (4) resolve possible time frames for the commencement date of the Contract Time for the construction phase Work; (5) schedule the pre-construction conference; and (6) discuss other matters as necessary.

3.6 Submittal Requirements. The Construction Manager shall include with each GMP Proposal a written statement of its basis, which shall include:

A. Detailed Scope. A detailed scope of services related to the respective GMP Proposal, including a breakdown of the GMP as it relates to the applicable part of the overall Scope.

B. Documents. A list of the Construction Documents, including all addenda, that were used in preparation of the respective GMP Proposal.

C. Allowances. A list of allowances and a statement of their basis.

D. Assumptions. A list of the assumptions and clarifications made by the Construction Manager in the preparation of the respective GMP Proposal to supplement the information contained in the Construction Documents.

E. Substantial Completion. The Substantial Completion date, if applicable, upon which the respective GMP Proposal is based and the Master Schedule for the Work upon which the respective Substantial Completion date is based, including a clear statement of the number of rain delay days included within the Master Schedule.

F. Alternate Prices. A schedule of applicable alternate prices.

G. Unit Prices. A schedule of applicable unit prices.

H. Additional Services. A statement of Additional Services included, if any.

I. Acceptance Period. The time limit for acceptance of the GMP Proposal.

3.7 GMP Proposal Review. The Construction Manager shall meet with the City and the Project Designers to review each GMP Proposal. In the event that the City discovers any inconsistencies or inaccuracies in the information presented, the City shall give written notice to the Construction Manager, who shall make appropriate adjustments to the GMP, its basis or both.

A. Independent Estimate. Upon receipt of any GMP Proposal from the Construction Manager, the City may submit the same documents that were used by Construction Manager in developing its GMP to an independent third party or to the Project Designers for review and verification. The third party or Project Designers will develop an independent estimate of the Cost of the Work and review the Master Schedule for the associated scope of the GMP Proposals.

B. GMP Exceeding Independent Estimate. If the Construction Manager's GMP Proposal is greater than the independent third party or Project Designers' estimate, the City may require the Construction Manager to reconfirm its GMP Proposal. The Construction Manager will accept the independent third party's or Project Designer's estimate for the Cost of the Work as part of its GMP or present a written request, within seven Days of receiving the estimates, to the City identifying, explaining and substantiating the differences. The Construction Manager may be requested to, or at its own discretion may, submit a revised GMP Proposal for consideration by the City. At that time the City may do one of the following.

1. Accept the Construction Manager's original or revised GMP Proposal, if within the City's budget, without comment.

2. Accept the Construction Manager's original or revised GMP Proposal that exceeds the City's budget, and indicate in writing to the Construction Manager that the Project budget has been increased to fund the differences.

3. Reject the Construction Manager's original or revised GMP Proposal because it exceeds either or both the City's budget and the independent third party's or Project Designers' estimate, in which event, the City may terminate this Agreement.

C. Design Changes During Negotiation. If, during the review and negotiation of GMP Proposals, design changes are required, the City will authorize and cause the Project Designers to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the Construction Manager. The Construction Manager will promptly notify the Project Designers and City's Project Manager if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.

3.8 No Prior Costs. Prior to the City's acceptance of a GMP Proposal, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work related to such GMP Proposal, except as provided in this Agreement or as the City may specifically authorize in writing.

3.9 Acceptance; Effect. Upon acceptance by the City of each GMP Proposal, the GMP contained therein and its basis shall be set forth in the applicable GMP Amendment. Once established, the GMP and the corresponding Substantial Completion date shall be subject to modification only as provided in Articles 6 and 8 below. The City's approval of the GMP Amendment will include the amount of the City's Contingency. The amount of the City's Contingency will be set solely by the City and will be in addition to the Project costs included in the Construction Manager's GMP Proposals. Use and management of the City's Contingency is at the City's sole direction.

3.10 GMP Effective Date. Each GMP Proposal shall not become a part of this Agreement until the City accepts such GMP Proposal in writing by executing the applicable GMP Amendment, on or before the date specified in each such GMP Proposal for such acceptance.

3.11 Failure to Agree Upon GMP. If the City and the Construction Manager do not agree to any provisions of the GMP Proposal, including the designated Default Neutral Arbitrator, all references in this Agreement to the GMP shall not be applicable, and the Parties shall proceed on the basis of reimbursement as provided in Article 7 below.

ARTICLE 4 CONSTRUCTION SERVICES

4.1 Control of Construction. After the date any Amendment to this Agreement is executed by the City and the Construction Manager approving a GMP Proposal, the Construction Manager shall become responsible for the means, methods, sequences and procedures used in the construction of the portion of the Project related to such GMP Proposal and shall proceed with the Construction Manager's Construction Services related to the GMP Proposal under this Agreement.

4.2 Completeness and Accuracy of Construction Manager Work. The Construction Manager will be responsible for the completeness and accuracy of its reviews, reports, supporting

data, and other pre-construction deliverables prepared or compiled pursuant to its obligations under this Agreement and will at its sole own expense correct its work or deliverables. The fact that the City has accepted or approved the Construction Manager's work or deliverables will in no way relieve the Construction Manager of any of its responsibilities under the Agreement, nor does this requirement to correct the work or deliverable constitute a waiver of any claims or damages otherwise available by law or contract to the City.

4.3 Alteration in Character of Work. In the event an alteration or modification in the character of work or deliverable materially increases or decreases the scope of service, cost of performance, or Master Schedule as determined by the City, the Work or deliverable will nonetheless be performed as directed by the City. However, before any altered or modified work begins, a Change Directive or Change Order must be approved and executed by the City and the Construction Manager to address such change. Such Change Directive or Change Order will not be effective until approved by the City. Additions to, modifications to, or deletions from the Project provided herein may be made, and the compensation to be paid to the Construction Manager may be adjusted accordingly, only by mutual agreement of the Parties. No claim for extra work done or materials furnished by the Construction Manager will be allowed by the City except as provided herein, nor will the Construction Manager do any work or furnish any material(s) not covered by this Agreement unless such work or material is first authorized in writing by the City. Work or material(s) furnished by the Construction Manager without such prior written authorization will be the Construction Manager's sole jeopardy, cost, and expense, and the Construction Manager hereby agrees that, without prior written authorization, no claim for compensation for such work or materials furnished will be made.

4.4 Construction Phase General Services. The Construction Manager shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all Work for the construction of the Project, and to completely and totally construct the same and install the material therein for the City. All Work will be performed in a good and workmanlike and substantial manner according to the standards set forth in Subsection 1.6(A) above. The Work shall be to the satisfaction of the City and strictly pursuant to and in conformity with the Project's Contract Documents, as modified and agreed to by the City. Construction Manager's Representative shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the Work. Construction Manager's Representative shall communicate regularly with City but not less than once each week and shall be vested with the authority to act on behalf of Construction Manager. Construction Manager's Representative may be replaced only with the written consent of City.

A. Government Approvals and Permits.

1. The Construction Manager shall be primarily responsible to obtain all necessary permits, approvals and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. The Contractor is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices. The City will be the applicant for the following permits; however, the Construction Manager shall be responsible for any work associated with obtaining the permits, as directed by the City:

- a. Aquifer Protection Permit (APP) No. P-100573
- b. MAG 208 Amendment
- c. Maricopa County Environmental Services Department
 - i. Approval to Construct
 - ii. Approval of Construction
 - iii. Air Quality Permit 980869, for plant operations and generators
- d. Well Drilling Permit
- e. Flood Plain Use Permit
- f. Arizona Pollution Discharge Elimination Systems (AZPDES), AZ0023281
- g. Architectural Approval; Site Plan/Conditional Use Permit Approval; Building Permit
- h. Stormwater Multi-Sector General Permit (AZMSG2010-002) relating to the WRF's industrial operations; provided that any construction permit necessary in conjunction with this permit shall be obtained by the Construction Manager.

2. Copies of the required permits and notices must be provided to the City's Representative prior to starting the permitted activity. In the case of Fire Department permits, a copy of the application for permit shall also be provided to the City's Representative. This provision does not constitute an assumption by the City of an obligation of any kind for violation of said permit or notice requirements.

3. City shall be responsible for permit(s) and fees for building and demolition permits. City will also pay review fees for grading and drainage, water, sewer, and landscaping. City shall also pay for utility design fees for permanent services.

4. Construction Manager shall be responsible for all other permits and review fees not specifically listed in Subsection 4.4(A)(1) above.

5. Construction Manager is responsible for all water bills on the Project meters until Substantial Completion of the Project. Arrangements for construction water are the Construction Manager's responsibility.

B. Pre-construction Activities.

1. Prior to the commencement of any Work, the City's Representative will schedule a pre-construction conference. The purpose of this conference is to establish a working relationship between the Construction Manager, utility firms, various City agencies and other entities as may be appropriate or beneficial. The agenda will include critical elements of the Work and Master Schedule, submittal schedule, cost breakdown of major lump sum items, payment requests and processing, coordination with the involved utility firms, the level of Project Record Documents required and emergency telephone numbers for all representatives involved in the course of construction. Minimum attendance at the preconstruction conference shall be the Construction Manager's Representative, the job superintendent, the Construction Manager's safety officer and the individuals deemed necessary by the City.

2. The Notice to Proceed date will be set by the City. At or after the pre-construction conference and upon delivery of the required bonds and insurance in a City-approved format or at such other time as the City may elect, a Notice to Proceed letter will be issued confirming the construction start date, the Contract Time and the Substantial Completion date. Failure by the Construction Manager to provide the properly executed bond and insurance forms in a timely manner may delay the construction start date; however, it will not alter the proposed Substantial Completion date nor be a basis for any time extension request or other claims.

3. The Construction Manager shall update the Schedule of Values based on the categories used in the buy out of the Work but not greater than the approved GMP; the update shall identify the Construction Manager's Contingency. The Schedule of Values will subdivide the Work into all items comprising the Work.

C. Project Management.

1. The Construction Manager shall refine the Management Plan for the Project. In refining the Management Plan, the Construction Manager shall consider the City's schedule, cost and design requirements for the Project. The Construction Manager shall then develop various alternatives for the sequencing and management of the Project and shall make recommendations to the City. The Management Plan shall also include a description of the various proposal packages recommended for the Project. The Management Plan shall be presented to the City for acceptance.

2. The Construction Manager shall conduct periodic Project meetings attended by the City's Representative, the Project Designers and other necessary parties. Such meetings shall serve as a forum for the exchange of information concerning the Project and the view of construction progress. The Construction Manager shall prepare and distribute minutes of these meetings to the City's Representative, the Project Designers and others in attendance.

3. The Construction Manager shall coordinate transmittal of documents to regulatory agencies for review and shall advise the City of potential problems in completing such reviews.

4. The Construction Manager shall assist the City in public relations activities and shall prepare information for and attend public meetings regarding the Project.

D. Reports.

1. The Construction Manager shall prepare and distribute design phase change reports monthly to the City that shall list all City-approved Change Directives and Change Orders as of the date of the report and shall state the effect of the Change Directives and Change Orders on the Project budget and the Master Schedule.

2. The Construction Manager shall prepare and distribute schedule maintenance reports monthly to the City comparing the actual and scheduled dates for Subcontractors' contract awards and completion of each such Subcontractor's portion of the Project.

3. The Construction Manager shall prepare and distribute the Project cost reports monthly to the City specifying actual award prices and construction costs for each of the individually awarded components of the Project as compared to the Project budget.

4. The Construction Manager shall prepare and distribute cash flow reports monthly to the City specifying actual cash flow for each of the individually awarded components of the Project as compared to the projected cash flow.

5. The requirements for filing reports set forth in this Subsection 4.4(D) shall not be deemed to meet the requirements for requests for extensions of time or requests for Change Directives and Change Orders as set forth in Section 6 and Section 8 below.

4.5 Work Management.

A. Construction Manager Resources. Unless otherwise provided in the Contract Documents to be the responsibility of City or a separate contractor, Construction Manager shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Construction Manager to complete the Work according to the Contract Documents. The Construction Manager shall provide and maintain a management team on the Site to provide contract administration. The Construction Manager shall establish and implement coordination and communication procedures among the Construction Manager, the City, the Project Designers and Subcontractors.

B. Means, Methods and Techniques. Construction Manager shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Construction Manager shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

C. Supervisor Presence. Construction Manager's Representative or the Construction Manager's Superintendent shall be present at the Site at all times that construction activities are taking place.

1. All elements of the Work shall be under the direct supervision of a foreman or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the Work.

2. In the event of noncompliance with this Subsection, the City may require the Construction Manager to stop or suspend the Work in whole or in part.

D. Manufacturer Requirements. Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is the Construction Manager's responsibility to ensure the Subcontractor employed for such work is approved by the manufacturer.

E. Measurements. Before ordering materials or doing work, the Construction Manager and each Subcontractor shall verify measurements at the Site and shall be responsible for the accuracy of such measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the plans; differences shall be submitted to the City for resolution before proceeding with the Work.

F. Field Measurements and Conditions. The Construction Manager shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Construction Manager with the Construction Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the City immediately.

G. Grades, Lines, Levels and Bench Marks. The Construction Manager shall establish and maintain all building and construction grades, lines, levels, and bench marks, and shall be responsible for accuracy and protection of same. This Work shall be performed or supervised by a civil engineer or surveyor licensed as such in the State of Arizona.

H. Proper Employee Conduct. Any person employed by the Construction Manager or any Subcontractor who, in the opinion of the City, does not perform his work in a proper, skillful and safe manner or is intemperate or disorderly or is otherwise found to be inappropriate due to the setting of the Site, shall, at the written request of the City, be removed from the Site by Construction Manager or Subcontractor employing such person, and the person shall not be employed again in any portion of Work without the written approval of the City. The Construction Manager or Subcontractor shall hold the City harmless from damages or claims which may occur in the enforcement of this Subsection.

I. Coordination of Activities. Construction Manager shall coordinate the activities of all Subcontractors. If City performs other work on the Project or at the Site with separate contractors under City's control, Construction Manager agrees to reasonably cooperate

and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

J. Change Processing. The Construction Manager shall establish and implement procedures for expediting and processing requests for information, Shop Drawings, material and equipment sample submittals, contract schedule adjustments, Change Directives, Change Orders, substitutes, payment requests and the maintenance of logs. The Construction Manager shall maintain daily job reports. The Construction Manager shall be the party to whom requests for information, submittals, Subcontractor schedule adjustments, substitutions, Change Directive requests, Change Order requests and payment requests shall be submitted.

K. Subcontractor Meetings. Periodically, the Construction Manager shall conduct meetings at the Site with each Subcontractor. The Construction Manager shall conduct coordination meetings with all Subcontractors. The Construction Manager shall record, transcribe and distribute minutes to all attendees, the City and the Project Designers.

L. Coordination of Inspections and Testing. Technical inspection and testing provided by the Project Designers or others who are not Subcontractors shall be coordinated with the Construction Manager. The Construction Manager shall be provided a copy of all inspection and testing reports on or before the next business day after the inspection or test. The Construction Manager is not responsible for providing, nor does the Construction Manager control, the actual performance of such technical inspection and testing. The Construction Manager is performing a coordination function and is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of such inspection and testing.

M. Self-Performed Work. The Construction Manager shall perform, with its own forces, construction work that amounts to not less than 45% of the total Contract Price for construction of the Project. For the purposes of this paragraph, the total Contract Price for construction of the Project (1) includes the total of the GMP amounts as agreed upon by the Construction Manager and the City and (2) does not include the cost of preconstruction services, design services or any other related services or the costs to procure any right-of-way or other costs of condemnation.

N. No Subcontractor Reliance. Construction Manager shall ensure that each Subcontractor (1) has inspected the Site and has thoroughly reviewed this Agreement as the same may be revised by the City, and is not relying on any opinions or representations of the City, (2) agrees to perform and complete the Work in strict accordance with this Agreement and under the Construction Manager's direction, (3) agrees that any exclusions of any Work must be approved in writing by the Construction Manager prior to acceptance of any agreement between Construction Manager and a Subcontractor or same shall not be excluded hereunder, (4) is responsible for all safety precautions and programs and shall provide all protection and necessary supervision to implement said precautions and programs as set forth in Section 4.13 below, (5) shall provide all competent supervision necessary to execute all Work and any work incidental thereto in a thorough, first-class, workmanlike manner and (6) has acknowledged that it is Subcontractor's responsibility that all of the Work and any work incidental thereto conforms to, and is performed in accordance with, Applicable Law.

O. Subcontractor Change Request. The Construction Manager shall review the contents of a request for changes to the subcontract time or price submitted by a Subcontractor, assemble information concerning the request and endeavor to determine the cause of the requests. In instances where the Construction Manager's analysis reveals that the request is valid, the Construction Manager shall prepare a detailed report to the City for approval in accordance with Articles 6 and 8 below, as applicable. The Construction Manager shall also prepare and timely deliver a detailed report to the City of other such requests and requests found to be invalid and timely inform the Subcontractor of any such determination. The Construction Manager shall prepare the necessary change documents for signature by the Subcontractor.

P. Quality Control. The Construction Manager shall establish and implement a program to monitor the quality of construction by itself and by Subcontractors. The purpose of the program shall be to protect the City against defects and deficiency in the Work of the Construction Manager or the Subcontractors. The Construction Manager shall reject the Work and transmit to the Subcontractor a notice of nonconforming work when the Construction Manager believes the Work does not conform to the requirements of the Contract Documents. Except for minor variations as stated herein, the Construction Manager is not authorized as part of this service to change, enlarge, relax, alter, or release any requirement of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents.

Q. Subcontractor Document Request. The Construction Manager shall coordinate and expedite submittals of information from the Subcontractors for record drawings and specification preparations and shall coordinate and expedite the transmittal of Project Record Documents to the City.

R. Traffic Control. All traffic affected by the Work under this Agreement shall be regulated in accordance with the most recent revision of the United States Department of Transportation *Manual on Uniform Traffic Control Devices* (the "MUTCD") and the City of Phoenix Traffic Barricade Manual (the "Barricade Manual") (the MUTCD and the Barricade Manual are collectively referred to herein as the "Traffic Control Requirements"), which are incorporated herein by reference; provided, however, that this Agreement shall govern in a conflict with the terms of the MUTCD or the Barricade Manual. At the time of the pre-construction conference, each Subcontractor shall designate an employee who is well qualified and experienced in construction traffic control and safety to be responsible for implementing, monitoring and altering traffic control measures, as necessary. At the same time the Construction Manager will designate a representative who will be responsible to see that all traffic control and any alterations are implemented and monitored to the extent that traffic is carried through the Work area in an effective manner and that motorists, pedestrians, bicyclists and workers are protected from hazard and accidents. The Construction Manager shall ensure that Subcontractors adhere to the following:

1. All traffic control devices and advance warning signs (such as REDUCE SPEED, LOOSE GRAVEL, 25 MPH SPEED LIMIT and DO NOT PASS) required for the Work under this Agreement shall be placed in accordance with the Traffic Control Requirements.

2. The Subcontractor provide, erect and maintain all necessary flashing arrow boards, barricades, suitable and sufficient warning lights, signals and signs and shall

take all necessary precautions for the protection of the Work and safety of the public. The Subcontractor shall provide, erect and maintain acceptable and adequate detour signs at all closures and along detour routes.

3. All barricades and obstructions shall be illuminated at night, and all safety lights shall be kept burning from sunset until sunrise. All barricades and signs used by the Subcontractor shall conform to the standard design generally accepted for such purposes and payment for all such services and materials shall be considered as included in the other pay items of the Agreement.

4. The Subcontractor shall ensure that all existing traffic signs are erect, clean and in full view of the intended traffic at all times. Street name signs at major street intersections shall be maintained erect at all times. If these signs should interfere with construction, the Subcontractor shall notify the City at least 48 hours in advance for City personnel to temporarily relocate said signs. The City will direct the Subcontractor as to the correct positions to re-set all traffic and street name signs to permanent locations when notified by the Subcontractor that construction is complete.

5. When construction activities or traffic hazards at the Site require the use of flagmen, it shall be the Subcontractor's responsibility to provide trained flagmen to direct traffic safely.

6. Manual traffic control shall be in conformity with the MUTCD, except that the designated liaison officer shall be contacted at the Avondale Police Department.

7. When traffic hazards at the Site warrant the use of certified police personnel to direct traffic, arrangements must be made with the liaison officer at the Avondale Police Department.

8. The assembly and turnarounds of the Subcontractor's equipment shall be accomplished using adjacent local streets when possible.

9. Equipment used and/or directed by the Subcontractor shall travel with traffic at all times. Supply trucks shall travel with traffic except when being spotted. Subcontractor shall provide a flagman or off-duty, uniformed law enforcement officer to assist with spotting.

10. During construction, it may be necessary to alter traffic control. Any such alterations shall be in accordance with the Traffic Control Requirements.

11. No street within the Project area may be closed to through traffic or to local emergency traffic without prior written approval of the City. The City may give written approval at its sole discretion and only if sufficient time exists to allow for notification of the public at least two Days in advance of such closing. Partial closure of streets within the Project shall be done in strict conformity with the City's written directions.

12. Caution should be used when excavating near intersections with traffic signal underground cable. Subcontractor shall notify the City 24 hours in advance of any work at such intersections. The Subcontractor shall install and maintain temporary overhead traffic signal cable as specified by the City when underground conduit is to be severed by excavations at intersections. The Subcontractor shall provide an off-duty uniformed City of Avondale police officer to direct traffic while the traffic signal is turned off and the wiring is transferred. All damaged or modified traffic signal overhead and underground items shall be repaired and restored to the City's satisfaction. Magnetic detector loops shall, under no circumstances, be spliced.

13. The Subcontractor shall accommodate local access to adjacent properties in accordance with the specification set forth below.

14. Where crossings of existing pavement occurs, no open trenches shall be permitted overnight, but plating may be permitted if conditions allow, as determined by the City or its authorized representative in his sole discretion. If plates cannot be used, crossings shall either be back-filled or the Subcontractor shall provide a detour.

4.6 Control of the Work Site.

A. Debris Removal. Throughout all phases of construction, including suspension of Work, Construction Manager shall keep the Site reasonably free from debris, trash and construction wastes to permit Construction Manager to perform its Construction Services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or an agreed upon portion of the Work, Construction Manager shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit City to occupy the Project or an agreed upon portion of the Project for its intended use.

B. Dust Control. Construction Manager shall take whatever steps, procedures or means necessary to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City and in accordance with the requirements of Applicable law and such other Specifications as the Parties may agree to in writing.

C. Accessibility. Construction Manager shall maintain "ADA" and "ANSI" accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. Construction Manager shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.

D. Material and Equipment Storage. Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Site by the Construction Manager. When equipment or materials are no longer required for the Work, each shall be removed promptly from the Site.

E. Protection of Site. Protection of the Work, the Site, and construction materials and equipment stored at the Site from weather, theft, damage and all other adverse conditions is solely the responsibility of the Construction Manager.

4.7 Time Management.

A. Master Schedule Updates. The Construction Manager shall, not less than monthly, adjust and update the Master Schedule and distribute copies to the City and the Project Designers. All adjustments to the Master Schedule must be (1) made for the benefit of the Project and (2) acceptable to the City; provided, however, that such adjustments or updates shall not extend the time for performance of the Work beyond the Substantial Completion date unless such extension is requested by the Construction Manager and approved by the City in accordance with Section 6 below.

B. Subcontractor Schedule Verification. The Construction Manager shall review each Subcontractor's construction schedule and shall verify that the schedule is prepared in accordance with the requirements of the Contract Documents and that it establishes completion dates that comply with the requirements of the Master Schedule.

C. Subcontractor Progress Monitoring. The Construction Manager shall (1) review the progress of construction of each Subcontractor on a monthly basis, (2) evaluate the percentage completion of each construction activity as indicated in the Subcontractor's construction schedule and (3) review such percentages with the Subcontractor. This evaluation shall serve as data for input to the periodic construction schedule report that the Construction Manager shall prepare and distribute to the appropriate Subcontractor, the City's Representatives and the Project Designers. The report shall serve as the basis for (i) determining the actual progress compared to scheduled progress and (ii) determining the progress payment due to the Subcontractor. The Construction Manager shall determine and implement alternative courses of action that may be necessary to achieve contract compliance by the Subcontractor.

D. Change Evaluation. The Construction Manager shall, prior to the issuance of a Change Directive or Change Order, determine the effect on the Master Schedule of time extensions requested by a Subcontractor. The Construction Manager may require a Subcontractor to prepare and submit a recovery schedule in the event the Subcontractor fails to meet the Master Schedule.

E. Minor Schedule Revisions. The Master Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve the Construction Manager of its obligations to complete the Work within the Contract Time, as such dates may be adjusted in accordance with the Contract Documents.

F. Payment Requests. An updated Master Schedule shall be submitted monthly to the City as part of the Payment Request.

1. The Construction Manager shall provide City with a monthly status report for the Master Schedule detailing the progress of the Work, including (a) if the Work

is proceeding according to schedule, (b) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (c) other items that require resolution so as not to jeopardize ability to complete the Work as presented in the applicable GMP and within the Contract Time.

2. With each schedule submittal the Construction Manager shall include a transmittal letter including the following:

- a. Description of problem tasks (referenced to field instructions and requests for information), as appropriate.
- b. Current and anticipated delays including:
 - i. Cause of the delay.
 - ii. Corrective action and schedule adjustments to correct the delay.
 - iii. Known or potential impact of the delay on other activities, milestones, and the Substantial Completion date.
- c. Changes in construction sequence.
- d. Pending items and status thereof including but not limited to:
 - i. Time Extension requests.
 - ii. Other items.
- e. Substantial Completion date status:
 - i. If ahead of schedule, the number of Days ahead.
 - ii. If behind schedule, the number of Days behind.
- f. Other project or scheduling concerns.

G. City Review. City's review of and response to the Master Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not: (1) relieve the Construction Manager from (a) compliance with the requirements of the Contract Documents or (b) the time extension request process set forth in Section 6 below; or (2) be construed as relieving the Construction Manager of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

H. CPM Diagram. The updated Master Schedule shall include a CPM diagram schedule that shows the sequence of activities, the interdependence of each activity and indicate the Critical Path.

1. The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.

2. The CPM diagram schedule shall indicate all relationships between activities.

3. The activities making up the Master Schedule shall be in sufficient detail to ensure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.

4. The CPM diagram schedule shall be based upon activities that coincide with the Schedule of Values.

5. The CPM diagram schedule shall show all submittals associated with each Work activity and the review time for each submittal.

6. The schedule shall show milestones, including milestones for City-furnished information, and shall include activities for City-furnished equipment and furniture when those activities are interrelated with the Construction Manager activities.

7. The schedule shall include a Critical Path activity that reflects anticipated rain and weather delay during the performance of the Agreement. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the Site. Weather data shall be based on information provided by the National Weather Services or other source approved in writing by the City.

I. Occupancy Consideration. The Master Schedule shall consider the City's occupancy requirements showing portions of the Project having occupancy priority.

J. Float Time. Float time shall be as prescribed below:

1. The total Float within the overall Master Schedule, is not for the exclusive use of either the City or the Construction Manager, but is jointly owned by both and is a resource available to and shared by both Parties as needed to meet contract milestones and the Project completion dates.

2. The Construction Manager shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing. Float time within the schedule is jointly owned; no time extensions will be considered or granted nor delay

damages considered or paid until a delay occurs that extends the Work beyond the Substantial Completion date.

3. City-caused delays on the Project may be offset by City-caused time savings (i.e., Critical Path submittals returned in less time than anticipated by the Master Schedule; approval of substitution requests and credit changes which result in savings of time to the Construction Manager). In such an event, the Construction Manager shall not be entitled to have considered or receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

K. Occupancy/Use Plan. The Construction Manager shall prepare an occupancy plan for the Project. This plan shall be provided to the City not later than 60 Days prior to the scheduled Substantial Completion date.

4.8 Cost Management.

A. Subcontract Schedule of Values. The Construction Manager shall, in participation with the Subcontractors, determine a Schedule of Values for each of the construction subcontracts. The Schedule of Values shall be the basis for the allocation of the Contract Price to the activities shown on the Subcontractors' construction schedule. The City shall approve the subcontract Schedule of Values before acceptance for progress billings.

B. Contract Price Allocation Each Subcontractor's construction schedule shall have the applicable portions of the Contract Price allocated among the Subcontractor's scheduled activities so that each of the Subcontractor's activities shall be allocated a price and the sum of the prices of the activities shall equal to or less than the total Contract Price. The Construction Manager shall review the Contract Price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents. Progress payments to a Subcontractor and Construction Manager shall be based on the Subcontractor's percentage of completion of the scheduled activities as set out in each Subcontractor's construction schedule report and the Subcontractor's compliance in accordance with the Contract Documents.

C. Additional Information. In instances where a lump sum or unit price is not determined prior to performing Work described in a request for changes to the Contract Price, the Construction Manager shall request from the Subcontractor records for the cost of payroll, materials and equipment and the amount of payments to its Subcontractors, if any, incurred by the Subcontractor in performing the Work.

D. Trade-off Studies. The Construction Manager shall provide trade-off studies for various minor construction components. The results of the trade-off studies shall be in report form and distributed to the City's Representative and the Project Designers.

E. Payment Applications. In consultation with the Project Designers, the Construction Manager shall review the payment applications submitted by each Subcontractor and determine whether the amount requested reflects the progress of the Subcontractor's work. The Construction Manager shall make appropriate adjustments to each payment application and shall

prepare and forward a progress payment report to the City. The progress payment report shall state the total Contract Price, payments to date, current payment requested, open book buyout detail, retainage and actual amounts owed for the current period. Included in this report shall be a certificate for payment that shall be signed by the Construction Manager and delivered to the City. The Construction Manager shall keep the Project and the Site free and clear of all liens and claims from its Subcontractors, suppliers or materialmen.

4.9 Shop Drawings, Product Data and Samples.

A. Purpose. Shop Drawings, product data, samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Construction Manager proposes to conform to the information given and the design concept expressed in the Contract Documents.

B. Review. The Construction Manager shall review, approve, verify, and submit to the Project Designers five copies of each Shop Drawing, product data, sample, and similar submittal required by the Contract Documents as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals made by the Construction Manager that are not required by the Contract Documents may be returned without action.

C. Project Designer Approval. The Construction Manager shall perform no portion of the Work requiring submittal and review of Shop Drawings, product data, samples, or similar submittals until the respective submittal has been approved by the Project Designers. Such Work shall be in accordance with approved submittals.

D. Construction Manager Verification. By approving, verifying and submitting Shop Drawings, product data, samples and similar submittals, the Construction Manager represents that the Construction Manager has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

E. No Deviation Approval; Errors. The Construction Manager shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Project Designer's approval of Shop Drawings, product data, samples or similar submittals unless the Construction Manager has specifically informed the Project Designer in writing of such deviation at the time of submittal and the Project Designer has given written approval to the specific deviation. The Construction Manager shall not be relieved of responsibility for errors or omissions in Shop Drawings, product data, samples, or similar submittals by the Project Designer's approval thereof.

F. Highlight Changes. The Construction Manager shall direct specific attention, in writing or on resubmitted Shop Drawings, product data, samples, or similar submittals, to revisions other than those requested by the Project Designers on previous submittals.

G. Informational Submittals. Informational submittals upon which the Project Designer is not expected to take responsive action may be so identified in the Contract Documents.

H. Other Certifications. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Project Designer shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

4.10 Quality Control, Testing and Inspection.

A. New Materials. All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.

B. Inspection and Approval. All construction materials to be used in the Work or incorporated into the Work, equipment, plant, tools, appliances or methods to be used in the Work may be subject to the inspection and approval or rejection by the City or the Project Designers. Any material rejected by the City or the Project Designers shall be removed immediately and replaced in an acceptable manner.

C. Test Methods. The procedures and methods used to sample and test material will be determined by the Project Designers. Unless otherwise specified, samples and tests shall be made in accordance with MAG 700 Series and the standard methods of AASHTO or ASTM as referenced in the MAG 700 Series.

D. Testing Facility. The Construction Manager will select a pre-qualified independent testing laboratory and will pay for initial City acceptance testing.

1. When the first and subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance and retesting will be paid for by the Construction Manager. Construction Manager's Contingency cannot be utilized for the cost of re-testing.

2. When the first and subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the same testing agency.

E. Cooperation. The Construction Manager will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the Work and shall provide the laboratory's employees or agents access to the Work at all times.

F. At-source Approval. At the option of the City, materials may be approved at the source of supply before delivery.

G. Code Compliance. Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority shall be the responsibility of and shall be paid by the Construction Manager, unless otherwise provided in the Contract Documents.

H. Responsibility. Construction Manager's quality control testing and inspections shall be the sole responsibility of the Construction Manager and shall be paid solely by the Construction Manager.

4.11 Trade Names and Substitutions.

A. Substitutions. Substitute or alternate items to Contract Document references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number may be permitted, unless indicated that no substitutions are permitted, and if permitted are subject to the following:

1. The substitution shall be submitted by Construction Manager in writing to the Project Designers.

2. The Construction Manager shall certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.

3. The submittal shall outline any required changes in the Contract Documents to adapt the design to the proposed substitution.

4. The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include any request for adjustment in the Contract Time created by the substitution.

B. Samples; Additional Information. The Construction Manager, if requested by the Project Designers, shall submit samples or any additional information that may be necessary to evaluate the acceptability of the substitution.

C. Project Designer Determination. The Project Designers will make the final decision and will notify the Construction Manager in writing as to whether the substitution has been accepted or rejected.

D. Presumed Rejection. If the Project Designers do not respond in a timely manner, the Construction Manager shall continue to perform the Work in accordance with the Contract Documents and the substitution will be considered rejected.

4.12 Project Record Documents.

A. Redline Prints. During the construction period, the Construction Manager shall maintain at the Site a set of redline, blueline or blackline prints of the Construction Documents and Shop Drawings for Project Record Document purposes. The Construction Manager will certify that these documents are up to date when it submits its monthly pay application. The Construction Manager shall also:

1. Mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents and give particular attention to information regarding concealed elements that would be difficult to

identify or measure and record later. Items required to be marked include, but are not limited to:

- Dimensional changes to the drawings.
- Revisions to details shown on drawings.
- Depths of foundations below first floor.
- Locations and depths of underground utilities.
- Revisions to routing of piping and conduits.
- Revisions to electrical circuitry.
- Actual equipment locations.
- Duct size and routing.
- Locations of concealed internal utilities.
- Changes made by Change Order or Change Directive.
- Details not on original Contract Documents.
- Similar deviations, variations and modifications.

2. Mark completely and accurately Project Record Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on the Construction Documents.

3. Mark Project Record Document sets with red erasable colored pencil.

4. Note Change Order or Change Directive numbers, as required to identify the source of the change to the Construction Documents.

5. As a condition of Substantial Completion, submit Project Record Documents and Shop Drawings to the City Representative for review and comment.

B. Corrections. Upon receipt of the reviewed Project Record Documents from the City, the Construction Manager shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to the City within 14 Days:

1. A complete set of electronic Project Record Documents prepared in AutoCAD format compatible with City CADD technology. The Project Designers will provide files of the original Construction Documents to the Construction Manager for the

use of preparing these final Project Record Documents or the Construction Manager may contract with the Project Designers to revise and update the electronic drawing files. Each drawing shall be clearly marked with "As-Built Document."

2. The original copy of the Project Record Documents (including all redline mark-ups).

4.13 Project Safety. Construction Manager recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.

A. Responsibility. Construction Manager assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.

B. Safety Representative. Construction Manager shall, prior to commencing construction, designate a safety representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Construction Manager's safety representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety.

C. Daily Inspections. The safety representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Construction Manager's personnel, Subcontractors and others as applicable. Construction Manager shall provide the City copies of daily inspection reports and weekly safety meeting minutes, with the monthly payment applications.

D. Legal Requirements. Construction Manager and Subcontractors shall comply with Applicable Law relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate Applicable Law. If Construction Manager believes a City-specific requirement violates Applicable Law, the Construction Manager shall notify the City of such violation within 24 hours of discovery.

E. Reporting. Construction Manager will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to City's Representative and, to the extent mandated by Applicable Law, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

F. Subcontractor Responsibility. Construction Manager's responsibility for safety under this Section is not intended in any way to relieve Subcontractors of their own contractual and legal obligations and responsibility for (1) complying with Applicable Law, including those related to health and safety matters, and (2) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

4.14 Substantial Completion. When the Construction Manager considers that the Work has reached Substantial Completion, it shall submit a request to the City's Project Manager for a certificate of Substantial Completion. Substantial Completion must occur not later than the date set forth in the applicable GMP Amendment, subject to modification by changes in the Contract Time according to Article 6 below. A prerequisite for Substantial Completion, over and above the extent of construction completion required, is receipt by the City of acceptable documentation that Construction Manager has successfully tested and demonstrated all systems for their intended uses. In consultation with the Project Designers, the City shall determine when the Project and the Construction Manager's Work is substantially complete. The Substantial Completion date shall be confirmed by a Certificate of Substantial Completion signed by the City and Construction Manager. The Certificate of Substantial Completion shall state the respective responsibilities of the City and the Construction Manager for security, maintenance and damage to the work and insurance. The Certificate of Substantial Completion shall also include the Punch List as created by the Construction Manager and modified by the Project Designers in consultation with the City and establish the time for completion and correction of all Punch List items. The Construction Manager shall proceed promptly to complete and correct Punch List items. Failure to include an item on the Punch List does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. If the City and the Construction Manager cannot agree as to the appropriate Substantial Completion date, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in Article 13 below. Notwithstanding such disagreement, the Construction Manager shall diligently proceed with completion of the Punch List items. Warranties required by the Contract Documents shall commence on the Substantial Completion date or designated portion thereof unless otherwise provided in the Contract Documents.

4.15 Final Completion. In consultation with the Project Designers, the City shall determine when the Project and the Construction Manager's Work has reached Final Completion. Final Completion must occur not later than 60 Days after the Substantial Completion date, subject to modification by changes in the Contract Time in Article 6 below. Final Completion shall be achieved only upon the City's written acceptance of (A) the construction, (B) all testing, (C) demonstration by the Construction Manager that the Work functions as required by the Contract Documents and meets all Contract Document requirements, (D) resolution of all outstanding system deficiencies and Punch List items, if any, (E) delivery of all as-built documentation, drawings, completed Project Record Documents (with revisions made after Substantial Completion), annotated submittals and design document deliverables, (F) submittal, acceptance, and delivery of the 100% complete O&M manuals, (G) delivery of warranties, inspection certificates, bonds and all other required documents, (H) all pre-requisites for final payment and (I) submittal of Construction Manager's request for final payment and acceptance enclosing all required documentation. Upon Final Completion the City shall issue a Certificate of Final Completion to the Construction Manager on behalf of the City. Following receipt of payment from the City, the Construction Manager shall make all payments due to the Subcontractors.

4.16 Correction of Defective Work.

A. During the Work. During the Work, Construction Manager shall take meaningful steps to commence correction of such nonconforming Work as notified by the City.

This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work.

B. During Warranty Period. Construction Manager agrees to correct any Work that is found to not be in conformance with the Contract Documents within the warranty period described in Subsection 5.6(A) below, or within such longer period to the extent required by the Contract Documents or as may be allowed by law. A progress payment, or partial or entire use or occupancy of the Project by the City, shall not constitute acceptance of Work not in accordance with the Contract Documents.

C. Commencement by Construction Manager. Construction Manager shall take meaningful steps to commence correction of nonconforming Work subject to Subsections 4.16(A) and (B) above within seven Days of receipt of written notice from the City. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Construction Manager fails to commence the necessary steps within such seven-Day period, the City, in addition to any other remedies provided under the Contract Documents or allowed by law, may provide Construction Manager with written notice that the City will commence correction of such nonconforming Work with its own forces. If the City corrects such nonconforming Work with its own forces, the GMP will be adjusted to deduct the cost to the City. If the City performs corrective Work after final payment, Construction Manager shall be responsible for all reasonable costs incurred by the City in performing such correction.

D. Emergencies. In the event nonconforming Work creates an emergency requiring an immediate response, the Construction Manager will respond and initiate corrections within 24 hours.

E. No Effect on Limitations Period. The two-year period referenced in Subsection 5.6(A) below applies only to Construction Manager's obligation to correct nonconforming Work as provided in this Section and is not intended to constitute a period of limitations for any other rights or remedies the City may have regarding Construction Manager's obligations under the Contract Documents or as may be allowed by law.

4.17 Additional Services. Any Additional Services must be authorized in advance by the City in writing; the Construction Manager shall furnish or obtain from others such authorized services. The Construction Manager shall be paid for these Additional Services by the City as herein provided to the extent they exceed reasonably inferable obligations of the Construction Manager under this Agreement. Potential Additional Services include:

A. Planning. Providing additional planning surveys or alternative site evaluations other than as required or reasonably inferred in this Article 4.

B. Future/Outside of Project Design. Providing design services relative to future facilities, systems and equipment that are not intended to be constructed as part of the Project, other than general planning and master planning for future work as indicated by the City's Project program. Providing design and engineering of any work outside the Site if said work is not expressly identified and included in the Scope.

C. Major Document Revisions/Additional Documents. Making major revisions in the construction documents, or other documents when such revisions are inconsistent with written approvals or instructions previously given by the City or are due to causes beyond the control and without the fault and negligence or partial fault or negligence of the Construction Manager or its consultants or agents. Preparing additional documents for alternate, separate, or sequential bids or providing services in connection with bidding, negotiation, or construction prior to the completion of the construction phase, other than as required or reasonably inferred in this Article 4. Making revisions to Construction Documents after the City has approved them when revisions are due to causes beyond the control and not the fault or partial fault of the Construction Manager.

D. Advanced Soils Analysis. Providing additional soils sampling, classification, and analysis other than as required or reasonably inferred in the foregoing sections of Article 4. Construction Manager is entitled to rely upon the soils analysis and recommendations as provided by a geotechnical consultant, however, Construction Manager is responsible for interpretation of such data for the purpose of establishing the means and methods of construction and such interpretation shall not be considered Additional Services during the design phase or the construction phase.

E. Expert Testimony. Preparing to serve or serving as an expert witness for the City in connection with any public hearing, arbitration proceeding, or legal proceeding wherein the Construction Manager or Subcontractor of the Construction Manager is not a party or allegedly at fault; provided, however, preparing to serve or serving as a fact witness for the City or rendering testimony necessary to secure governmental approval for the Project shall not constitute an additional service.

F. Survey. Providing surveying services such as platting, mapping, subdivision agreements, or recording subdivision plats other than as required or reasonably inferred in this Article 4.

G. Additional Travel. Providing Additional Services and costs necessitated by out-of-town travel required of and approved in writing by the City other than visits to the Project and other than for travel required to accomplish the Work.

H. Unrelated Services. Providing any other services not otherwise included in this Agreement, not reasonably inferred by this Agreement or not customarily furnished in accordance with generally accepted contractual practices consistent with the term of this Agreement.

I. Replacement Work. Providing consultation concerning replacement of Work damaged by fire or other causes and not due in whole or in part to Construction Manager's action or inaction during construction, or furnishing services required in connection with the replacement of such work.

J. Special Studies. Providing additional special surveys, environmental studies, and submissions required for approvals of governmental authorities or others having jurisdiction over the Project, other than as required or reasonably inferred in this Article 4.

K. O&M Analysis. Providing analyses of operating and maintenance costs other than as required for value analysis in Subsection 2.2(E) above, unless provided for in the Scope.

L. Assisting with City-Performed Work. Designing, and providing other services supporting the procurement of materials to be obtained, or work, if any, to be performed by the City, that are not a part of the Work.

ARTICLE 5 POST-CONSTRUCTION PHASE

5.1 Final Accounting and Close-out. At the conclusion of the Project, the Construction Manager shall prepare final Project accounting and close-out reports.

5.2 Occupancy Plans. The Construction Manager shall prepare and distribute reports as necessary associated with the occupancy plan.

5.3 Certificates. The Construction Manager shall secure required certificates of inspection, testing or approval and deliver them to the City.

5.4 Manufacturer Manuals and Warranties. The Construction Manager shall require the Subcontractors to provide manufacturers' operations and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project. Prior to Final Completion of the Project, the Construction Manager shall compile such manuals, warranties and guarantees, bind same in an organized manner and deliver the bound materials to the City; the City shall not be required to issue the final payment to the Construction Manager pursuant to Section 9.6 below until after the compiled manuals, warranties and guarantees have been delivered to the City. At the discretion of the City, electronic records may be substituted for the bound materials required in this section.

5.5 Inspection and Testing. With the assistance of the City's maintenance personnel, the Construction Manager shall direct the inspection of utilities and operations of systems and equipment for readiness, and assist in their initial start-up and testing.

5.6 Warranties.

A. Warranty for the Work. Construction Manager or its assignee shall give to the City a two-year warranty against deficiencies in material and workmanship for all Work on the Project or other such warranty as required by the City Engineer, which warranty shall begin on the Substantial Completion date. Any material deficiencies in material or workmanship identified by City staff during the two-year warranty period shall be brought to the attention of the Construction Manager or its assignee that provided the warranty, which both shall promptly remedy or cause to be remedied such deficiencies to the reasonable satisfaction of the City Engineer. Continuing

material deficiencies in a particular portion of the Work shall be sufficient grounds for the City to require (1) an extension of the warranty for an additional two-year period and (2) the proper repair of or the removal and reinstallation of, that portion of the Work that is subject to such continuing deficiencies. Regardless of whether the applicable warranty period has expired, the Construction Manager agrees to repair any damage to the Work caused by construction activities on the Site. Nothing contained herein shall prevent the City or the Construction Manager from seeking recourse against any other third party for damage to the Work caused by such third party.

B. New Materials. The Construction Manager warrants that all materials and equipment furnished under construction phase(s) of this Agreement are (1) new unless otherwise specified and approved by the City, (2) of good quality, (3) in conformance with the Contract Documents and (4) free from defective workmanship, defective materials and Hazardous Materials. Warranties shall commence on the date of Substantial Completion of the Work or of a designated portion if the warranted items are fully installed, operational and available for use and if not, at such time after the date of Substantial Completion as they are fully installed, operational and available for use.

C. Actions by Others. Construction Manager's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than Construction Manager or anyone for whose acts Construction Manager may be responsible and/or liable.

D. No Limitation on Other Warranties. Nothing in this warranty is intended to limit any manufacturer's warranty that provides City with greater warranty rights than set forth in this Section or the Contract Documents.

E. No Limitation on Legal Remedies. Nothing in this warranty is intended to limit any other remedy at law that may be available to the City.

ARTICLE 6 CONTRACT TIME

6.1 Progress and Completion. The City and the Construction Manager agree the time limits stated in the Contract Documents, as the same may be amended and updated by the Parties, are of the essence of this Agreement.

6.2 Commencement of the Work. The Work, except for the (A) environmental investigation services set forth in Section 2.1 above, (B) review of Construction Documents and design remedies services set forth in Section 2.2 above, and (C) Pre-Construction Phase General Services set forth in Section 2.3 above, shall commence on the Notice to Proceed date of the applicable GMP Amendment, and shall proceed in general accordance with the Schedule for the Work set forth therein. Each GMP Amendment shall establish a separate Notice to Proceed date, Substantial Completion date and portion of the Contract Time applicable to that GMP. The Substantial Completion dates may be sequential or may run consecutively.

6.3 Prosecution of the Work. The Construction Manager shall prosecute the Work so that the portion of the Work completed at any point in time shall be not less than as required by

the Master Schedule. If the delay is an Inexcusable Delay, as defined below, the Construction Manager shall prepare a recovery schedule for the City's review and approval, showing how the Construction Manager will compensate for the delays and achieve Substantial Completion by the date shown on the Master Schedule. If the Construction Manager is unable to demonstrate how it will overcome Inexcusable Delays, the City may order the Construction Manager to employ such extraordinary measures as are necessary to bring the Work into conformity with the date of Substantial Completion set forth therein, the costs of which shall be included as part of the Cost of the Work. If the delay is an Excusable Delay, as defined below, the City shall either (A) authorize an equitable extension in the Master Schedule to account for such delay, and equitably adjust the GMP on account of such delay or (B) request that the Construction Manager prepare a recovery schedule showing how (if possible) the Construction Manager can achieve Substantial Completion by the date shown on the Master Schedule, and equitably adjust the applicable GMP in accordance with the Change Order provisions of this Agreement related to any extraordinary activities required of the Construction Manager on account of such recovery schedule.

6.4 Critical Path Activities. To the extent the Construction Manager completes activities on the Critical Path earlier than scheduled, the savings in time on account thereof shall belong solely to the Construction Manager.

6.5 Construction Activities. At such time as the Construction Documents, or any portion thereof, are complete, the Construction Manager shall submit a revised Master Schedule to the City for incorporation into the Contract Documents, which will expand the Master Schedule approved to date, but which will not, in and of itself, change the Substantial Completion date for the Project. This revised Master Schedule shall be based upon a CPM and shall show in complete detail starting and completion time of detail activities, the sequence of the Work and all significant activities.

6.6 Extensions of Time.

A. Limited to Excusable Delay. An extension in the scheduled Substantial Completion date will only be granted in the event of Excusable Delays affecting Work activities on the Critical Path. The Construction Manager shall be entitled to general condition costs and extra costs related to the Excusable Delay for idle labor, equipment inefficiency and lost productivity of the performance of the Work; however, the Construction Manager must submit evidence reasonably satisfactory to the City substantiating such costs. Such adjustment to the contract sum and Substantial Completion date shall be issued in an amendment to this Agreement.

B. Excusable Delays. To the extent any of the following events results in an actual delay in the Work affecting activities on the Critical Path, such shall constitute an "Excusable Delay" (to the extent not set forth below, a delay will be considered an "Inexcusable Delay"):

1. Delays resulting from Force Majeure events. 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, floods, 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. The Force Majeure shall be deemed to commence when the Party declaring Force Majeure notifies the other Party, in accordance with Subsection 14.6, of the existence of the Force Majeure and shall be deemed to continue as long as the results or effects of the Force Majeure prevent the Party from resuming performance in accordance with this Agreement. Force Majeure shall not include: (a) late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies or similar occurrences, or (b) late performance by a Subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Subsection 6.6(B). 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. The delayed Party shall cause such delay to cease as soon as practicable and shall notify the other Party in writing. The time of Substantial Completion or Final Completion shall be extended by written amendment for a period of time equal to the time that the results or effects of such delay prevent the delayed Party from performing in accordance with this Agreement.

2. Differing, unusual or concealed Site conditions that could not reasonably have been anticipated by the Construction Manager in preparing the Master Schedule, including, without limitation, archaeological finds and unusual soil conditions (including rock or other geological conditions), underground foundations, abandoned or not properly identified utility lines and water conditions.

3. Delays resulting from the existence or discovery of Hazardous Materials on the Site not brought to the Site by or on behalf of the Construction Manager.

4. Delays resulting from changes in Applicable Law occurring after the date of execution of this Agreement.

5. Delays occurring due to the acts or omissions of the City and those within the control of the City.

6. Delays occurring due to the acts or omissions of a utility, so long as Construction Manager has coordinated with the utility causing the delay and the delay occurs despite reasonable steps taken by Construction Manager to avoid the delay.

7. Delays resulting from weather conditions that make it unreasonable to perform the Work in accordance with the Master Schedule.

C. Process for Requesting Extension of Time. In order to obtain an extension of time due to an Excusable Delay, the Construction Manager must comply with the following requirements: The Construction Manager shall notify the City of the Excusable Delay as soon as practicable, but in no event more than seven Days after the Construction Manager becomes aware of the occurrence of the Excusable Delay. Such notice shall describe the Excusable Delay and shall state the approximate number of Days the Construction Manager expects to be delayed. After

the cessation of the Excusable Delay, the Construction Manager shall notify the City of the number of Days the Construction Manager believes that its activities were in fact delayed by the Excusable Delay. In the event that the delay arises as a result of a Change Order request by the City, the request for an extension of time contained in the resulting Change Order proposal or amendment to this Agreement, as applicable, shall be deemed sufficient for purposes of this Subsection.

D. City Determination. Within 10 Days after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the Parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the Parties as to the then-current status of Excusable Delays and Inexcusable Delays, the City will provide the Construction Manager with written notice of City's determination of the number of Days of Excusable Delay and/or Inexcusable Delay within 10 Days after receipt by the City of the Construction Manager's written request for such determination. The Construction Manager shall not, however, deem an issuance by the City of such a determination to be a concurrence with any matters set forth in the Construction Manager's request. The Construction Manager may invoke the dispute resolution procedures set forth in Article 13 below with respect to such determination.

6.7 Concurrent Delays. To the extent the Construction Manager may be entitled to an extension of time due to an Excusable Delay, but the performance of the Work would have been suspended, delayed or interrupted by the fault or neglect of the Construction Manager or by an Inexcusable Delay, the Construction Manager shall not be entitled to any additional costs for the period of such concurrency.

6.8 Weather Delays. The Construction Manager shall include and clearly identify an appropriate number of Days of weather-related delays within (A) the aggregate Master Schedule for the Work and within the portions of the Master Schedule submitted with each GMP Proposal relating to any phase of the Project and (B) each GMP Amendment. If the Construction Manager experiences additional weather-related delays beyond the number of Days set forth in the Master Schedule and the GMP Amendment, the Construction Manager shall be entitled to commensurate extension of time and reimbursement of costs associated with such delay; provided such requests for extensions of time are submitted and approved according to the process set forth in Section 6.6 above. If the Construction Manager fails to include an appropriate number of Days of weather-related delays within the applicable GMP Proposal for any portion of the Project, the Construction Manager shall not be eligible for any extension of time or reimbursement of costs related to otherwise Excusable Delays relating to weather for the applicable GMP Proposal.

6.9 Liquidated Damages.

A. Established. The Construction Manager and the City acknowledge that in the event that the Construction Manager fails to achieve Substantial Completion or Final Completion of the Project by the dates established therefore in the applicable GMP Amendment, as adjusted, the City will incur substantial damages and the extent of such damages shall be incapable of accurate measurement. Nonetheless, the Parties acknowledge that on the date of this Agreement, the amount of liquidated damages set forth below represents a good faith estimate as to the actual potential damages that the City would incur as a result of late Substantial Completion or Final Completion of the Project. Such liquidated damages shall be the sole and exclusive

remedy of the City for late completion of the Project, and the City hereby waives all other remedies available at law or in equity with respect to losses resulting from late completion. The amount of the liquidated damages calculated hereunder does not include any penalty.

B. Amount of Liquidated Damages.

1. If the Construction Manager fails to achieve Substantial Completion of for that portion of the Work applicable to a particular GMP Proposal on or before the Substantial Completion date set forth in the applicable GMP Proposal, as adjusted, for any reason other than Excusable Delays, the Construction Manager shall pay to the City liquidated damages in the amount per Day as determined by the Maricopa Association of Governments specifications existing on the date this Agreement is approved by the City Council (the “MAG Specifications”) for each Day Substantial Completion is delayed beyond the Substantial Completion date set forth in the applicable GMP Amendment.

2. If the Construction Manager fails to achieve Final Completion of for that portion of the Work applicable to a particular GMP Proposal on or before the Final Completion date, as adjusted, for any reason other than Excusable Delays, the Construction Manager shall pay to the City liquidated damages in the amount per Day as determined by MAG Specifications for each Day Final Completion is delayed beyond the Final Completion date established according to the applicable GMP Amendment.

3. In no case may the amount of liquidated damages due under this Subsection 6.9(B) for any single Day of delay exceed the highest amount, as determined according to MAG Specifications, that would be charged for any single Inexcusable Delay existing on such Day.

4. Payment of liquidated damages is to be made contemporaneously with any required payment to the Construction Manager, and such payments may be offset against each other.

**ARTICLE 7
CONTRACT PRICE**

7.1 Pre-construction Phase Compensation.

A. Project Designers’ Services Not Included. The cost of services performed directly by the Project Designers are not included in the Construction Manager’s compensation.

B. Amount. The City shall pay the Construction Manager an amount not to exceed \$80,005.00 for services performed during the Pre-construction Phase, as set forth in Article 2 above, and as more particularly described in the Pre-Construction cost summary, attached hereto as Exhibit J and incorporated herein by reference, including all cost items, allowances and reimbursable expenses.

C. Equitable Adjustment. Compensation of Pre-construction Services shall be equitably adjusted if such services extend beyond April 30, 2021, for reasons beyond the

reasonable control and not the fault or partial fault of the Construction Manager or as provided in Section 8.2 below. For changes in Pre-construction Services, compensation shall be adjusted as mutually agreed upon by the City and the Construction Manager at the time of such extended services.

D. Payments. Payments for Pre-construction Services shall be due and payable within 30 Days following approval of the Construction Manager's monthly invoice by the City. Payments due the Construction Manager that are unpaid for more than 30 Days from the due date of the invoice shall bear interest at the statutory rate.

7.2 Construction Phase Compensation. The portion of Contract Price applicable to the Construction Services shall be the aggregate of all approved GMP Amendments.

A. GMP. The Guaranteed Maximum Price is composed of the Direct Construction Costs and the Construction Fee. The Construction Manager is at risk to cover any additional Project costs. To the extent the combined total of the Direct Construction Costs and the Construction Fee at the conclusion of the Project is less than the GMP, the difference shall be retained by the City.

B. GMP Adjustment. If a GMP requires an adjustment due to changes in the Work, the cost of such changes is determined subject to Article 8. The markups permitted on such changes shall be no greater than the markups delineated in the approved GMP.

C. City's Contingency. City's Contingency funds are to be used at the discretion of the City to cover any increases in Project costs that result from City-directed changes or unforeseen Site conditions. City's Contingency will be approved in conjunction with the applicable GMP Amendment but will not be included in the full Contract Price. Markups for Construction Fee and taxes will be applied by the Construction Manager at the time that City's Contingency is used. The amount of contingency for each GMP amendment will be negotiated separately.

D. Payment Data. The Construction Manager shall submit to the City, upon request, all payrolls, reports, estimates, records and any other data concerning the Work performed or to be performed or concerning materials supplied or to be supplied, as well as Subcontractor or Consultant payment applications or invoices and such Subcontractor's or Consultant progress payment checks. The requirements of this Section shall be included in all contracts between the Construction Manager and its Subcontractors and Consultants. The City may exercise its rights under this Section as often as reasonably necessary in the City's sole judgment to ensure the City has a complete and accurate understanding of all Project costs.

7.3 Adjustment in the Contract Price. Adjustment to the respective components of the Contract Price shall be made as follows:

A. Changes in the Work. For changes in the Work as provided in Article 8 below, the applicable Contract Price shall be adjusted as mutually agreed by the Parties, in writing, prior to commencement of any work pursuant to such changes.

B. Delays in the Work. For delays in the Work not caused, in whole or in part, by the Construction Manager, Subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, there will be an equitable adjustment in the Contract Price to compensate the Construction Manager for increased expenses due to unforeseeable circumstances, according to the requirements of Article 6 above.

C. Replacement Work. If the Construction Manager is placed in charge of managing the replacement of an insured or uninsured loss not caused by or the fault of the Construction Manager or other parties identified in Subsection 7.3(B) above, the Construction Manager shall be paid an additional fee in the same proportion that the applicable portion of the Contract Price bears to the estimated applicable Cost of the Work, or as otherwise agreed to by the Parties.

ARTICLE 8 CHANGES IN THE WORK

8.1 Prescribed Methods for Changes. Changes in Construction Manager's Services shall only be made by a written Change Directive or Change Order to this Agreement signed by the City and the Construction Manager. Changes involving (A) a change in the lump sum for the Pre-Construction Services set forth in Section 7.1 above or (B) a change in any GMP, shall be considered a Change Order and must be approved as an amendment to this Agreement and executed by the City and the Construction Manager. The Construction Manager shall not (A) perform any additional Services or (B) eliminate any duties included in the Services until a written amendment addressing the Change Order has been properly approved and executed by both Parties. The Construction Manager shall proceed to perform the Services required by the Change Order only after receiving written notice from the City directing the Construction Manager to proceed.

8.2 Change Control System. The Construction Manager shall establish and implement a change control system. All proposed changes shall first be described in detail in writing by the requesting party. The requesting party shall submit detailed information to the Construction Manager for evaluation concerning the costs and time adjustments, if any, necessary to perform the proposed changed work. The Construction Manager shall discuss the proposed change with the appropriate Subcontractor and endeavor to determine the Subcontractor's basis for the cost to perform the work and the effect, if any, on the applicable GMP. The Construction Manager shall make a recommendation to the City pursuant to this Article 8 prior to the City's acceptance of all change requests.

8.3 Change Directives; Change Orders; GMP Adjustments. Changes in the Work that are within the general scope of this Agreement may be accomplished by Change Directive without invalidating this Agreement; provided, however, that any change in the Work that will result in an increase to a GMP or extension of the Substantial Completion date shall be pursuant to a Change Order approved by a written amendment to this Agreement clearly delineating the amounts attributable to compensation for the General Conditions Costs, the Construction Fee and other Cost of the Work.

8.4 Determination of Cost. An increase or decrease in a GMP resulting from a change in the Work shall be determined by one or more of the following methods:

- A. Unit prices set forth in this Agreement or as subsequently agreed.
- B. Mutually accepted, itemized lump sum.
- C. Costs determined as defined in Article 3 above.

D. If an increase or decrease cannot be agreed to as set forth in Subsections 8.4(A) and (B) and the City issues a written order for the Construction Manager to proceed with the change, the cost of the change in the Work shall be determined by the reasonable expense or savings of the performance of the Work resulting from the change.

8.5 No Obligation to Perform. The Construction Manager shall not be obligated to perform changed Work until a Change Directive or a Change Order/amendment to this Agreement, as applicable, has been executed by the City and the Construction Manager, except as provided in Subsection 8.4(D) above.

8.6 Adjustment of Unit Prices. If a proposed change alters original quantities to a degree that application of previously agreed to unit prices would be inequitable to either the City or the Construction Manager, the unit prices shall be equitably adjusted and, if the result is an increase to a GMP, an amendment to this Agreement shall be executed.

8.7 Unknown Conditions. If, in the performance of the Work, the Construction Manager or its Subcontractor finds latent, concealed or subsurface physical conditions that (A) differ from the conditions the Construction Manager or its Subcontractor should have reasonably anticipated, (B) differ substantially from available soils reports or (C) differ substantially and materially from those normally encountered and generally recognized as inherent in the kind of work provided for in this Agreement at this location (occurrence of shifting and expansive soils, including clay soils and sandstone expressly noted as commonly occurring in the Project area), then the applicable GMP compensation and/or the Substantial Completion date may be equitably adjusted only if the Construction Manager notifies the City within seven Days after the conditions are first observed in accordance with Article 6 above.

8.8 Emergencies. In any emergency affecting the safety of persons and/or property, the Construction Manager shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in a GMP, compensation for Pre-construction Services, the Contract Price and/or extension of the Substantial Completion date on account of emergency work shall be determined as provided in this Agreement.

ARTICLE 9 PAYMENT

9.1 Progress Payments.

A. Submittal Process. On or before the 15th day of each month after the construction phase has commenced, the Construction Manager shall submit to the City an "Application for Payment" consisting of the Cost of the Work performed up to the end of the prior month, including the cost of material stored on the Site or at other locations approved by the City, along with a proportionate share of the Construction Fee. For the purpose of audit, prior to submission of the next Application for Payment, the Construction Manager shall make available at the request of the City a statement accounting for the disbursement of funds received under the previous Application. The form and extent of such statement shall be as agreed upon between the City and Construction Manager.

B. City's Payment. Within seven Days after approval of each monthly Application for Payment, the City shall pay directly to the Construction Manager the appropriate amount for which Application for Payment is made, less amounts (1) previously paid by the City, (2) sufficient to pay expenses the City reasonably expects to incur in correcting deficiencies that are set forth in writing and provided to the Construction Manager and (3) any retainage as set forth in Section 9.2 below.

C. No Liens. The Construction Manager warrants and guarantees that the title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the City upon receipt of such payment by the Construction Manager free and clear of all liens, claims, security interests or encumbrances.

D. Non-Conforming Work. The City's progress payment, occupancy or use of the Project, whether in whole or in part, shall not be deemed as acceptance of any Work not conforming to the requirements of this Agreement or the Contract Documents.

E. Unfinished Items. Upon Substantial Completion of the Work, the City shall pay the Construction Manager the unpaid balance of the Cost of the Work, General Conditions Costs and the Construction Fee, less a sum equal to the Construction Manager's estimated cost of completing any unfinished items as agreed to between the City and the Construction Manager as to extent and time for completion. The City thereafter shall pay the Construction Manager monthly the amount retained for unfinished items as each item is completed.

9.2 Retainage.

A. Exceptions to Retainage Requirement. No retainage shall be withheld with respect to gross receipts tax and premiums for bonds and insurance.

B. Amount Retained. With respect to the Work, the City shall retain 10% of the amount of each estimate until Final Completion and acceptance of all material, equipment and work covered by the Contract Documents.

1. Any securities submitted by Construction Manager in lieu of retainage as may be allowed by law, shall be deposited in an escrow account by the City. The City shall be listed as payee or multiple payee with Construction Manager on all such securities.

2. When the Work is 50% completed, one-half of the amount retained including any securities substituted pursuant to Subsection 9.2(B)(1) shall be paid to the Construction Manager upon the Construction Manager's request, provided the Construction Manager is making satisfactory progress on the Work and there is no specific cause or claim requiring a greater amount to be retained. After the construction Work is 50% completed, no more than 5% of the amount of any subsequent progress payments made under the Contract Documents may be retained, provided the Construction Manager is making satisfactory progress on the Project. If, at any time, the City determines satisfactory progress is not being made, 10% retention shall be reinstated for all progress payments made under the Contract Documents after the determination.

9.3 Payment for On-site and Off-site Stored Materials. Payment shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. Payment may similarly be made for materials and equipment suitably stored off the Site, conditioned upon the Construction Manager furnishing evidence to the Owner that (A) title to the materials and equipment will pass to the City upon payment therefore, (B) the materials and equipment are adequately insured and (C) such other matters as the City may reasonably request in order to protect its interests.

9.4 Title to Construction Work. The Construction Manager warrants that title to all Work covered by an Application for Payment shall pass to the City no later than the time of payment. The Construction Manager further warrants that, upon submittal of an Application for Payment, all Work for which Applications for Payment have been previously issued and payments received from the City shall be free and clear of liens, claims, security interests or encumbrances in favor of the Construction Manager, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

9.5 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the City may offset against any money due to the Construction Manager any amounts Construction Manager owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The City may offset against any money due to the Construction Manager any amounts Construction Manager owes to the City for delinquent fees, transaction privilege use taxes and property taxes, including any interest or penalties.

9.6 Final Payment.

A. Fully Completed Work. Final payment, consisting of the unpaid balance of (1) the Cost of the Work, (2) compensation for Pre-Construction Services and (3) the Construction Fee, shall be due and payable when the Work is fully completed and accepted by the City. Before issuance of final payment, the City may request satisfactory evidence that all payrolls, materials bills and other indebtedness connected with the Work have been paid or otherwise satisfied.

B. Waiver of Claims. In making final payment, the City waives all claims against the Construction Manager except for:

1. Outstanding liens.
2. Improper workmanship or defective materials.
3. Work not in conformance with the Contract Documents or work not completed.
4. Terms of any special warranties required by the Contract Documents.
5. Delivery to City of all warranties, operation and maintenance manuals, record drawings and other documents as required by the Contract Documents.
6. Right to audit Construction Manager records for a period of three years.
7. Claims previously made in writing that remain unsettled.

C. Acceptance as Waiver. Acceptance of final payment by the Construction Manager shall constitute a waiver of affirmative claims by the Construction Manager against the City, its employees, elected officials and agents, except those previously made in writing and identified as unsettled at the time of final payment.

9.7 Payments to Subcontractors.

A. The Construction Manager shall pay its Subcontractors or suppliers within seven Days of receipt of each progress payment from the City and as required by Arizona law. The Construction Manager shall pay for the amount of Work performed or materials supplied by each Subcontractor or Supplier as accepted and approved by the City with each progress payment. In addition, any reduction of retention by the City to the Construction Manager shall result in a corresponding reduction to Subcontractors or suppliers who have performed satisfactory work. The Construction Manager shall pay Subcontractors or suppliers the reduced retention within 14 Days of the payment of the reduction of the retention to the Construction Manager. No Contract between the Construction Manager and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment and retention reduction as provided herein or by Arizona law.

B. Failure to Timely Pay. The Construction Manager agrees that if it fails to make payments in accordance with these provisions, the City may take any one or more of the following actions:

1. Hold the Construction Manager in default under this Agreement.

2. Withhold future payments, including retention, until proper payment has been made to Subcontractors or suppliers in accordance with these provisions.

3. Reject all future offers to perform work for the City from the Construction Manager for a period not to exceed one year from Substantial Completion date of this Project.

4. Terminate this Agreement.

5. Make a claim against the bonds required pursuant to Article 11.

C. No Waiver. Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.

D. Inclusion in Subcontracts. The Construction Manager shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

9.8 Record Keeping and Finance Controls.

A. Retention Requirement. Records of the Construction Manager's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and the Construction Manager shall be kept on a generally recognized accounting basis and shall be available for three years after Final Completion of the Project.

B. Audit Rights. The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the Construction Manager's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any Change Orders.

C. Pricing Data Inaccuracies. The City reserves the right to decrease Contract Price and/or payments made on this Agreement, in an amount determined by the City in its sole discretion, if, upon audit of the Construction Manager's records, the audit discloses the Construction Manager has provided false, misleading, or inaccurate cost and pricing data.

D. Inclusion in Subcontracts. The Construction Manager shall include a similar provision in all of its agreements with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.

E. City Remedies. The City reserves the right to decrease Contract Price and/or payments made under this Agreement, in an amount determined by the City in its sole discretion, if the above provision is not included in Subconsultant's and Subcontractor's contracts,

and one or more Subconsultants and/or Subcontractors do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

ARTICLE 10 INSURANCE AND INDEMNITY

10.1 Insurance Representations and Requirements.

A. General.

1. Insurer Qualifications. Without limiting any obligations or liabilities of the Construction Manager, the Construction Manager shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

2. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect the Construction Manager. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Construction Manager from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

3. Additional Insured. All insurance coverage, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Named Insured as specified under the respective coverage sections of this Agreement.

4. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

5. Primary Insurance. Construction Manager's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.

6. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past

completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance and necessary endorsements citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

7. Waiver. All policies, excluding Professional Liability but including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Construction Manager. Construction Manager shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

8. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Construction Manager shall be solely responsible for any such deductible or self-insured retention amount.

9. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Construction Manager shall execute written agreements with its subcontractors containing the indemnification provisions set forth below and insurance requirements set forth herein protecting the City and Construction Manager. Construction Manager shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

10. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Construction Manager will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Construction Manager's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The City shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Construction Manager's responsibility to forward renewal certificates and declaration page(s) to the City 30 Days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without a reference to this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing this Agreement will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

a. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

i. Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.

ii. Auto Liability – Under ISO Form CA 20 48 or equivalent.

iii. Excess Liability – Follow Form to underlying insurance.

b. Construction Manager’s insurance shall be primary insurance with respect to performance of this Agreement.

c. All policies, except for Professional Liability, including Workers’ Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Construction Manager under this Agreement.

d. ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

11. Endorsements. Construction Manager shall provide the City with the necessary endorsements to ensure City is provided the insurance coverage set forth in this Article.

B. Required Insurance Coverage.

1. Commercial General Liability. Construction Manager shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$2,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to

liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this Subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

2. Vehicle Liability. Construction Manager shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Construction Manager’s owned, hired and non-owned vehicles assigned to or used in the performance of the Construction Manager’s work or services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this Subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

3. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Construction Manager engages in any professional services or work in any way related to performing the work under this Agreement, the Construction Manager shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Construction Manager, or anyone employed by the Construction Manager, or anyone for whose negligent acts, mistakes, errors and omissions the Construction Manager is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.

4. Workers’ Compensation Insurance. Construction Manager shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Construction Manager’s employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

5. Builder’s Risk Insurance. Unless expressly waived by the City in a written amendment to this Agreement, the Construction Manager shall be responsible for purchasing and maintaining insurance to protect the Project from perils of physical loss. The insurance shall provide for the full cost of replacement for the entire Project at the time of any loss. The insurance shall include as named insureds the City, the Construction Manager, and the Construction Manager’s Subcontractors and shall insure against loss from the perils of fire and all-risk coverage for physical loss or damage due to theft, vandalism, collapse, malicious mischief, transit, flood, earthquake, testing, resulting loss arising from defective design, negligent workmanship or defective material. The Construction Manager shall increase the coverage limits as necessary to reflect changes in the estimated replacement cost.

C. Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without 30 Days’ prior written notice to the City.

10.2 Indemnity. To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an “Indemnified Party”), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys’ fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (“Claims”) to the extent that such Claims (or actions in respect thereof) are caused by the negligent acts, recklessness or intentional misconduct of the Construction Manager, its officers, employees, agents, or any tier of subcontractor in connection with Construction Manager’s work or services in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

ARTICLE 11 BONDS

11.1 Performance Bond. After the City and the Construction Manager have agreed to a GMP but prior to commencing the Construction Services attributable to such GMP, the Construction Manager shall be required to furnish the City with an irrevocable security binding the Construction Manager to provide faithful performance of the Agreement in the amount of 100% of the percentage of the GMP attributable to the Construction Services, payable to the City, and shall not include the cost of any design services, preconstruction services, finance services, maintenance services, operations services or any other related services. Performance security shall be in the form of a performance bond, certified check or cashier’s check. If the Construction Manager fails to execute the security document as required, the Construction Manager may be found in material default of this Agreement, permitting the City to terminate this Agreement for cause as set forth in Section 12 below. In case of default the City reserves all rights. All performance bonds shall be executed on the form attached hereto as Exhibit K, duly executed by the Construction Manager as Principal and having as Surety thereon a Surety company approved by the City and holding a Certificate of Authority issued by the Arizona Department of Insurance to transact surety business in the State of Arizona. Individual sureties are unacceptable. All Insurers and Sureties shall have at the time of submission of the proposal an A.M. Best’s Key Rating Guide of “A-” or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

11.2 Payment Bond. After the City and the Construction Manager have agreed to a GMP but prior to commencing the Construction Services attributable to such GMP, the Construction Manager shall be required to furnish the City with an irrevocable security for the protection of claimants supplying labor or materials to the Construction Manager or any Subcontractor in the prosecution of the construction and not for the protection of persons providing any design services, preconstruction services, finance services, maintenance services, operations services or other related services related to the Agreement. Payment security shall be in the amount of 100% of the portion of the GMP attributable to the Construction Services and be payable to the City. Payment security shall be in the form of a payment bond, certified check or cashier’s check. If the Construction Manager fails to execute the security document as required, the Construction Manager may be found in material default of this Agreement, permitting the City to terminate this Agreement for cause as set forth in Section 12 below. All payment bonds shall be executed on a

the form attached hereto as Exhibit L, duly executed by the Construction Manager as Principal and having as Surety thereon a Surety company approved by the City and holding a Certificate of Authority issued by the Arizona Department of Insurance to transact surety business in the State of Arizona. Individual sureties are unacceptable. All Insurers and Sureties shall have at the time of submission of the proposal an A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

ARTICLE 12 TERMINATION AND SUSPENSION

12.1 Termination by the Construction Manager.

A. Procedure. Upon 30 Days' written notice to the City of one of the reasons set forth below, and if the City fails to cure or initiate reasonable action to cure within 30 Days of receipt of said notice, the Construction Manager may terminate this Agreement for any of the following:

1. If the Work has been stopped for a 60-Day period:
 - a. Under court order or order of other governmental authorities having jurisdiction; or
 - b. As a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Construction Manager, materials are not available.
2. If the Work is suspended by the City for more than 60 Days.
3. If the City materially delays the Construction Manager in the performance of the Work.
4. If the City otherwise materially breaches this Agreement.

B. Payment to Construction Manager. Upon termination by the Construction Manager in accordance with Subsection 12.1(A) above, the Construction Manager shall be entitled to recover from the City payment for all Work completed to the date of termination plus reasonable demobilization costs, subcontract and purchase order termination costs, reasonable overhead, extended general conditions and profit on the Work performed. The City may subtract reasonable estimates of costs for deficient work from the payments noted above.

12.2 Termination by the City for Cause.

A. Construction Manager Default. If the Construction Manager refuses or fails, except in cases for which extension of time is provided, to supply sufficient properly skilled staff or proper materials, or disregards laws, ordinances, rules, regulations, or orders of any public authority jurisdiction, or otherwise substantially violates or materially breaches any term or provision of this Agreement, and such nonperformance or violation continues without cure for 15

Days after the Construction Manager receives written notice of such nonperformance or violation from the City, then the City may, without prejudice to any right or remedy otherwise available to the City, terminate this Agreement.

B. Construction Manager Insolvency. Upon the appointment of a receiver for the Construction Manager, or if the Construction Manager makes a general assignment for the benefit of creditors, the City may terminate this Agreement, without prejudice to any right or remedy otherwise available to the City, upon giving three Days' written notice to the Construction Manager. If an order for relief is entered under the bankruptcy code with respect to the Construction Manager, the City may terminate this Agreement by giving three Days' written notice to the Construction Manager unless the Construction Manager or the trustee does all of the following:

1. Promptly cures all breaches within such three-Day period.
2. Provides adequate assurances of future performance.
3. Compensates the City for actual pecuniary loss resulting from such breach(es).
4. Assumes the obligations of the Construction Manager within the established time limits.

C. Failure to Agree on a GMP. If the City and the Construction Manager fail, after good faith efforts, to agree upon a GMP, this Agreement may be terminated upon 15 Days' notice from either Party to the other. In the event of a termination for failure to agree on a GMP, the Construction Manager's sole and exclusive right and remedy shall be to be paid for all Work performed and to receive equitable adjustment for all Work performed through the date of termination plus reasonable demobilization costs, subcontract and purchase order termination costs, reasonable overhead and profit on the Work performed. The Construction Manager shall not be entitled to be paid any amount as profit for unperformed Work or Services or consideration for the termination under this Subsection.

12.3 Termination by the City for Convenience. The City may, upon 30 Days' written notice to the Construction Manager, terminate this Agreement, in whole or in part, for the convenience of the City, without prejudice to any right or remedy otherwise available to the City. Upon receipt of such notice, the Construction Manager shall immediately discontinue all services affected unless such notice directs otherwise. In the event of a termination for convenience of the City, the Construction Manager's sole and exclusive right and remedy shall be to be paid for all Work performed and to receive equitable adjustment for all Work performed through the date of termination plus reasonable demobilization costs, subcontract and purchase order termination costs, reasonable overhead and profit on the Work performed. The Construction Manager shall not be entitled to be paid any amount as profit for unperformed Work or Services or consideration for the termination of convenience by the City.

12.4 Set Off. Upon termination of this Agreement by the City, the City shall be entitled to furnish or have furnished the Services to be performed hereunder by the Construction Manager

by whatever method the City may deem expedient. Also, in such case, the Construction Manager shall not be entitled to receive any further payment until completion of the Work and the total compensation to the Construction Manager under this Agreement shall be the amount that is equitable under the circumstances. If the City and the Construction Manager are unable to agree on the amount to be paid under the foregoing sentence, the City shall fix an amount, if any, that it deems appropriate in consideration of all of the circumstances surrounding such termination, and shall make payment accordingly. The Construction Manager may dispute the City's assessment of the termination amount by the method of dispute resolution under Article 13 of this Agreement.

12.5 Suspension by the City for Convenience.

A. Procedure. The City may order the Construction Manager in writing to suspend, delay or interrupt all or any part of the Work without cause for such period of time as the City may determine to be appropriate for its convenience, but not in abrogation of the rights given Construction Manager in Section 12.1 above.

B. Adjustments to GMP and Schedule. Adjustments caused by suspension, delay or interruption shall be made for increases in the applicable GMP and/or the applicable Substantial Completion date. No adjustment shall be made if the Construction Manager is or otherwise would have been responsible for the suspension, delay or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.

ARTICLE 13 DISPUTE RESOLUTION

13.1 Scope. Notwithstanding anything to the contrary provided elsewhere in the Contract Documents, except for Subsection 13.4 (G) below, the alternative dispute resolution ("ADR") process provided for herein shall be the exclusive means for resolution of claims or disputes arising under, relating to or touching upon the Agreement, the interpretation thereof or the performance or breach by any party thereto, including but not limited to original claims or disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to agreements containing this ADR provision.

13.2 Neutral Evaluator, Arbitrators. The City will select a Neutral Evaluator to serve as set forth in this ADR process. The City and Construction Manager shall each select an arbitrator to serve as set forth in this ADR process. Each arbitrator selected shall be a member of the State Bar of the State of Arizona and shall have experience in the field of construction law. None of the arbitrators nor any of the arbitrator's firms shall have presently, or in the past, represented any party to the arbitration.

13.3 Neutral Evaluation Process. If the Parties have been unable to resolve the disputes after discussions and partnering, the following neutral evaluation process shall be used to resolve any such dispute.

A. Notification of Dispute. The City shall notify the Neutral Evaluator in writing of the existence of a dispute within 10 Days of the City or the Construction Manager declaring need to commence the neutral evaluation process.

B. Non-Binding Informal Hearing. The Neutral Evaluator shall schedule a non-binding informal hearing of the matter to be held within seven Days from receipt of notification of the existence of a dispute. The Neutral Evaluator may conduct the hearing in such manner as he deems appropriate and shall notify each party of the hearing and of its opportunity to present evidence it believes will resolve the dispute. Each party to the dispute shall be notified by the Neutral Evaluator that it shall submit a written outline of the issues and evidence intended to be introduced at the hearing and the proposed resolution of the dispute to the Neutral Evaluator before the hearing commences. Arbitrators shall not participate in such informal hearing or proceedings process. The Neutral Evaluator is not bound by the rules of evidence when admitting evidence in the hearing and may limit the length of the hearing, the number of witnesses or any evidence introduced to the extent deemed relevant and efficient.

C. Non-Binding Decision. The Neutral Evaluator shall render a non-binding written decision as soon as possible, but not later than five Days after the hearing.

13.4 Binding Arbitration Procedure. The following binding arbitration procedure, except as provided in Subsection 13.4(G) below, shall serve as the exclusive method to resolve a dispute if any party chooses not to accept the decision of the Neutral Evaluator. The party requesting binding arbitration shall notify the Neutral Evaluator in writing within three Days of receipt of the Neutral Evaluator's decision of a request for arbitration. If the Construction Manager requests arbitration it shall post a cash bond with the Neutral Evaluator in an amount agreed upon by the Parties or, in the event of no agreement, the Neutral Evaluator shall establish the amount of the cash bond to defray the cost of the arbitration as set forth in Subsection 13.4(M) and the proceeds from the bond shall be allocated in accordance with Subsection 13.4(M) by the Arbitration Panel.

A. Arbitration Panel. The Arbitration Panel shall consist of three arbitrators: the City's appointed arbitrator, the Construction Manager's appointed arbitrator and a third arbitrator (or "Neutral Arbitrator") who shall be selected by the Parties' arbitrators as set forth in Subsection 13.4(B) below. If one or more Subcontractor(s) is (are) involved in a dispute, the Subcontractors shall agree on an appointee to serve as arbitrator on behalf of all such Subcontractors. The Neutral Evaluator shall not participate in the proceedings.

B. Selection of Neutral Arbitrator. The Parties' arbitrators shall choose the Neutral Arbitrator within five Days of receipt of notification of a dispute from the Neutral Evaluator. The Neutral Arbitrator shall have the same qualifications as those of the arbitrators set forth in Section 13.2 above. In the event that the selected arbitrators cannot agree on the Neutral Arbitrator as set forth above, the Neutral Arbitrator shall be the "Default Neutral Arbitrator." The Default Neutral Arbitrator shall be selected as follows: the City and the Construction Manager shall each submit two names to the presiding judge of the Maricopa County Superior Court, who shall select one person to serve as the Default Neutral Arbitrator.

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

D. Procedure. The Arbitration Panel will select a chairman and will conduct the hearing in such a manner that will resolve disputes in a prompt, cost-effective manner giving regard to the rights of all parties. Each Party shall supply to the Arbitration Panel a written pre-hearing statement which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. The Arbitration Panel shall review and consider the Neutral Evaluator decision. The chairman shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with deadlines provided herein, and the Parties' objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of any materials or information for which a privilege is recognized by Arizona law. 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.

E. Hearing Days. In order to effectuate Parties' goals, the hearing once commenced, will proceed from Day to Day until concluded, absent a showing of emergency circumstances.

F. Award. The Arbitration Panel shall, within 10 Days from the conclusion of any hearing, by majority vote issue its award. The award shall include an allocation of fees and costs pursuant to Subsection 13.4(M) below. The award is to be rendered in accordance with this Agreement and the laws of the State of Arizona.

G. Scope of Award. The Arbitration Panel shall be without authority to award punitive damages, and any such punitive damage award shall be void. The Arbitration Panel shall be without any authority to issue an award against any individual Party in excess of 20% of the original Agreement amount, but in no event shall any award exceed \$2,000,000, exclusive of interest, arbitration fees, costs and attorneys' fees. If an award is made against any individual Party in excess of \$100,000, exclusive of interest, arbitration fees, costs and attorneys' fees, it must be supported by written findings of fact, conclusions of law and a statement as to how damages were calculated. Any claim in excess of 20% of the original Agreement amount or in excess \$2,000,000 shall be subject to the jurisdiction of the Superior Court of Arizona, Maricopa County. Any Party may contest the validity of the amount claimed if an action is filed in the Superior Court.

H. Jurisdiction. The Arbitration Panel shall not be bound for jurisdictional purposes by the amount asserted in any Party's claim, but shall conduct a preliminary hearing into the question of jurisdiction upon application of any Party at the earliest convenient time, but not later than the commencement of the arbitration hearing.

I. Entry of Judgment. Any Party can make application to the Maricopa County Superior Court for confirmation of an award, and for entry of judgment on it.

J. Severance and Joinder. To reduce the possibility of inconsistent adjudications, the Neutral Evaluator or the Arbitration Panel, may: (1) at the request of any Party, join and/or sever Parties, and/or claims arising under other contracts containing this ADR provision and (2) the Neutral Evaluator, on his own authority, or the Arbitration Panel may, on its own authority, join or sever Parties and/or claims subject to this ADR process as they deem necessary for a just resolution of the dispute, consistent with the Parties' goal of the prompt and efficient resolution of disputes; provided, however, that the Construction Manager, the Project Designers and other Project professionals shall not be joined as a Party to any claim made by a Subcontractor. Nothing herein shall create the right by any Party to assert claims against another Party not germane to the Agreement or not recognized under the substantive law applicable to the dispute. Neither the Neutral Evaluator nor the Arbitration Panel is authorized to join to the proceeding Parties not in privity with the City. The Construction Manager cannot be joined to any pending arbitration proceeding, without the Construction Manager's express written consent, unless the Construction Manager is given the opportunity to participate in the selection of the non-City appointed arbitrator.

K. Appeal. Any party may appeal (1) errors of law by the Arbitration Panel if, but only if, the errors arise in an award in excess of \$100,000, (2) the exercise by the chairman or Arbitration Panel of any powers contrary to or inconsistent with this Agreement or (3) on the basis of any of the grounds provided in ARIZ. REV. STAT. § 12-1512. Appeals shall be to the Maricopa County Superior Court within 15 Days of entry of the award. The standard of review in such cases shall be that applicable to the consideration of a motion for judgment notwithstanding the verdict, and the Maricopa County Superior Court shall have the authority to confirm, vacate, modify or remand an award appealed under this Section, but not to conduct a trial, entertain the introduction of new evidence or conduct a hearing *de novo*.

L. Uniform Arbitration Act. Except as otherwise provided herein, binding arbitration pursued under this provision shall be governed by the Uniform Arbitration Act as codified in Arizona in ARIZ. REV. STAT. § 12-1501, *et seq.*

M. Fees and Costs. Each Party shall bear its own fees and costs in connection with any informal hearing before the Neutral Evaluator. All fees and costs associated with any arbitration before the Arbitration Panel, including without limitation the Arbitration Panelists' fees, and the prevailing Party's reasonable attorneys' fees, expert witness fees and costs, will be paid by the non-prevailing Party, except as provided for herein. In no event shall any Arbitrator's hourly fees be awarded in an amount in excess of \$200 per hour and (1) costs shall not include any travel expenses in excess of mileage at the rate paid by the City, not to exceed a one way trip of 150 miles, and (2) all travel expenses, including meals, shall be reimbursed pursuant to the travel policy of the City in effect at the time of the hearing. The determination of prevailing and non-

prevailing Parties, and the appropriate allocation of fees and costs, will be included in the award by the Arbitration Panel. Fees for the Neutral Evaluator shall be paid by the City.

N. Confidentiality. Any proceeding initiated under ADR shall be deemed confidential to the maximum extent allowed by Arizona law and no Party shall, except for disclosures to a Party's attorneys or accountants, make any disclosure related to the disputed matter or to the outcome of any proceeding except to the extent required by law, or to seek interim equitable relief, or to enforce an agreement reached by the Parties or an award made hereunder.

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

P. Change Order. Any award in favor of the Construction Manager against the City or in favor of the City against the Construction Manager shall be reduced to a Change Order amendment to this Agreement and executed by the Parties in accordance with the award and the provisions of this Agreement.

Q. Merger and Bar. Any claim asserted pursuant to this ADR process shall be deemed to include all claims, demands, and requests for compensation for costs and losses or other relief, including the extension of the Agreement performance period which reasonably should have or could have been brought against any Party that was or could have been brought into this ADR process, with respect to the subject claim. The Arbitration Panel shall apply legal principles commonly known as merger and bar to deny any claim or claims against any Party regarding which claim or claims recovery has been sought or should have been sought in a previously adjudicated claim for an alleged cost, loss, breach, error, or omission.

R. Inclusion in Other Contracts. The Construction Manager shall cooperate with the City in efforts to include this ADR provision in all other Project subcontracts. The Construction Manager agrees that any modification to this ADR provision that is included in the construction or other subcontracts shall also apply to the Construction Manager. It is the intent of the Parties that any changes to this ADR provision in later contracts will be evolutionary and designed to incorporate the terms of this ADR provision without material changes to the substance or procedure of this ADR provision.

ARTICLE 14 ADDITIONAL PROVISIONS

14.1 Confidentiality. The Construction Manager shall not disclose or permit the disclosure of any confidential information except to its agents, employees and Subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement.

14.2 Limitation and Assignment. The City and the Construction Manager each bind themselves, their successors, assigns and legal representatives to the terms of this Agreement. Neither the City nor the Construction Manager shall assign or transfer its interest in this Agreement without the written consent of the other, except that the Construction Manager may assign accounts receivable to a commercial bank for securing loans without approval of the City. Nothing contained in this Section shall prevent the Construction Manager from employing such consultants, associates or Subcontractors as the Construction Manager may deem appropriate to assist in performance of the Services hereunder.

14.3 Entire Agreement. This Agreement represents the entire and integrated agreement between the City and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Construction Manager. Nothing contained in this Agreement is intended to benefit any third party. Subcontractors, if any, and the Project Designers are not intended third-party beneficiaries of this Agreement.

14.4 Severability. If any provision of this Agreement is held as a matter of law to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be enforceable without such provision.

14.5 Meaning of Terms. References made in the singular shall include the plural and the masculine shall include the feminine or neuter.

14.6 Notices and Requests. 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:

With copies to: City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: Procurement Officer

City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: City Attorney

If to Project Designers: Perlman Architects of Arizona, Inc.
4808 N. 24th Street, Suite 100
Phoenix, Arizona 85016
Attn: Ken Powers, Principal
Phone: 480-951-5900
Email: kenp@perlmanaz.com

If to Construction Manager: Willmeng Construction, Inc.

2048 N. 44th Street, Suite 200
Phoenix, Arizona 85008
Attn: Keith Sabia, Principal-In-Charge
Phone: 480-968-4755x29
Email: ksabia@willmeng.com

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 Section. 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.

14.7 Governing Law. This Agreement shall be governed by the laws of the State of Arizona and venue shall be in Maricopa County.

14.8 No Waiver of Performance. The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition right with respect to further performance.

14.9 Headings. The headings given to any of the provisions of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.10 Asbestos Free Materials. The Project is to be constructed by the Construction Manager with asbestos free materials. A written, notarized statement on company letterhead shall be submitted to the City by the Construction Manager with the final payment request certifying that the Construction Manager has incorporated no asbestos material into the Project. Final payment shall be withheld until such statement is submitted. The Construction Manager shall agree that if materials containing asbestos are subsequently discovered at any future time to have been included in the construction done by the Construction Manager or any of its Subcontractors or agents and were not specified in the design or required by the Contract Documents, the Construction Manager shall be liable for all costs related to the abatement of such asbestos and damages or claims against the City notwithstanding any statute of limitations or other legal bar to any claim by the City.

14.11 Cancellation. This Agreement may be cancelled by the City pursuant to ARIZ. REV. STAT. § 38-511.

14.12 Survival of Representations and Warranties. Notwithstanding any other provision of this Agreement, the representations, warranties and covenants herein shall survive termination of this Agreement.

14.13 Endangered Hardwoods Prohibited. Construction Manager shall ensure that products containing endangered wood species shall not be utilized in the construction of the Project unless exempted pursuant to ARIZ. REV. STAT. § 34-201(J), as amended.

14.14 Records and Audit Rights. Construction Manager's and its Subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Construction Manager and its Subcontractors' employees who perform any work or Services pursuant to this Agreement to ensure that the Construction Manager and its Subcontractors are complying with the warranty under Subsection 14.15 below (all the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Construction Manager's and its Subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Construction Manager's and its Subcontractors' compliance with the Arizona employer sanctions laws referenced in Subsection 14.15 below. To the extent necessary for the City to audit Records as set forth in this Subsection, Construction Manager and its Subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its Subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the City to Construction Manager pursuant to this Agreement. Construction Manager and its Subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this Subsection. The City shall give Construction Manager or its Subcontractors reasonable advance notice of intended audits. Construction Manager shall require its Subcontractors to comply with the provisions of this Subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

14.15 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Construction Manager and its Subcontractors 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). Construction Manager's 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.

14.16 Israel. Consultant certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in, a boycott of Israel, as that term is defined in ARIZ. REV. STAT. § 35-393.

14.17 Independent Contractor. The Construction Manager is and will be an independent contractor and whatever measure of control the City exercises over the work or deliverable pursuant to the Contract will be as to the results of the work only. No provision in this Agreement will give or be construed to give the City the right to direct the Construction Manager as to the details of accomplishing the work or deliverable. These results will comply with all applicable laws and ordinances.

14.18 Agreement Subject to Appropriation. The City is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the City's then-current fiscal year. The City's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the City concerning budgeted purposes and appropriation of funds. Should the City Council elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the City shall be relieved of any subsequent obligation under this Agreement. The Parties agree that the City has no obligation or duty of good faith to budget or appropriate the payment of the City's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The City Council shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The City shall keep Construction Manager informed as to the availability of funds for this Agreement. The obligation of the City to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the City. Construction Manager hereby waives any and all rights to bring any claim against the City from or relating in any way to the City's termination of this Agreement pursuant to this Section.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above.

“City”

CITY OF AVONDALE,
an Arizona municipal corporation

Charles A. Montoya, City Manager

ATTEST:

Marcella Carrillo, City Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On _____, 2019, before me personally appeared Charles A. Montoya, the City Manager of the CITY OF AVONDALE, an Arizona municipal corporation, 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 the above document, on behalf of the City of Avondale.

Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

“Construction Manager”

WILLMENG CONSTRUCTION, INC.,
an Arizona corporation

By: *Michael J. Mongelli*
Michael J. Mongelli (Nov 5, 2020 09:07 MST)

Name: Michael J. Mongelli

Title: President

(ACKNOWLEDGMENT)

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, 2019, before me personally appeared _____
_____, the _____ of _____,
a(n) _____, whose identity was proven to me on the basis of
satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she
signed the above document on behalf of the _____.

Notary Public

(Affix notary seal here)

EXHIBIT A
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND
WILLMENG CONSTRUCTION, INC.

[Construction Documents]

See following pages.

EXHIBIT B
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND
WILLMENG CONSTRUCTION, INC.

[Amendments]

See following pages.

EXHIBIT C
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND
WILLMENG CONSTRUCTION, INC.

[GMP Proposals]

See following pages.

EXHIBIT D
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND
WILLMENG CONSTRUCTION, INC.

[Master Schedule]

See following pages.

EXHIBIT E
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND
WILLMENG CONSTRUCTION, INC.

[The City's RFQ]

See following pages.

**REQUEST FOR
STATEMENTS OF QUALIFICATIONS
FOR
CONSTRUCTION MANAGER AT RISK (CMAR):
Permanent Fire Station: 127th Ave. & Van Buren St.**

City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323

SOLICITATION INFORMATION AND SELECTION SCHEDULE

Solicitation Number:	EN 21-012
Solicitation Title:	Permanent Fire Station CMAR
Release Date:	August 12, 2020
Advertisement Date:	August 12 & August 19, 2020 SW Valley Republic August 20, 2020 AZ Business Gazette
NON-MANDATORY Pre-Submittal Conference:	September 2, 2020; 10:00AM (local time, Avondale, AZ) Please see Vendor Registry for Details
Final Date for Inquiries:	September 10, 2020
SOQ Due Date and Time:	September 22, 2020; 5:00 PM (local time, Avondale, AZ)
Letters for Final Listed Firms:	October 06, 2020
Oral Interviews:	October 15, 2020 (anticipated)
Target City Council Award Date:	November 16, 2020
Anticipated Agreement Start Date:	November 17, 2020
RFQ Administrator:	Loretta Browning lbrowning@avondaleaz.gov ; 623-333-2029

* The City of Avondale reserves the right to amend the solicitation schedule, as necessary.

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PART I. RFQ PROCESS; AWARD OF AGREEMENT

1.1 Purpose; Scope of Work. The City of Avondale (the “City”) is issuing this Request For Qualifications (this “RFQ”) seeking statements of qualifications (“SOQ”) from qualified, licensed Construction Manager at Risk firms (“CMAR Firms”) interested in providing Construction Manager At Risk (CMAR) for design phase review and complete construction services related to the construction of a permanent fire station (the “Project”) and other items as deemed necessary by the City (collectively, the “Services”), as more particularly described in Subsection 1.1(A) below. This will be a one-step, qualifications-based process as authorized by ARIZ. REV. STAT. § 34-601 *et. seq.* A separate Request for Proposal will not be issued. In accordance with the City’s Procurement Code, the City will accept sealed SOQ for the Services.

A. Background. To meet the growth needs in the City’s central area, a permanent Fire Station is proposed to be designed and built on City property located on the south side of Van Buren Street at 127th Ave. The City will retain an Architectural Consultant for the design process for the new, permanent Fire Station. Design and Construction of the permanent Fire Station is referred to as the “Improvements.”

B. Design Review. The City has issued a RFQ for Design Services for this project and intends to award a contract to a consultant prior to the award of this solicitation’s resulting CMAR contract. The CMAR Firm will immediately coordinate with the consultant to conduct a thorough review of the documents and subsequent refinements according to the CMAR Agreement.

1.2 Preparation/Submission of SOQ. CMAR Firms are invited to participate in the competitive selection process for the Services outlined in this RFQ. Responding parties shall review their SOQ submissions to ensure the following requirements are met.

A. Irregular or Non-responsive SOQ. The City may consider as “irregular” or “non-responsive” and reject any SOQ not prepared and submitted in accordance with this RFQ, or any SOQ lacking sufficient information to enable the City to make a reasonable determination of compliance to the minimum qualifications. Unauthorized conditions, limitations, or provisions may be cause for rejection. An SOQ may be deemed non-responsive at any time during the evaluation process if, in the sole opinion of the City, any of the following are true:

- (1) CMAR Firm does not meet the minimum required skill, experience or requirements to perform or provide the Services.
- (2) CMAR Firm has a past record of failing to fully perform or fulfill contractual obligations.
- (3) CMAR Firm cannot demonstrate financial stability.
- (4) CMAR Firm’s SOQ contains false, inaccurate or misleading statements.

B. Submittal Quantities. Interested CMAR Firms must submit **one PDF copy** of the SOQ via the City's Solicitation Page on Vendor Registry. The PDF file must be in one file. Failure to adhere to the submittal quantity criteria shall result in the submittal being determined non-responsive.

C. Required Submittal. The SOQ shall be a maximum of **12** pages to address the SOQ criteria (excluding cover letter, resumes and the CMAR Firm Information Form, but including the materials necessary to address Project understanding, general information, organizational chart, photos, tables, graphs, and diagrams). Each page side (maximum 8 1/2" x 11") with criteria information shall be counted. However, one page may be substituted with an 11" x 17" sheet of paper, folded to 8 1/2" x 11", showing a proposed Project schedule or organizational chart and only having information on one side. Cover, back, table of contents and tabs may be used and shall not be included in the page count, unless they include additional project-specific information or SOQ criteria responses. CMAR Firms are encouraged to utilize recyclable materials and endeavor to be considerate of the environment in preparation of the SOQ. The minimum allowable font for the SOQ is **11 pt, Arial or Times New Roman**. Failure to adhere to the page limit, size and font criteria and shall result in the SOQ being determined non-responsive. Each SOQ shall be submitted with the documents necessary to meet all of the requirements of this solicitation, including the information required in Part II and the following:

- (1) Cover letter with a **signature** by a person authorized to bind the Vendor. Statements of Qualifications submitted without a cover letter with a **signature** by a person authorized to bind the Vendor may be determined non-responsive.
- (2) CMAR Firm Information Form, with **signature**.
- (3) References.
- (4) Project Schedule, if required.
- (5) Resumes, Licenses and Certifications (if required).
- (6) Acknowledgment page, with a **signature**, for any Addendum received.

D. CMAR Firm Responsibilities. All CMAR Firms shall (1) examine the entire RFQ, (2) seek clarification of any item or requirement that may not be clear, (3) check all responses for accuracy before submitting an SOQ and (4) submit the entire SOQ by the official SOQ Due Date and Time. A late SOQ will not be accepted. A CMAR Firm submitting a late SOQ shall be so notified. Negligence in preparing an SOQ shall not be good cause for withdrawal after the SOQ Due Date and Time.

E. Online Submittals Only. All SOQ shall be submitted electronically via the City's [Solicitation Webpage](#) on Vendor Registry and shall be attached to the corresponding solicitation project and clearly marked with the RFQ number and title, **"EN 21-012 Request for**

Qualification for Permanent Fire Station CMAR". The City is not responsible for the pre-opening of, post-opening of, or the failure to open, any SOQ not properly addressed or identified.

F. Address. All SOQ shall be submitted electronically via the City's [Solicitation Webpage](#) on Vendor Registry. SOQ must be received by the SOQ Due Date and Time indicated on the cover page of this RFQ. Telegraphic (facsimile), electronic (e-mail) or mailgram SOQ will not be considered.

G. Amendment/Withdrawal of SOQ. At any time prior to the specified SOQ Due Date and Time, a CMAR Firm (or designated representative) may amend or withdraw its SOQ. Any erasures, interlineations, or other modifications in the SOQ shall be initialed by the authorized person signing the SOQ. Facsimile, electronic (e-mail) or mailgram SOQ amendments or withdrawals will not be considered. No SOQ shall be altered, amended or withdrawn after the specified SOQ Due Date and Time.

1.3 Cost of SOQ Preparation. The City does not reimburse the cost of developing, presenting or providing any response to this solicitation. An SOQ submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner. The CMAR Firm is responsible for all costs incurred in responding to this RFQ. All materials and documents submitted in response to this RFQ become the property of the City and will not be returned.

1.4 Inquiries.

A. Written/Verbal Inquiries. Any question related to the RFQ shall be directed to the City Representative whose name appears on the cover page of this RFQ. Questions shall be submitted in writing, electronically via the City's [Solicitation Webpage](#) on Vendor Registry, by the close of business on the Final Date for Inquiries indicated on the cover page of this RFQ. Any inquiries related to this RFQ shall refer to the number and title, page and paragraph. Any Vendor found to be communicating with any member of City staff about this solicitation shall be prohibited from submitting an SOQ, or if an SOQ is received, such SOQ shall be deemed non-responsive.

B. Inquiries Answered. All inquiries must be directed to the RFQ Administrator. Verbal or telephone inquiries **will not be answered** and Vendors attempting to do so will be directed to submit written inquiries. The RFQ Administrator shall provide a compilation of all questions received in writing with official answers that will be made available on the City's [Solicitation Webpage](#) on Vendor Registry. The RFQ Administrator shall endeavor to post the compilation not later than five days after the inquiry deadline.

C. Pre-Submittal Conference. A Pre-Submittal Conference may be held. If scheduled, the date and time of this conference will be indicated on the cover page of this RFQ. Vendors are strongly encouraged to attend the Pre-Submittal Conference, even if designated as nonmandatory. The purpose of this conference will be to clarify the contents of this RFQ in order to prevent any misunderstanding of the City's requirements. Any doubt as to the requirements of this RFQ or any apparent omission or discrepancy should be presented to the City at this conference. The City may issue a written amendment or addendum to this RFQ. Oral statements or instructions are

provided for informational purposes only and do not become a part of this RFQ. Any change to the RFQ shall be made in the form of an addendum.

1.5 Addenda. Any addendum issued as a result of any change in this RFQ shall become part of the RFQ and must be acknowledged in the SOQ submittal. Failure to indicate receipt of any addendum may result in the SOQ being rejected as non-responsive. It shall be the CMAR Firm's responsibility to check for addenda issued to this RFQ. Any addendum issued by the City with respect to this RFP will be posted on the City's [Solicitation Webpage](#) on Vendor Registry.

1.6 Public Record. All SOQ shall become the property of the City and shall become a matter of public record available for review, subsequent to the award notification, in accordance with the City's Procurement Code.

1.7 Confidential Information. If a CMAR Firm believes that an SOQ or protest contains information that should be withheld from the public record, a statement advising the City Representative of this fact shall accompany the submission and the information shall be clearly identified. The information identified by the CMAR Firm as confidential shall not be disclosed until the City Representative makes a written determination. The City Representative shall review the statement and information with the City Attorney and shall determine in writing whether the information shall be withheld. If the City Attorney determines that it is proper to disclose the information, the City Representative shall inform the CMAR Firm in writing of such determination.

1.8 CMAR Firm Licensing and Registration. Prior to the award of the Agreement, the successful CMAR Firm shall (A) be registered with the Arizona Corporation Commission and authorized to do business in Arizona and (B) have a completed Request for Vendor Number on file with the City Financial Services Department. The CMAR Firm shall provide licensure information with the SOQ. Corporations and limited liability entities must be able to provide a Certificate of Good Standing from the Arizona Corporation Commission.

1.9 Certification. By submitting an SOQ, the CMAR Firm certifies:

A. No Collusion. The submission of the SOQ did not involve collusion or other anti-competitive practices.

B. No Discrimination. It shall not discriminate against any employee or applicant for employment in violation of Federal Executive Order 11246.

C. No Gratuity. It has not given, offered to give, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor or service to a City employee, officer or agent in connection with the submitted SOQ. It (including the CMAR Firm's employees, representatives, agents, lobbyists, attorneys, and subcontractors) has refrained, under penalty of disqualification, from direct or indirect contact for the purpose of influencing the selection or creating bias in the selection process with any person who may play a part in the selection process, including the Selection Committee, elected officials, the City Manager, Assistant City Managers, Department Heads, and other City staff, unless such person is designated as a City Representative. All inquiries must be addressed to the City's Procurement

Agent, except for questions submitted as set forth in Section 1.4 (Inquiries) above. Any attempt to influence the selection process by any means shall void the submitted SOQ and any resulting Agreement.

D. Financial Stability. It is financially stable, solvent and has adequate cash reserves to meet all financial obligations including any potential costs resulting from an award of the Agreement.

E. No Signature/False or Misleading Statement. The signature on the cover letter of the SOQ and the CMAR Firm Information Form is genuine, and the person signing has the authority to bind the CMAR Firm. Failure to sign the cover letter and the CMAR Firm Information Form, or signing either with a false or misleading statement, shall void the submitted SOQ and any resulting Agreement.

F. Construction Manager at Risk Agreement. In addition to reviewing and understanding the submittal requirements, it has reviewed the attached sample Construction Manager at Risk Agreement and agrees to be bound by its terms.

1.10 Award of Agreement.

A. Evaluation; Selection. A Selection Committee composed of representatives from the City will conduct the selection process according to the schedule on the cover page of this RFQ. The Selection Committee will create a final ranking of the CMAR Firms based upon its evaluation of (1) the SOQ, (2) information provided by references and (3) criteria outlined in this RFQ. The Selection Committee will rank the SOQ, developing a single final list of at least three (3) and not more than five (5) of the highest ranked Firms. Total points will be utilized as a tiebreaker. No interviews will be conducted during this phase of the selection process. If there are less than three firms that submit SOQ the number of firms ranked will be adjusted accordingly.

B. Oral Interviews. The Selection Committee will provide interview criteria and conduct the interviews with the all ranked CMAR Firms and upon completion of the final tabulation of points for scored components, will create a final list, in order of preference, of the three most qualified CMAR Firms. The City will enter into negotiations with the highest ranking CMAR Firm from the final list.

C. Form of Agreement. The selected CMAR Firm will be required to execute the City's standard Construction Manager at Risk Agreement in a form acceptable to the City Attorney. A sample of the Construction Manager at Risk Agreement is included with this RFQ. If the City is unsuccessful in negotiating an Agreement with the highest-ranked CMAR Firm, the City may then negotiate with the second, then third, highest-ranked CMAR Firm until an Agreement is executed. The City reserves the right to terminate the selection process at any time.

D. Waiver; Rejection; Reissuance. Notwithstanding any other provision of this RFQ, the City expressly reserves the right to: (1) waive any immaterial defect or informality, (2) reject any or all SOQ or portions thereof and (3) cancel or reissue an RFQ.

E. Protests. Any CMAR Firm may protest this RFQ, the proposed award of an Agreement, or the actual award of an Agreement. All protests will be considered in accordance with the City Procurement Code.

1.11 Offer. An SOQ submittal is an offer to contract with the City based upon the terms, conditions and specifications contained in this RFQ, including the sample Construction Manager at Risk Agreement, and the CMAR Firm's responsive SOQ, unless any of the terms, conditions, or specifications are modified by a written addendum or agreement amendment. Provided, however, that no contractual relationship shall be established until the CMAR Firm has signed, and the City has approved, a Construction Manager at Risk Agreement between the City and the CMAR Firm in the form acceptable to the City Attorney.

PART II. STATEMENT OF QUALIFICATIONS FORMAT; SCORING

2.1 Evaluation Process. Each submittal will be reviewed for compliance with the submittal requirements and scored by the Selection Committee.

2.2 Proposal Format and Scoring. The SOQ shall be organized and submitted in the format as outlined below. Failure to conform to the designated format, standards and minimum requirements shall result in a determination that the SOQ is non-responsive. Additionally, the Selection Committee will evaluate and award points to each SOQ based upon the evaluation criteria as outlined in this document. Points listed below are the maximum number of points possible for each criteria.

A. General Information - 10 pts.

(1) One page cover letter as described in Subsection 1.2(C) (Required Submittal).

(2) Provide CMAR Firm identification information. Explain the CMAR Firm's legal organization including the legal name, address, identification number and legal form of the CMAR Firm (e.g., partnership, corporation, joint venture, limited liability company, sole proprietorship). If a joint venture, identify the members of the joint venture and provide all of the information required under this section for each member. If a limited liability company, provide the name of the member or members authorized to act on the company's behalf. If the CMAR Firm is a wholly owned subsidiary of another company, identify the parent company. If the corporation is a nonprofit corporation, provide nonprofit documentation. Provide the name, address and telephone number of the person to contact concerning the SOQ.

(3) Identify the location of the CMAR Firm's principal office, the local work office, if different from the principal office and the percent of work expected to be done locally. Include any documentation that supports the CMAR Firm's authority to provide services in Arizona.

(4) Provide a general description of the CMAR Firm that is proposing to provide the Services, including years in business.

(5) Identify any contract or subcontract held by the CMAR Firm or officers of the CMAR Firm that has been terminated within the last five years. Briefly describe the circumstances and the outcome.

(6) Identify any claims arising from a contract that resulted in litigation or arbitration within the last five years. Briefly describe the circumstances and the outcome.

(7) Provide the Arizona professional and contractor license numbers held by the CMAR Firm/team and the key personnel who will be assigned to this Project; please indicate if the individual or the firm holds the license.

(8) CMAR Firm Information Form, with a **signature** (may be attached as separate appendix).

(9) CMAR Firms selected as finalists for this Project will be required to provide a statement from a surety company licensed to do business in Arizona with an A.M. Best rating of not less than A- to verify the Firm's bonding capacity.

B. Experience and Qualifications of the CMAR Firm - 25 pts.

(1) List at least three comparable projects in which the CMAR Firm served as Construction Manager at Risk during design and construction phases (without providing construction services), as the Builder in a Design-Build project, and/or General Contractor. Special consideration will be given to CMAR Firms that have provided Construction Manager at Risk services on similar successful projects. For each project, provide:

- (a) Project description. Include details about how your project is similar to the one described in this SOQ.
- (b) Role of the CMAR Firm (i.e. Construction Manager at Risk, Construction Manager, or General Contractor). If Construction Manager at Risk or General Contractor, state the percent and type of work self-performed for each project. Specify services provided during the design phase, i.e. cost estimating, scheduling, value engineering and other services.
- (c) Describe the CMAR Firm's experience construction services specific to Fire Stations.
- (d) Project's original contracted construction cost and final construction cost.

- (e) Project's original completion date and final completion date.
- (f) Project owner.
- (g) Project references, including telephone number and email address.

(2) List all Arizona projects, whether completed, ongoing, or selected, but not yet under contract, where the CMAR Firm/team provided either Construction Manager at Risk, Builder in a Design-Build project, or general construction services in the last three years.

(3) The City's representative may conduct any investigation deemed necessary to determine the CMAR Firm's ability to perform the Project. CMAR Firms may be requested to submit additional documentation within 72 hours (or as specified) to assist the City in its evaluation.

C. Key Positions - 25 pts.

(1) Provide an organizational chart showing key personnel to be involved in this Project and CMAR Firm affiliation. At a minimum, identify the following:

- (a) Project Manager for Preconstruction Services.
- (b) Project Manager during construction.
- (c) Construction Engineer.
- (d) Superintendent.
- (e) Other key personnel as desired.

(2) Identify the home office location of key personnel, length of time with the firm and the percent of work to be done locally.

(3) If a subcontractor will be used for all work of a certain type, include information on this subcontractor. A detailed plan for providing supervision must be included.

(4) Attach a résumé and evidence of certification, if any, for each key personnel member and/or subcontractor to be involved in this Project, including experience in construction manager at risk projects. At a minimum, the listed projects should include two comparable projects, the project name, project owner, location, key person's role, reference information and brief description of the work. Résumés should be attached

together as a single appendix at the end of the SOQ and will not count toward the SOQ page limit. However, each resume shall not exceed two pages in length.

D. Project Understanding and Approach - 20 pts.

(1) Discuss your understanding of this Project. Include major issues your firm/team has identified and how you intend to address those issues.

(2) Describe your approach to performing the required Services in the Scope of Work described in the Construction Manager at Risk Agreement in Exhibit B, including the following processes:

- (a) Planning.
- (b) Estimating.
- (c) Scheduling.
- (d) Cost controls.
- (e) Project management and team organization during design and construction phase services.
- (f) Bid package management.
- (g) Management of overhead costs.
- (h) Managing subcontractors.
- (i) Quality control.
- (j) Safety.
- (k) Dispute resolution.

(3) Submit a subcontractor selection plan that meets ARIZ. REV. STAT. § 34-601 *et seq.* requirements. Discuss the benefits that your selection provides to the Project.

E. Project Schedule - 20 pts.

Provide a project schedule showing key project milestones and deliverables. The schedule shall demonstrate CMAR Firm's ability to meet the designated milestones as listed below. Assumptions used in developing the schedule shall be identified and at a minimum the proposed schedule shall include the following dates:

- | | | |
|-----|-----------------------------|-------------------------------|
| (1) | Contract Award Date | Anticipated November 16, 2020 |
| (2) | Notice to Proceed Date | Anticipated November 17, 2020 |
| (3) | Proposed Kick-Off Meeting | |
| (4) | Substantial Completion Date | |
| (5) | Final Completion Date | |

Total Possible Points for SOQ Submittal:

100

PART III. ORAL INTERVIEWS; SCORING

The highest-ranked CMAR Firms may be selected for oral interviews. The selected CMAR Firms will be invited to participate in discussions with the Selection Committee on the date indicated on the cover page of this RFQ and awarded points based upon the criteria as outlined below. CMAR Firms may be given additional information for these oral interviews.

Oral Interview

20	Experience and Qualifications of the CMAR Firm
40	Key Positions
<u>40</u>	Project Approach
100	Total Possible Points for Oral Interview

Total Points Possible for this RFQ:

200

PART IV. CMAR FIRM INFORMATION FORM

By submitting your Statement of Qualifications, the submitting CMAR Firm certifies that it has reviewed the administrative information and draft of the Construction Manager at Risk Agreement's terms and conditions and, if awarded the Agreement, agrees to be bound thereto.

CMAR FIRM SUBMITTING SOQ

FEDERAL TAX ID NUMBER

PRINTED NAME AND TITLE

AUTHORIZED SIGNATURE

ADDRESS

TELEPHONE

FAX #

CITY STATE ZIP

DATE

WEB SITE:

EMAIL ADDRESS:

MINORITY/WOMEN-OWNED SMALL BUSINESSES (check appropriate item):

- _____ Disadvantaged Business Enterprise (DBE)
_____ Women-Owned Business Enterprise (WBE)
_____ Minority Business Enterprise (MBE)
_____ Small Business Enterprise (SBE)

Has your firm been certified by any jurisdiction in Arizona as a minority or woman owned business enterprise?

If yes, please provide details and documentation of the certification.

EXHIBIT A
TO
REQUEST FOR STATEMENTS OF QUALIFICATIONS
FOR
CONSTRUCTION MANAGER AT RISK

[Scope of Work]

See following pages.

CONSTRUCTION MANAGER AT RISK (CMAR) Permanent Fire Station: 127th Ave. & Van Buren St.

Project Description: To meet the growth needs in the City's central area, a permanent Fire Station is proposed to be designed and built on City property located on the south side of Van Buren Street at 127th Ave. This project includes Construction Manager at Risk (CMAR) for design phase review and complete construction services related to the construction of a permanent fire station and other items as deemed necessary by the City. This approximately 19,000 square foot, single story station will be designed and constructed with three (3) bays on an approximately 2.5-acre portion of the City's property. It may be assumed utilities are available in the vicinity of the site and minimal Right of Way improvements may be required, other than driveways and modification to the existing traffic signal.

Design Requirements: The Design will include architectural designs, landscapes, and hardscapes to match the surrounding community. In addition, the design should be creative to meet the City requirements and follow City's guidelines and permitting process so project concepts can be expedited through the public process. The following components are the minimum requirements of the proposed fire station:

Fire Station General Requirements

A. Public Space / Lobby

A fire station is an integral part of the community and should be a friendly and approachable facility. An important function of the fire station is public service programs such as blood pressure checks, school programs, educational tours, way finding, neighborliness, etc. Therefore, it is important that a community room for multiple purposes be integrated into the design of the facility.

B. Company Quarters

The fire station is initially planned to house one four-person crew with facilities for another support use (such as brush trucks, etc.) in the future and the ability to add an ambulance or other apparatus for a total staffing of 10 to 12. The apparatus space should be designed and constructed with three 90' bays.

A fire station must function as the day-to-day office and residence for the crews. The interior finishes, fixtures and furnishing must be functional and durable, yet comfortable. The crew's quarters should include:

- captains' offices plus an office for a fire inspector or other staff (i.e. a police office)
- a crew office
- a large kitchen and dining area
- a training room/ day room
- ten (10) to twelve (12) sleeping rooms
- exercise room
- men's and women's locker rooms
- adequate storage, janitorial and telecommunication space
- laundry room and a turn-out room

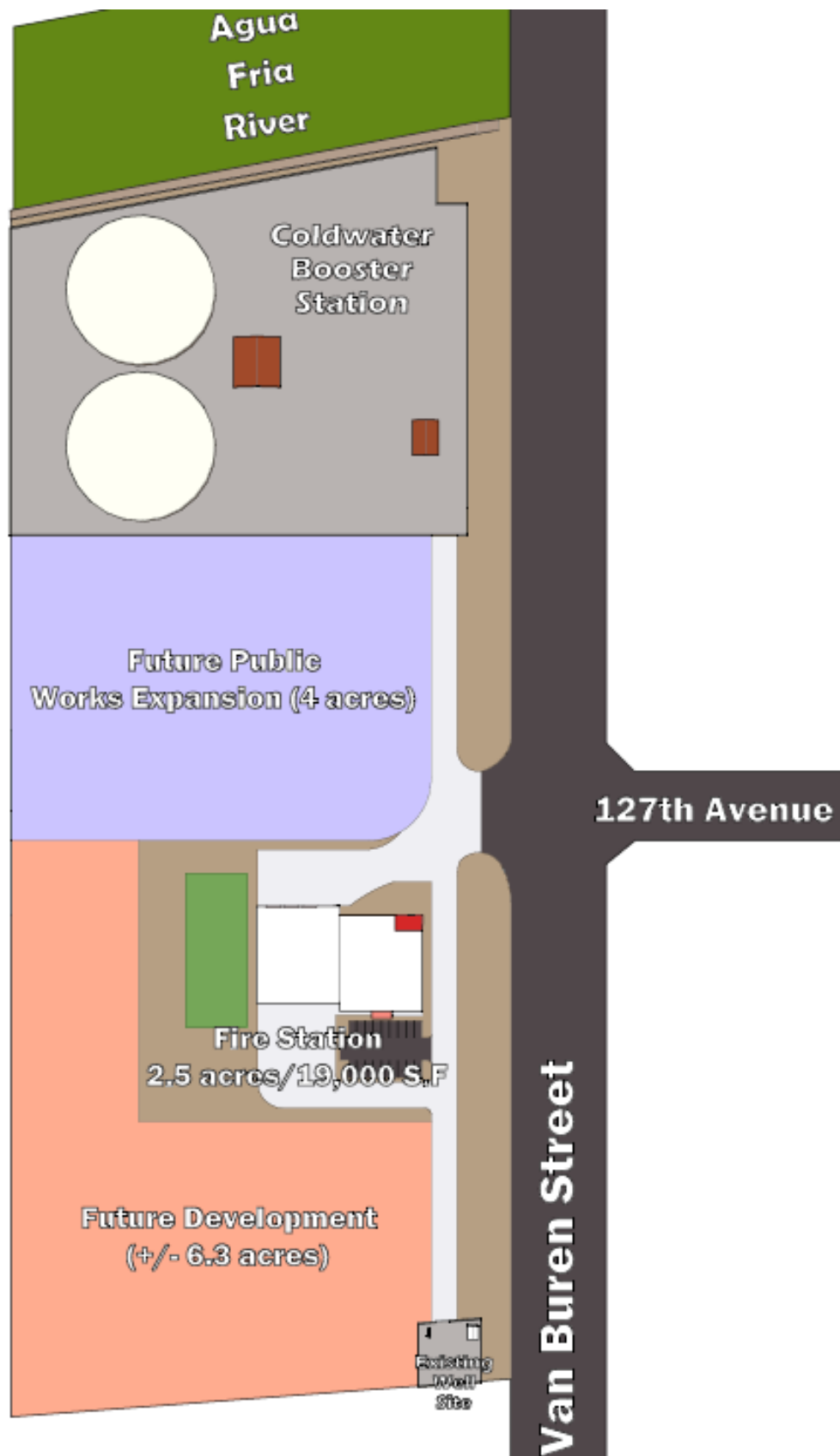




EXHIBIT B
TO
REQUEST FOR STATEMENTS OF QUALIFICATIONS
FOR
CONSTRUCTION MANAGER AT RISK

[Construction Manager at Risk Agreement]

See following pages.

**CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND**

THIS CONSTRUCTION MANAGER AT RISK AGREEMENT (this “Agreement”) is made _____, 2020, by and between the City of Avondale, an Arizona municipal corporation (the “City”), and _____, a/n _____ (the “Construction Manager”), for design phase review and complete construction services related to the construction of a Permanent Fire Station (the “Project”), and other items as deemed necessary by the City (the “Services”). The City and the Construction Manager are referred to herein individually as a “Party” and collectively as the “Parties.”

**ARTICLE 1
GENERAL**

1.1 Project Summary. The Construction Manager shall perform all pre-construction services set forth in Article 2 below (the “Pre-Construction Services”) and, subject to Section 1.2 below, management and construction services set forth in Article 4 below (the “Construction Services”) (the Pre-Construction Services and the Construction Services are collectively referred to as the “Services”), including providing all material, equipment, tools and labor necessary to complete the Work (as defined below) described herein and reasonably inferable from the Contract Documents (as defined below), including the upgrades and improvements to be encompassed in the Project. The Construction Manager will also coordinate with and provide comments to _____ (the “Project Designers”) to ensure that the Project design is constructible within the established budget.

1.2 Phased Agreement. The Services contemplated by this Agreement shall be carried out in several distinct phases. The initial Services shall be to provide Pre-Construction Services including (A) such services as applicable pursuant to Section 2.1 below, (B) review of the Project Designers’ Construction Documents pursuant to Section 2.2 below and (C) the Pre-Construction Phase General Services, pursuant to Section 2.3 below (the “Pre-Construction Phase General Services”). The Construction Manager shall be compensated on an hourly basis, at the agreed-upon hourly rates and a stipulated not-to-exceed total fee, for the Pre-Construction Services as set forth in Section 7.1 below, provided that such services may extend through the construction phase for various components of the Project. At the point in the Pre-Construction Services as determined by the City, the City may, in its sole discretion, request that the Construction Manager submit a proposal for a guaranteed maximum price (“GMP”) for construction of the Project, which may be submitted as a single GMP or as multiple GMPs at the City’s sole discretion. The Construction Manager shall prepare and submit the GMP Proposals pursuant to Article 3 below. If the City and the Construction Manager agree upon the respective GMP Proposals, the Construction Manager shall furnish, with respect to each GMP Proposal (A) such services as applicable pursuant to Section 2.1 below and (B) the Construction Services set forth in Article 4 below. If the City and the Construction Manager cannot, after good faith efforts, agree on the GMP, the City may, in its

sole discretion, terminate this Agreement (subject to the terms and conditions set forth in Section 12.2 below).

1.3 Definitions.

A. “Additional Services” means services not initially included as part of the Work, but which are later identified as necessary or desirable by the City, as more fully described in Section 4.17 below.

B. “Applicable Law” means any law, rule, code, regulation, requirement, action, determination, guideline, or order of, or any legal entitlement issued by, any governmental body having jurisdiction, applicable or relating to the design, permitting, construction, equipping, financing, ownership, possession, or any other transaction or matter contemplated hereby relating to the design and construction of the Project.

C. “Change Directive” means a written order prepared and signed by the City and the Construction Manager, approving a change in the Work that does not require an adjustment in the Contract Price or the Contract Time.

D. “Change Order” means a contract amendment issued after execution of this Agreement or future GMP Amendments signed by the City, Construction Manager and other parties, as may be required or appropriate, agreeing to an addition, deletion or revision in the scope of Work, an adjustment to the Contract Price, an adjustment to the Contract Time or other modifications to Contract terms.

E. “City’s Contingency” means a fund used at the discretion of the City, usually for costs that result from City-directed changes to cover any increases in Project costs that result from City-directed changes or unforeseen Site conditions. City’s Contingency as defined herein shall govern any GMP Assumptions and Clarifications.

F. “Construction Documents” means the plans, Specifications and drawings prepared by the Project Designers after correcting for permit review requirements, and as approved by the City Manager or authorized designee. The Construction Documents, once approved by the City as 100% complete, shall be attached hereto as Exhibit A and incorporated herein by reference.

G. “Construction Fee” means the portion of Construction Manager’s compensation not related to Direct Construction Costs, as set forth in Subsection 3.4 below.

H. “Contract Documents” means all of the following:

1. Change Orders and written amendments to this Agreement, including the amendments, if any, relating to the respective GMPs (the “GMP Amendments”), signed by both the City and the Construction Manager, attached hereto as Exhibit B and incorporated herein by reference.

2. This Agreement.

3. The Construction Documents.
4. The Construction Manager's Guaranteed Maximum Price Proposals (the "GMP Proposals"), attached hereto as Exhibit C and incorporated herein by reference, including but not limited to:
 - a. The Construction Manager's proposed scope of services and fee breakdown for each GMP Proposal (the "Scope").
 - b. The Master Schedule relating to the applicable Scope developed in accordance with Subsection 2.3(C) below and updated as set forth in this Agreement, attached hereto as Exhibit D and incorporated herein by reference.
5. The City's Request for Qualifications (the "RFQ") attached hereto as Exhibit E and incorporated herein by reference.
6. The Construction Manager's response to the City's RFQ attached hereto as Exhibit F and incorporated herein by reference.

In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the order in which they are listed above.

I. "Contract Price" means the total compensation to be paid to the Construction Manager, as more fully described in Article 7 below.

J. "Contract Time" means the Days, as set forth in Article 6, indicating the period of time, including authorized adjustments, allotted in the Contract Documents to achieve Substantial Completion of the Work.

K. "Cost Model" means the detailed cost information for the Project as described in Subsection 2.3(D) below.

L. "Cost of the Work" means the portion of Direct Construction Costs necessarily incurred by the Construction Manager in the proper performance of the Work as more specifically set forth in Section 3.3(B) below.

M. "Critical Path" means the sequence of activities from the start of the Work to Substantial Completion of the Project for which any delay in the completion of these activities will delay achieving Substantial Completion.

N. "Day(s)" means calendar day(s) unless otherwise specifically noted in the Contract Documents.

O. "Differing Site Conditions" means concealed or latent physical conditions or subsurface conditions at the Site that (1) materially differ from the conditions indicated in the Contract Documents or (2) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized in the area of the Site as inherent in the Work.

P. “Direct Construction Costs” means General Conditions Costs and Cost of the Work as set forth in Section 3.3 below.

Q. “Environmental Conditions” means collectively, Hazardous Materials and Underground Storage Tanks.

R. “Environmental Damages” means all claims, judgments, damages, losses, penalties, fines, liabilities, encumbrances, liens, costs and expenses of investigation and defense of any claim, including, without limitation, attorney’s fees, that are incurred at any time as a result of the existence of Environmental Conditions upon, about or beneath the Project Site or migrating or threatening to migrate to or from the Site, and including, without limitation:

1. Damages for personal injury, or injury to property or to natural resources occurring upon or off the Site.

2. Fees incurred for the services of attorneys, consultants, the Construction Manager, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Environmental Conditions or violation of Environmental Requirements.

3. Liability to any third party or governmental agency or political subdivision to indemnify such party, agency or political subdivision for costs expended in connection with the items listed in Subsections 1.3(R)(1) and (2) above.

S. “Environmental Requirements” means all applicable laws, statutes, regulations, rules, ordinances, common law codes, licenses, permits, orders and similar items of all governmental agencies or other instrumentalities of the United States, the State of Arizona, Maricopa County and all applicable, judicial, administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation:

1. (a) Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) (42 U.S.C. § 9601, *et seq.*), as amended by the Superfund Amendments and Reauthorization Act of 1986, and as further amended from time to time, and regulations promulgated thereunder; (b) defined as a “regulated substance” within the meaning of Subtitle I of the Resource Conservation and Recovery Act (“RCRA”) (42 U.S.C. § 6691 *et seq.*), as amended from time to time, and regulations promulgated thereunder; (c) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1321), as amended from time to time, and the regulations promulgated thereunder, or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317), as amended from time to time, and the regulations promulgated thereunder; (d) the Clean Air Act (42 U.S.C. § 7401 *et seq.*), as amended from time to time, and regulations promulgated thereunder; (e) regulated under the Toxic Substances Control Act (15 U.S.C. § 2601, *et seq.*); (f) Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 *et seq.*); (g) the Solid Waste Disposal Act (42 U.S.C. § 6901 *et seq.*), as amended from time to time, and regulations promulgated thereunder; or (h) defined as

“hazardous”, “toxic”, or otherwise regulated, under any Environmental Requirements adopted by the state in which the Site is located, or its agencies or political subdivisions.

2. Asbestos or asbestos-containing materials.

3. All requirements, including but not limited to, those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Materials into the air, surface water, ground water or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials.

4. All requirements pertaining to the protection of the health and safety of employees or the public.

T. “Final Completion” means completion of the Project, including Punch List items, by the Construction Manager in accordance with the Contract Documents, certified to the City by the Construction Manager and confirmed by the City’s contract administrator.

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

V. “General Conditions Costs” means a portion of the costs incurred by Construction Manager during the construction phase, as set forth in Section 3.3(A) below.

W. “Hazardous Materials” means any substance as defined under Environmental Requirements including:

1. The presence of which requires notification, investigation or remediation under federal, state or local law, statute, regulation, ordinance, order, action, policy or common law.

2. Which is or becomes defined as a “hazardous waste”, “hazardous substance”, pollutant or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto.

3. Which is petroleum, petroleum products, including crude oil or any fraction thereof not otherwise designated as a “hazardous substance” under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons; and, ethanol, methyl tertiary butyl ether or derivatives or constituents of or vapors from any of the foregoing.

4. Which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority or instrumentality of the United States or the State of Arizona.

5. The presence of which on the Project Site causes or threatens to cause a nuisance upon the Project Site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the Project Site.

6. The presence of which on adjacent properties could constitute a trespass by the Construction Manager or the City.

X. “Master Schedule” is defined as set forth in Subsection 2.3(C) below.

Y. “Project Record Document(s)” means the document(s) created pursuant to Section 4.12.

Z. “Punch List” means that list of items provided by City to the Construction Manager at the time of Substantial Completion indicating items to be completed or corrected, including the time for completion or correction by the Construction Manager after Substantial Completion.

AA. “Shop Drawings” means drawings, diagrams, schedules and other data specially prepared for the Work by the Construction Manager or a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

AB. “Site” means the land or premises on which the Project is located.

AC. “Specifications” means the part(s) of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

AD. “Subcontractor” means a person or entity employed or engaged by the Construction Manager or any person or entity directly or indirectly in privity with the Construction Manager to perform any portion of the Work. The term Subcontractor does not include any separate contractor employed by the City.

AE. “Substantial Completion” means construction has been completed in accordance with the Contract Documents to the extent that the City can use or occupy the entire Project, or the designated portion of the Project for the use intended without any outstanding, concurrent construction at the Site, except as may be required to complete or correct Punch List items.

AF. “Underground Storage Tank” shall have the definition assigned to that term by § 9001 of RCRA, 42 U.S.C. § 6991, as amended, and also shall include: (1) any tank of 1,100 gallons or less capacity used for storing motor fuel; (2) any tank used for storing heating oil for consumption on the premises where stored; (3) any tank used for storing waste oil; (4) any septic tank; and (5) any pipes with oil dispensers connected to items listed in clauses 1.3(AA)(1) and 1.3(AA)(2) above.

AG. The “Work” means, collectively, the (1) Preconstruction services set forth in Article 2 below, (2) Review of Construction Documents and design remedies set forth in Section 2.2 below, (3) Pre-construction Phase General Services set forth in Section 2.3 below, (4) Construction Services provided in accordance with Article 4 below, if applicable, (5) Additional Services that may be provided pursuant to an approved Change Directive or Change Order in accordance with Article 8 below and (6) other services that are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

1.4 Cooperative Relationship. The City and the Construction Manager agree to proceed with the Project on the basis of trust, good faith and fair dealing, and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner, but without sacrificing quality. The City and the Construction Manager agree to consider design modifications and alternative materials or equipment if necessary to permit the Project to be constructed by the dates of Substantial Completion and Final Completion, as established by the mutually-agreed-upon Master Schedule attached hereto.

1.5 City Representations.

A. Project Designer Selection. The City has contracted separately with the Project Designers to provide engineering and design for the Project.

B. City’s Project Manager. City has either designated a City staff member to act as City’s Project Manager and/or has contracted separately with a person, firm or corporation to act as City’s Project Manager. The City’s Project Manager has no design responsibilities of any nature. None of the activities of City’s Project Manager supplant or conflict with the design, budget, or any other services and responsibilities furnished by the Construction Manager, the Project Designers or sub-consultants. All instructions by the City relating to this Agreement will be issued or made through the City’s Project Manager. All communications and submittals of Construction Manager to the City shall be issued or made through the City’s Project Manager unless the City or the City’s Project Manager shall otherwise direct. The City’s Project Manager shall not unreasonably withhold approval for the Construction Manager to communicate directly with other City officials or the Project Designers. Throughout the term of this Agreement the City’s Project Manager shall have the authority to establish procedures, consistent with this Agreement, to be followed by the Construction Manager and to call periodic conferences to be attended by the Construction Manager and the Construction Manager’s Subcontractors.

C. Limited Project Management. None of the City’s project management activities are intended to supplant or conflict with the design, budget, or any other services and responsibilities customarily furnished by the Construction Manager or its Subcontractors, except as otherwise specifically modified by this Agreement.

D. No Third Party Relationships. The Construction Manager assumes responsibility to City for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between City and any level of Subcontractor, including but not limited to any third-party beneficiary rights. Nothing contained

in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against the City or the Construction Manager.

E. Requests for Information. The City shall examine requests for information/direction submitted by the Construction Manager and shall render decisions thereto promptly. The City shall furnish required information and approvals and perform its responsibilities and activities in a timely manner to facilitate orderly progress of the Work (1) in cooperation with the Construction Manager, (2) consistent with this Agreement and (3) in accordance with the planning and scheduling requirements and budgetary restraints of the Project as determined by the City.

F. Notice to Construction Manager of Defect. If the City, or other delegated representative, observes or otherwise becomes aware of any fault or defect in the Project or nonconformity with the Contract Documents, the delegated representative shall provide notice to the City and upon receipt the City shall give written notice thereof to the Construction Manager.

G. Approvals. The City shall secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the Project.

H. Communication. The City, its representatives and consultants shall communicate with the Subcontractors only through the Construction Manager unless otherwise directed or permitted by the Construction Manager.

I. Notices. The City shall send to the Construction Manager, and shall require the Project Designers to send to the Construction Manager, copies of all notices and communications sent to or received by the City or the Project Designers relating to the Construction Manager's Services with respect to the Project.

1.6 Construction Manager Representations.

A. Standards. The Construction Manager shall provide the professional management and construction services for the Project in accordance with the terms and conditions of this Agreement. The Construction Manager covenants with the City to furnish its skill and judgment with due care and in accordance with the highest standards of its profession and with Applicable Law in effect on the date of this Agreement or as subsequently amended.

B. Subcontractor Selection Program. In conjunction with its response to the City's RFQ, the Construction Manager submitted to the City a written procedure in conformance with ARIZ. REV. STAT. § 34-601 *et seq.*, as amended, for qualifications-based selection of Subcontractors to be utilized in completion of the Project (the "Subcontractor Selection Program"), which is attached hereto as Exhibit G and incorporated herein by reference. The Construction Manager shall conduct a telephone and correspondence campaign to attempt to create interest among Subcontractors. The Construction Manager shall develop and coordinate procedures to provide answers to Subcontractors' questions. The Construction Manager shall use best efforts to utilize minority business enterprises, woman business enterprises and local contractors or suppliers. The Construction Manager shall ensure that each Subcontractor has secured the required business licenses, permits, insurance and bonds. The Construction Manager shall be solely responsible for ensuring that (1) the Subcontractor Selection Program is in conformance with

Applicable Law and (2) all Subcontractors are selected in accordance with the Subcontractor Selection Program. The Construction Manager shall defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees for, from and against all claims, damages, losses and expenses (including, but not limited to, attorney fees, court costs and the cost of appellate proceedings) relating to, arising out of, or alleged to have resulted from the Construction Manager's failure to appropriately select its Subcontractors. Additionally, as part of the Construction Manager's submittal of any GMP Proposal under this Agreement, the Construction Manager shall utilize the Subcontractor Selection Program to meet its requirements under Section 3.7 below.

C. Key Personnel. The Construction Manager shall provide to the City a list of the proposed key project personnel of the Construction Manager and its Subcontractors to be assigned to the Project. This list shall include such information on the professional background of each of the assigned individuals as may be requested by the City. Such key personnel and consultants shall be satisfactory to the City and shall not be changed except with the consent of the City. The Construction Manager will maintain an adequate number of competent and qualified persons, as determined by the City, to ensure acceptable and timely completion of the Services described in this Agreement. If the City objects, with reasonable cause, to any of the Construction Manager's staff, the Construction Manager will take prompt corrective action acceptable to the City and, if required, remove such personnel from the Project and replace with new personnel with qualifications acceptable to the City. Additionally, the City shall have the right to request that the Construction Manager personnel be removed from the Project if, in the City's sole discretion, such personnel are detrimental to the Project delivery process. Upon receipt of such request, the Construction Manager shall remove such personnel unless the Construction Manager can provide the City with sufficient documentation to prove it is commercially impractical to replace the personnel with similarly qualified personnel. The City's approval of substituted personnel shall not be unreasonably withheld.

D. Site Conditions. The Construction Manager represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work related to the Project, and that it has investigated and satisfied itself as to the general and local conditions and constraints that are applicable to the Work such as (1) conditions bearing on transportation, disposal, handling and storage of materials, (2) the availability of labor, water, power and roads, (3) normal weather conditions, (4) observable physical conditions at the Site, (5) the surface conditions of the ground and subsurface conditions investigated per Article 2.1.A and (6) the character of equipment and facilities needed prior to and during the performance of the Work. To the extent the Construction Manager encounters subsurface or concealed conditions that differ materially from those which could reasonably have been determined from a Site surface and subsurface investigation per Article 2.1.A by the Construction Manager on the date of this Agreement or from those ordinarily found to exist and generally recognized as inherent in the activities of the character provided in the Contract Documents, then the Construction Manager shall give notice to the City promptly before conditions are disturbed and in no event later than seven Days after the first observance of the conditions if a Change Order is contemplated by the Construction Manager due to such conditions. Such materially different conditions, if discovered after a GMP is approved, may entitle the Construction Manager to an equitable adjustment in the applicable GMP or schedule pursuant to the Change Order provisions set forth in Article 8 below.

1.7 City and Subcontractors. The City will require the Construction Manager to contract directly with such Subcontractors as may be necessary for construction or supply of the Project. All such contracts shall be issued consistent with (A) the applicable provisions of this Agreement and (B) Applicable Law, including, but not limited to, the requirements of ARIZ. REV. STAT. § 34-603(N) relating to inclusion of the Project's physical location in all subcontracts.

1.8 Construction Manager to Other Project Participants. In providing the Services described in this Agreement, the Construction Manager shall endeavor to maintain a working relationship with the Project Designers. The Construction Managers cost estimating, constructability analysis and design collaboration are critical to the successful design within the existing budget. The Project Designers are solely responsible for the Project design and shall perform in accordance with their respective agreements with the City. Nothing in this Agreement shall be construed to mean that the Construction Manager is responsible for the design of the Project or that the Construction Manager assumes any of the contractual or customary responsibilities or duties of the Project Designers or any other persons or parties not specified by this Agreement; provided, however, that the Construction Manager shall provide comment and input as described above and as with respect to the Project Designers' designs as set forth in Section 2.2 below.

1.9 Data Confidentiality.

A. Data Defined. As used in this Agreement, "data" means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the Construction Manager in the performance of this Agreement.

B. Confidentiality. The Parties agree, subject to Arizona public records law, that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the Construction Manager in connection with the Construction Manager's performance of this Agreement is confidential and proprietary information belonging to the City.

C. Use of Data. The Construction Manager will not divulge data to any third party without prior, written consent of the City. The Construction Manager will not use the data for any purposes except to perform the Services required under this Agreement. These prohibitions will not apply to any of the following data, provided the Construction Manager has first given the required notice to the City:

1. Data that was known to the Construction Manager prior to its performance under this Agreement, unless such data was acquired in connection with work performed for the City.

2. Data that was acquired by the Construction Manager in its performance under this Agreement, and which was disclosed to the Construction Manager by a third party, who to the best of the Construction Manager's knowledge and belief, had the legal right to make such disclosure and the Construction Manager is not otherwise required to hold such data in confidence.

3. Data that is required to be disclosed by the Construction Manager by virtue of law, regulation, or court order.

D. Disclosure Notice. In the event the Construction Manager is required or requested to disclose data to a third party, or any other information to which the Construction Manager became privy as a result of any other contract with the City, the Construction Manager will first notify the City as set forth in this section of the request or demand for the data. The Construction Manager will timely give the City sufficient facts, such that the City can have a meaningful opportunity to either first give its consent or take such action that the City may deem appropriate to protect such data or other information from disclosure.

E. Return After Completion. The Construction Manager, unless prohibited by law, within 10 Days after completion of services for a third party on real or personal property owned or leased by the City, will promptly deliver, as set forth in this Section, a copy of all data to the City. All data will continue to be subject to the confidentiality requirements of this Agreement.

F. Construction Manager Responsible. The Construction Manager assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this Section are violated by the Construction Manager, its employees, agents or Subcontractors. For the purposes of seeking injunctive relief, it is agreed that a breach of this Section will be deemed to cause irreparable harm that justifies injunctive relief in court.

ARTICLE 2 PRE-CONSTRUCTION SERVICES

2.1 Design Phase Services.

A. Discovery. The CMAR shall review the Phase I Report, the Geotechnical report, the site concept diagram, utilities information and other information available for the selected site. After reviewing the available documentation and information, the CMAR shall perform a site visit to confirm the site feasibility. The CMAR shall perform subsurface investigation of utilities utilizing, including but not limited to, potholing, utility locating detection, video camera, ground penetrating radar, etc. of existing utilities impacted by project. Any findings or site attributes that may impact the construction and occupation of the Permanent Fire Station shall be reported to the City.

B. Collaboration. The CMAR's collaboration with the design team is critical to the success of the design and the resulting construction and as such shall be provided by the CMAR in a constructive and cooperative fashion.

C. Constructability Analysis. The CMAR shall provide design review and evaluation of systems, components, finishes and features as necessary to optimize the design and achieve the quality, safety and environmental goals within the project budget.

D. Estimating Notice; Permitting. The CMAR shall provide costs estimates based on the documents and specifications provided by the Design consultant weekly, or at the time of or as a result of substantive design changes.

E. City Indemnity. To the extent that the Construction Manager or the Subcontractors are not in violation of Subsection 2.1(L) below and to the extent sufficient appropriations are made pursuant to Section 14.18 below, the City shall indemnify, defend and hold harmless the Construction Manager, the Subcontractors, and the directors, officers, agents and employees of each (the “Construction Manager Indemnitees”), for, from and against any Environmental Damages asserted against or sustained by such parties as a result of any of the Construction Manager Indemnities being deemed or determined to be a generator, arranger, owner, operator, treater, storer, transporter or disposer of, or otherwise responsible for, any such Environmental Conditions.

F. Hazardous Materials. The Construction Manager shall not bring Hazardous Materials to the Site, and shall not include Hazardous Materials in any construction materials, unless permitted by Environmental Requirements. The Construction Manager shall comply, and shall cause the Subcontractors to comply, with all Environmental Requirements regarding the generation, handling, storage, treatment and disposal of Hazardous Materials.

G. Construction Manager Indemnity. The Construction Manager shall indemnify, defend and hold harmless the City, its agents, representatives, officers and employees for, from and against any Environmental Damages asserted against or sustained by such parties as a result of any violation by the Construction Manager or the Subcontractors of any Environmental Requirements arising out of Subsection 2.1(L) above.

2.2 Review of Construction Documents; Design Remedies.

A. Program Evaluation. The Construction Manager will provide to the City a written evaluation of the City’s proposed Project and Project budget, with recommendations as to the appropriateness of each, and an analysis as to how each contribute to successfully achieving the City’s goal for the Project.

B. Design Document Review. The Construction Manager shall assist the City in reviewing the Construction Documents for clarity, consistency, constructability and coordination among the various contractors. The Construction Manager’s first review of the Construction Documents shall occur at the 15% stage of the design for each component of the Project as designated by the City and shall be ongoing until 100% plans are final and complete for all phases of the Project. If the Construction Manager recognizes that portions of the Construction Documents are (1) in violation of Applicable Law or (2) in any way inadequate to achieve the intended result of the Project, the Construction Manager shall immediately notify the City in writing, describing the apparent violation or inadequacy.

1. The Construction Manager will periodically evaluate the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design, and other factors that may impact the Cost Model, GMP Proposals and/or the Master Schedule.

2. The Construction Manager will identify those additional surface and subsurface investigations that are required to provide the necessary information for the Construction Manager to construct the Project. After completion of pre-construction services, the Construction Manager may provide additional investigations to improve the adequacy and completeness of the Site condition information and data made available with the Construction Documents. The Construction Manager will be responsible for the time and cost required to obtain such additional investigations, except as otherwise provided by specific Additional Services.

3. The Construction Manager will meet with the Project team as required to review designs during their development. The Construction Manager will thoroughly familiarize itself with the evolving documents through conceptual design, preliminary design, and development of the Construction Documents (detailed design). The Construction Manager will proactively advise the Project team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and, labor and material availability. The Construction Manager will also advise the Project team on proposed Site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the Construction Documents. The Construction Manager will recommend cost effective alternatives.

C. Constructability and Bidability Reviews. The Construction Manager will conduct constructability and bidability reviews of the Construction Documents. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents, especially those related to clarity, consistency, and coordination of Work of Subcontractors and suppliers. The Construction Manager shall provide the City with a written report containing, at a minimum, (i) a summary of the research and analysis conducted, (ii) a detailed description of any constructability issues or challenges and (iii) recommendations for correcting any constructability issues or challenges.

1. Constructability Review. The Construction Manager will evaluate whether (a) the Construction Documents are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the Construction Documents, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions, (f) sequences of Work required by or inferable from the Construction Documents are practicable, and (g) the design has taken into consideration, efficiency issues concerning access and entrance to the Site, laydown and storage of materials, staging of Site facilities, construction parking, and other similar pertinent issues.

2. Bidability Review. The Construction Manager will check cross-references and complementary Project drawings and sections within the Construction Documents and evaluate whether (a) the plans and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well or otherwise,

in similar installations, (c) the design provides as-built data, (d) Specifications include alternatives in the event a requirement cannot be met in the field, (e) and the Project is likely to be subject to Differing Site Conditions considering the data on subsurface conditions, physical conditions of existing surface and subsurface facilities and physical conditions of underground utilities made available by the design or resulting from conditions inherent to work similar to the Work.

3. Reports. The results of the reviews will be provided to the City in written reports clearly identifying all discovered discrepancies and inconsistencies in the Project, plans and Specifications with notations and recommendations made on the plans, Specifications and other Construction Documents. If requested by the City, the Construction Manager will meet with the City's Project Manager and Project Designers to discuss any findings and to review reports.

D. Notification of Variance or Deficiency. Construction Manager is responsible for assisting the Project Designers in ascertaining that the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the Construction Manager recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations it will promptly notify the Project Designers and City in writing, describing the apparent variance or deficiency.

E. Value Analysis. The Construction Manager shall make recommendations to the City and the Project Designers with respect to constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction and separation of the Project into contracts for various categories of the Work. Construction Manager shall evaluate all design options to provide value analysis services and cost savings recommendations to the City. The Construction Manager shall consider options most effective in first costs as well as long term operational costs and life cycle costs when evaluating each design option. The Construction Manager shall submit to the City and Project Designers (1) written cost studies, (2) cost-benefit evaluations of each cost studies, (3) a formal report to the design team, (4) a final written analysis study document and (5) a tracking report for the increases or decreases in Project cost due to value engineering or scope changes. The City will decide which alternatives will be incorporated into the Project. The Project Designers will have full responsibility for the incorporation of the alternatives into the Contract Documents. The Construction Manager will include the cost of the alternatives into the Cost Model and any GMP Proposals.

F. Certification. At the completion of its review of the Construction Documents for each phase of the Project, the Construction Manager shall certify, without assuming engineering responsibility therefore, that the Construction Documents are sufficient and complete to build the respective portion of the Project within (1) the time available before the respective Substantial Completion date and (2) the Project budget. The Construction Manager's assistance in reviewing the Project design, Construction Documents and in making recommendations as provided herein is only for the purpose of providing advice to the City. Nothing in this Subsection shall relieve the Project Designers of their respective responsibility for the Construction Documents.

G. Construction Manager Not Responsible for Design. Notwithstanding the foregoing, the Construction Manager is not responsible for providing, nor does the Construction Manager control, the Project design and contents of the Construction Documents. By assisting with the reviews described herein, the Construction Manager is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of the Project design and Construction Documents.

2.3 Pre-Construction Phase General Services.

A. Personnel; Project Meetings; Project Analysis. The Construction Manager will meet with the City, the Project Designers and all the other Project stakeholders to fully understand the program, the Construction Documents and all other aspects of the Project. The Construction Manager shall attend the regularly scheduled meetings with the City and the Project Designers to advise the City on matters of Site use, improvements, selection of materials, building methods, construction details, building systems, equipment, phasing and sequencing.

1. The Construction Manager will provide pre-construction services, described herein, in a proactive manner and consistent with the intent of the most current Construction Documents. The Construction Manager will promptly notify the City in writing whenever the Construction Manager determines that any Construction Documents are inappropriate for the Project and or cause changes in the scope of Work requiring an adjustment in the Cost Model, Master Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.

2. The Construction Manager, when requested by the City or at its own initiative, if sanctioned by the City, will attend, make presentations and participate as may be appropriate in public agency and/or community meetings, germane to the Project. The Construction Manager will assist the Project Designers in the preparation of drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or appropriate in any such public agency meetings.

B. Construction Management Plan.

1. Preparing Plan. The Construction Manager will prepare a construction management plan (the "Management Plan"), that will detail, but not necessarily be limited to, the Construction Manager's determinations concerning: (a) Project milestone dates and the Master Schedule, including the broad sequencing of the design and construction of the Project; (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities; (c) alternate strategies for fast-tracking and/or phasing the construction; (d) separate bidding documents/packages and strategies for the early procurement of long-lead equipment and/or materials; (e) the number of separate subcontracts to be awarded to Subcontractors and suppliers for the Project construction; (f) permitting strategy; (g) safety and training programs; (h) construction quality control; (i) the Project Cost Model and basis of the model; (j) a matrix summarizing each Project team member's responsibilities and roles related to the Services; and (k) construction security.

2. Maintaining Plan. The Contract Manager shall keep the Management Plan current throughout the pre-construction services phase so that the Management Plan is ready for implementation at the start of the construction phase. The update/revisions will take into account: (a) revisions in Construction Documents; (b) the Construction Manager's examination of the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the City, Project Designers or the Construction Manager; (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and rights-of-way; (d) the fast-tracking (if any) of the construction, or other chosen construction delivery methods; (e) the requisite number of separate bidding documents to be advertised; (f) the status of the procurement of long-lead time equipment and/or materials; and (g) funding issues identified by the City.

C. Schedule Development. In accordance with the Management Plan, the Construction Manager shall prepare a master schedule for the Project (the "Master Schedule"). In preparing the Master Schedule, the Construction Manager shall establish: (i) detailed Critical Path Method ("CPM") schedules for the pre-construction/design phase and the construction phase of the Project with concurrence of the City and the Project Designers, (ii) monitor the Project schedules during the pre-construction phase and ensure that the Master Schedule is updated as necessary and advise the City of any schedule deficiencies. The Construction Manager shall utilize Microsoft Project scheduling software to prepare, provide and maintain the detailed CPM schedules unless the City requests use of a different scheduling product.

1. Each Project team member is responsible for its compliance with the Master Schedule requirements. The Construction Manager will update and maintain the Master Schedule on behalf of and to be used by the Project team based on input from other team members. The Master Schedule will be consistent with the most recent revised/updated Management Plan. The Master Schedule will be presented in graphical and tabular reports as agreed upon by the Project team. The Master Schedule will include all tasks and deliverables required by each member of the Project team to identify long lead items, real property transactions, utility relocation activity, permitting requirements, etc. If Project phasing as described below is required, the Master Schedule will indicate milestone dates for the phases. The Master Schedule's activities will directly correlate with the Schedule of Values (as defined in Subsection 2.3(D)(4) below). The Master Schedule shall include resource loading for manpower and cash flow. The manpower loading shall include the daily manpower required to complete the task as shown on the Master Schedule.

2. The Construction Manager will include and integrate in the Master Schedule the services and activities required of the City's Project Manager, Project Designers and Construction Manager, including all construction phase activities. The Master Schedule will detail activities to the extent required to show: (a) the coordination between conceptual design, schematic design, and development of the Construction Documents (detailed design), (b) separate long-lead procurements, (c) permitting issues, (d) land and right-of-way acquisition, if any, (e) bid packaging strategy and awards to Subcontractors and suppliers, (f) major stages of construction, (g) start-up, and (h) occupancy of the completed Work by the City. The Master Schedule will include, by

example and not limitation, proposed activity sequences and durations for design, procurement, construction and testing activities, milestone dates for actions and decisions by the Project team, preparation and processing of Shop Drawings and samples, delivery of materials or equipment requiring long-lead time procurement, milestone dates for various construction phases, total Float for all activities, relationships between the activities, City's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates for Substantial Completion and when the Work would be ready for final acceptance.

3. The Master Schedule will be updated and maintained by the Construction Manager with assistance from the Project team throughout the pre-construction services phase such that it will not require major changes at the start of the construction phase to incorporate Construction Manager's plan for the performance of the construction phase Work. The Construction Manager will provide updates and/or revisions to the Master Schedule for use by the Project team, whenever required, but no less often than monthly; provided, however, that no such changes shall alter the date of Substantial Completion without the City's prior, written approval. The Construction Manager will include with such submittals a narrative describing its analysis of the progress achieved versus that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.

4. Prior to transmitting Contract Documents to Subcontractors, the Construction Manager shall prepare a pre-proposal construction schedule for each part of the Project and make the schedule available to the Subcontractors. The Construction Manager shall provide a copy of the Master Schedule to the Subcontractors. As part of the notice of award by the Construction Manager to each Subcontractor, the Construction Manager shall inform each Subcontractor of the requirements for the preparation of the Master Schedule. Each Subcontractor shall prepare its own Subcontractor construction schedule in accordance with the requirements of the Contract Documents.

D. Cost Models; Cost Estimates and Schedule of Values. The Construction Manager shall provide the City with detailed cost information for all aspects of the Project. Each cost model will contain a detailed estimate of the direct cost (including materials, labor and equipment) pertaining to each aspect of the Project along with the cost of the contract bonds, the cost of the Project's required insurance, the cost of all applicable taxes, Construction Manager's general conditions, Construction Manager's fee and the amount of Construction Manager's Contingency and shall be consistent with such requirements as determined by the City or the Project Designers. The individual aspect cost models shall be collectively referred to as the "Cost Model."

1. As soon as practical during the conceptual design phase, the Construction Manager will review all available information regarding the design and scope of the Project, and based on the Construction Manager's experience in performing similar work, develop a Cost Model for review and approval by the City. Once approved by the City, the Cost Model will be continually updated and kept current as the design progresses throughout the pre-construction phase until a final GMP for the entire Project is established. The Cost Model will be the Construction Manager's best representation of the

complete functional Project's construction costs. The Construction Manager will communicate to the Project team any assumptions made in preparing the Cost Model. The Cost Model will support the Construction Manager's construction cost estimates and may be broken down initially as dictated by the available information. The Cost Model will also include allowances as agreed to by the Project team, including but not limited: (a) allowances for potential additional quantities and/or additional Work that the City may require, and (b) any costs related to investigations described in Subsection 2.1.

2. After receipt of the Project Designers' most current documents from certain specified design milestones, the Construction Manager will provide a detailed written report to the Project team regarding the impact of and changes to the Cost Model based on the Construction Manager's review of Construction Documents made available at the specified design milestone. The City's Project Manager, Project Designers and the Construction Manager will reconcile any disagreements on the estimate to arrive at an agreed upon estimate for the construction costs based on the scope of the Project through that specified design milestone. The design milestones applicable to this paragraph are: conceptual design completion, schematic design completion, and detailed design completion at 30%, 60%, 90% and 100%. If no consensus is reached, the City will make the final determination. If the Project team requires additional updates of the Cost Model beyond that specified in this Subsection, the Construction Manager will provide the requested information in a timely manner.

3. If, at any point, the estimate submitted to the City exceeds previously-accepted estimates or other key aspects of the Cost Model or the City's Project budget, the Construction Manager will make appropriate recommendations to the City's Project Manager and Project Designers on means/methods, materials, and/or other design elements that it believes will reduce the estimated construction costs, (without altering the City's basic program) such that it is equal to or less than the established Project budget.

4. Near completion of the 60% detailed design review and included with the associated report, the Construction Manager will also submit to the City for review and approval a "Schedule of Values" which complies with the following requirements. The Schedule of Values will highlight significant variances from any previously submitted preliminary Schedule of Values. The Schedule of Values will be directly related to the breakdowns reflected in the Management Plan and the Construction Manager's Cost Model. In addition, the Schedule of Values will: (a) detail unit prices and quantity take-offs, (b) segregate Work covered by any changes to construction phase Work already in progress, (c) reconcile used and remaining Construction Manager's Contingency (as defined in Subsection 3.3(D)(1) below) allowance, (d) detail all other allowances and unit price Work shown and specified in the detailed Construction Documents and (e) material and equipment costs, labor costs, General Conditions costs, hourly labor rates, payment for pre-construction services and total cost. Labor costs in the Schedule of Values will include employee benefits, payroll taxes and other payroll burdens. The total cost for any portion of the Work to be performed by Subcontractors will include Subcontractor overhead and profit.

5. The Construction Manager will submit to the City a final Schedule of Values based on the 100% detailed design set of Construction Documents for the entire Project or any portion thereof, which final Schedule of Values will also be included in any proposed GMP(s).

6. Upon request by the City, the Construction Manager will submit to the City a cash flow projection for the Project based on the current updated/revised Master Schedule and the anticipated level of payments for the Construction Manager during the pre-construction and construction phases. In addition, if requested by the City and based on information provided by the City, the Construction Manager will prepare a cash flow projection for the entire Project based on historical records for similar types of projects to assist the City in the financing process.

E. Traffic Control/Sequencing Plans. The Construction Manager shall provide the City with (1) a detailed traffic control plan, in accordance with Subsection 4.5(R) below and (2) construction sequencing plans. Upon approval by the City, the traffic control plan and the construction sequencing plan shall be attached hereto as Exhibit H, and incorporated herein by reference.

F. Phasing; Long Lead Procurement. The Construction Manager shall review the Construction Documents and make recommendations to the City with respect to the phase issuance of the Construction Documents to facilitate phased construction of the Work, if appropriate. The Construction Manager will take into consideration such factors as natural and practical lines of work severability, sequencing effectiveness, access and availability constraints, total time for completion, construction market conditions, labor and materials availability, and any other factors pertinent to saving time and cost. The Construction Manager may also recommend to the City and to the Project Designers a list and a schedule for purchasing items necessary for the Project which may require substantial lead time for procurement (the "Long Lead Items"), which may be separately procured by the City or included as a separate GMP in this Agreement, at the discretion of the City. The Construction Manager shall make such adjustments to the Master Schedule as necessary to accommodate the procurement process for the Long Lead Items. Upon purchase, the Construction Manager shall safeguard the Long Lead Items until installed as part of the Project.

G. Other Deliverables; Pre-Construction Progress Payments. The Construction Manager shall provide the City with written plans for the pre-qualification of Subcontractors (according to the Subcontractor Selection Program), subcontract bid packages, project safety, quality control, owner training and commissioning. The Construction Manager will prepare and submit monthly pay applications to the City for work performed during the specific payment period for the pre-construction phase of the Project.

ARTICLE 3

GUARANTEED MAXIMUM PRICE PROPOSAL

3.1 GMP Submittal Process. At the stage of the pre-construction phase services as determined by the City, the Construction Manager shall, if requested by the City, submit a GMP

Proposal, which shall be the sum of the estimated Cost of the Work relating to completion of the Scope for the Project and the Construction Fee relating to the Project based upon the most-current version of the Cost Model. Each GMP Proposal shall include, in the Cost of the Work, those taxes that are applicable at the time the GMP is established. Each GMP is the total cost of the applicable portion of the Project including the cost of labor, equipment, supplies, materials, services and allowances to complete the applicable portion of the Project. The cost data is directly correlated to the specific Construction Documents in existence at the time each GMP Proposal is prepared. The assumptions used in the preparation of the GMP Proposal shall be identified by the Construction Manager as part of the GMP Proposal. In submitting this proposal, Construction Manager represents that:

A. Document Review. Construction Manager has examined and carefully studied the Contract Documents for the construction phase, including all addenda.

B. Site Visit. Construction Manager has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, performance and furnishing of the Work.

C. Laws and Regulations. Construction Manager is familiar with and is satisfied as to all Applicable Laws that may affect cost, progress, performance and furnishing of the Work, including, but not limited to, ARIZ. REV. STAT. § 42-5075(P), which applies to the Project contemplated within this Agreement.

D. Reports; Subsurface Conditions. Construction Manager has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site which have been identified in the Contract Documents for the construction phase. Construction Manager acknowledges that such new reports may not be complete for Construction Manager's purposes. Construction Manager acknowledges that City and Project Designers do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents for the construction phase with respect to underground facilities at or contiguous to the Site. Construction Manager has obtained and carefully studied (or assumes responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and underground facilities) at or contiguous to the Site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Construction Manager and safety precautions and programs incident thereto. Construction Manager does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the determination of this GMP Proposal for performance and furnishing of the Work in accordance with the times, price and other terms and conditions of the Contract Documents for the construction phase.

E. Work by Others. Construction Manager is aware of the general nature of Work to be performed by City and others at the Site that relates to Work for which the GMP Proposal is submitted as indicated in the Contract Documents for the construction phase.

F. Conditions and Plans Correlated. Construction Manager has correlated the information known to Construction Manager, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents for the construction phase and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents for the construction phase.

G. Inconsistencies Resolved. Construction Manager has given Project Designers written notice of all conflicts, errors, ambiguities or discrepancies that Construction Manager has discovered in the Contract Documents for the construction phase and the written resolution thereof by Project Designers is acceptable to Construction Manager, and the Contract Documents for the construction phase are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which the GMP Proposal is submitted.

H. No Improper Actions. The proposal is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Construction Manager has not directly or indirectly induced or solicited any person, firm or corporation to refrain from proposing; and Construction Manager has not sought collusion to obtain for itself any advantage over any other contractor or over the City.

3.2 Acknowledged Construction Documents. The Construction Manager, in preparing any GMP Proposal, will obtain from the Project Designers three sets of signed, sealed, and dated Construction Documents (including all addenda). The Construction Manager will prepare its GMP Proposal in accordance with the City's requirements and the most-current completed Construction Documents at that time. The Construction Manager will mark the face of each document of each set upon which its GMP Proposal is based. The Construction Manager will send one set of those documents to the City's Project Manager, keep one set and return the third set to the Project Designers.

3.3 Direct Construction Costs. Direct Construction Costs means the sum of the amounts that the Construction Manager actually and necessarily incurs constructing the Work in strict compliance with the Contract Documents. Direct Construction Costs include only the cost categories set forth in this Article and does not include the Pre-Construction Phase Fees or the Construction Phase Fees unless specifically noted.

A. General Conditions Costs. Construction Manager is entitled to receive reimbursement for the actual cost of the allowable General Conditions items incurred between issuance of the applicable Notice to Proceed and 30 days after the date scheduled for Substantial Completion. Construction Manager is entitled to reimbursement for General Conditions Costs incurred before receipt of the Notice to Proceed, or after Substantial Completion, only with prior written approval of the City. "Allowable General Conditions Cost Line Items" are identified below and in Exhibit I, attached hereto and incorporated herein by reference. These items shall be included in the General Conditions Cost amount shown as a line item in the applicable GMP Proposal and as detailed on the Schedule of Values. Items not specifically included below or in Exhibit I will not be allowed as a General Condition Costs.

1. Personnel costs, which include wages paid for Construction Manager's hourly employees and salaries of Construction Manager's salaried personnel when (a) stationed at the field office located at the Site and working on matters directly related to the Project, in whatever capacity employed; (b) engaged on the road expediting the production or transportation of material and equipment; and (c) performing functions directly related to the Work from the principal or branch office. The project manager's salary may be included in the General Conditions Costs only when the project manager is directly managing the Project. Personnel costs also include the cost of all employee benefits and taxes including but not limited to, unemployment compensation, Social Security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Construction Manager's standard personnel policy. All personnel costs are subject to audit to determine the actual cost of the wages, salaries and allowable employer contributions incurred by the Construction Manager for services performed for the Project.

2. Reasonable transportation, travel and hotel expenses of the Construction Manager's personnel incurred in connection with the Work.

3. Costs of long-distance telephone calls, telegrams, postage, package delivery and courier service, hardwired telephone service, and reasonable expenses of Construction Manager's jobsite office if incurred at the Site and directly and solely in support of the Work.

4. Costs of materials, supplies, temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Site by Construction Manager, if such items are fully consumed in the construction of the Work and are included in the list of Allowable General Conditions Cost Line Items set forth in Exhibit I. Cost for used items shall be based on fair market value and may include transportation, installation, and minor maintenance costs, and removal costs. If an item is not fully consumed in the construction of the Work, its recoverable cost under this Contract shall be based on the original cost of the item less its fair market salvage value.

5. Rental charges for temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Site by Construction Manager, provided they are included in the list of Allowable General Conditions Cost Line Items set forth in Exhibit I and the City has approved the rentals and the rental rates in advance and in writing. Rental rates may include transportation, installation, and minor maintenance costs, and removal costs. For tools, machinery or construction equipment rented directly from the Construction Manager, the rental rate, including freight and delivery costs and all operating expenses except labor, shall be approved in advance by the City and shall be in accordance with either the "Rental Rate Blue Book for Construction Mobilization Costs" published by Primedia, latest edition, or the most-recent rates provided by Equipmentwatch.com, but no higher than the prevailing competitive rates for rental of similar equipment in the Project vicinity.

6. The aggregate rental cost of any item charged to the City shall not exceed 75% of the purchase price and maintenance cost of the item. If the anticipated

aggregate rental cost for an item of equipment exceeds 75% of the purchase and maintenance price, Construction Manager shall purchase the equipment and turn it over to the City upon final completion of the Work or, at the City's option, credit the City with the fair market resale value of the item.

7. Permit and inspection fees paid by Construction Manager where the City is exempt will not be reimbursed by the City.

8. Cost of premiums for normal and customary Construction Manager's Subcontractor default insurance at the rate of 1.25% of the cost of subcontracts and Subcontractor's liability, workman's compensation and builders risk insurance as required pursuant to Article 10 below, which shall be identified as separate line items within the applicable GMP. If the Construction Manager intends to utilize Subcontractor Liability Wrap-up Coverage (Z-25), it will be reimbursed at the rate of 1.5% of the Subcontract amount, and credited from the Subcontractor bids. Commercial General Liability Insurance shall be reimbursed at the rate of 1.1% of the applicable GMP amount; Builders Risk Insurance shall be reimbursed at the rate of 0.47% of the applicable GMP amount; Performance and Payment Bonds shall be reimbursed at 0.76% of the applicable GMP amount. All amounts shall be identified as separate line items within the applicable GMP.

9. Cost of bond premiums to the extent directly attributable to the Project.

10. Governmental transaction privilege sales and use taxes directly attributable to the General Conditions Items that are not subject to exemption, in the form and at the rates legally enacted on the date of the first GMP, whether such taxes are effective or scheduled to go into effect. Such taxes paid on materials or services that were entitled to tax exemption will not be reimbursed by the City as Direct Construction Costs.

B. Cost of the Work. Construction Manager is entitled to receive payment for the actual cost of the allowable Cost of the Work items incurred after receipt of the City's written Notice to Proceed with the Construction Phase Work through Final Completion of the Project. Construction Manager is not entitled to reimbursement for Cost of the Work costs incurred before receipt of the City's written Notice to Proceed. Cost of the Work includes the following:

1. Costs of materials, supplies and equipment purchased directly by the Construction Manager and incorporated into or consumed in the performance of the Work, including transportation charges, to the extent such costs of materials, supplies and equipment are not included in the General Conditions Costs.

2. Costs of removal and disposal in accordance with all applicable laws and regulations of Site debris, non-hazardous substances and waste materials, if not otherwise included in General Conditions.

3. Payments made by Construction Manager to Subcontractors and their vendors or suppliers for the subcontract work in accordance with the Construction

Documents and the requirements of the subcontracts with the Subcontractors, vendors or suppliers.

4. Payments earned by Construction Manager for self-performed subcontract work, other than General Conditions work, in accordance with the Construction Documents and the terms of this Contract and approved by the City.

5. Fees and expenses for design services procured by the Construction Manager related to necessary modifications to the Construction Documents.

6. Intellectual property royalties and licenses for items specifically required by the Construction Documents which are, or will be, incorporated into the Work.

7. All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office at the Site.

8. All water, power and fuel costs necessary for the Work.

9. Costs incurred due to an emergency affecting the safety of persons and/or property, excluding such costs related to the negligence or willful acts of the Construction Manager or any person or entity for whom the Construction Manager is responsible.

10. All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Contract Price as set forth in Article 7 below, which are reasonably inferable from the Contract Documents as necessary to produce the intended results, subject to the maximum price limitation established by the respective GMP.

11. Costs related to the Construction Manager's safety program related to the Project.

C. Exclusions from General Conditions Costs and Cost of the Work. The General Conditions Costs and Cost of the Work shall not include the following:

1. Any professional fees paid by the City to the Project Designers or other consultants retained directly by the City.

2. Any costs paid directly by the City to Subcontractors or suppliers retained directly by the City and outside the scope of all GMPs.

3. Any additional service costs as defined herein.

4. Any other costs not within the control of the Construction Manager or identified as being not within any GMP.

5. Any fees paid to the Construction Manager except those fees that may be paid to Construction Manager for Pre-construction Phase Services above.

D. Construction Manager's Contingency.

1. The GMP Proposal may include an amount (the "Construction Manager's Contingency") to be used to cover cost growth during the Project for costs that result from Project circumstances. Construction Manager's Contingency as defined herein shall govern any GMP Assumptions and Clarifications in the Direct Construction Costs of the Project identified through the refinement, development and completion of the Construction Documents or procurement of the Work. The Construction Manager's Contingency shall be negotiated between the Parties and it shall reflect the risk inherent in the state of completion of the Construction Documents at the time the GMP Proposal is submitted.

2. Any re-allocation of funds from the Construction Manager's Contingency to cover increases in the Direct Construction Costs must be approved by the City in advance and in writing, which approval shall not to be unreasonably withheld. In written requests to use the Construction Manager's Contingency, the Construction Manager shall provide detailed documentation of the scope of work affected and the basis for any increases in costs resulting in the need to use Construction Manager's Contingency funds.

3. As the Construction Documents are finalized and the buyout of the Work progresses the Construction Manager's Contingency amount shall be reduced by mutual agreement of the City and Construction Manager. The buyout shall occur within the first 20% of the construction duration for each Notice to Proceed issued for construction. Construction Manager shall submit open book buyout detail with each Pay Application for approval of application. Should savings occur after the buyout stage, such savings, and related reductions to the Construction Manager's Contingency amount, will be retained by the City.

E. Calculation Methods; Audits.

1. The City and the Construction Manager understand and agree that any GMP agreed to under this Project will be administered as a measured quantity/unit price guaranteed not-to-exceed contract. This not-to-exceed amount is defined by the individual work items and their associated competitively bid and/or negotiated unit prices plus negotiated on-site general conditions, fee structures, markups and Construction Manager's Contingency. Final contract price/payout will be based on field measured final completed quantities, approved unit prices and approved Change Directives and Change Orders. Furthermore, the term "actual cost" is defined as the final negotiated unit prices (costs) mutually agreed to by the City and Construction Manager. The City and the Construction Manager understand and agree that individually priced, "self-performed" items may include the cost associated with the risk of delivering the work.

2. The City and the Construction Manager understand and agree that the City, its authorized representatives, and/or the appropriate federal or state agencies may audit the Construction Manager's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate any GMP, and including, but not limited to, self-performed items, qualifications-only selected Subcontractor items, Change Orders, use of allowance funds and use of Construction Manager's Contingency funds. The City and its authorized representatives shall have access, during normal working hours, to all necessary Construction Manager and Subcontractor facilities, and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with the provisions of this Subsection. The City shall give Construction Manager or Subcontractor reasonable advance notice of intended audits.

F. Discounts. All discounts for prompt payment shall accrue to the City to the extent such payments are made directly by the City. To the extent payments are made with funds of the Construction Manager, all cash discounts shall accrue to the Construction Manager. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

3.4 Construction Fee. The "Construction Fee" is the maximum amount payable to the Construction Manager for any cost or profit expectation incurred in the performance of the Work that is not specifically identified as being eligible for reimbursement by the City elsewhere in this Agreement. The Construction Fee includes, but is not limited to, the following items.

A. Profit. All profit, profit expectations and costs associated with profit sharing plans such as personnel bonuses, incentives, and rewards; company stock options; or any other like expenses of the Construction Manager, which shall not exceed 7.5% of the total applicable GMP amount, excluding Construction Manager's Contingency.

B. Salaries. Salaries of Construction Manager's officers, project manager(s), estimators, schedulers and all other employees not stationed at the Project site and performing services directly related to the Project.

C. Overhead. Any and all overhead, labor or general expenses of any kind unless specifically allowed under General Conditions. These costs include, but are not limited to: costs for the purchase, lease, rental, allowance or maintenance of vehicles, radios/communication equipment, jobsite computers, copiers and other business equipment, specialized telephone systems and cellular/digital phones; home office operations and support staff (i.e. accounting, purchasing); trade or professional association dues; costs for hiring and/or relocation of any of the Construction Manager's personnel; and travel, per diem and subsistence expense of Construction Manager, its officers or employees except as specifically allowed under General Conditions, which shall not exceed 5.0% of the total applicable GMP amount, excluding Construction Manager's Contingency.

D. Financial Costs. Any financial costs incurred by the Construction Manager including the cost of capital or interest on capital, regardless of whether it is related to the Project, and costs associated with construction warranty reserves.

E. Professional Fees. Any legal, accounting, professional or other similar costs incurred by the Construction Manager, including costs incurred in connection with the prosecution or defense any dispute, mediation, arbitration, litigation or other such proceeding related to or arising from the Project.

F. Taxes. Any Federal and/or State income and franchise taxes paid by Construction Manager. Any levies, assessments, fines, penalties, sanctions or other impositions made by any governmental body against Construction Manager.

G. Damages and Related Costs. Any cost arising out of a breach of this Agreement or the fault, failure or negligence of Construction Manager, its Subcontractors, or any person or entity for whom they may be liable. These costs include, without limitation: costs to remedy defective, rejected, or nonconforming work, materials or equipment; costs due to failure to coordinate the Work or meet CPM schedule milestones; costs arising from Construction Manager's contractual indemnification obligations; liquidated or actual damages imposed by the City for failure to complete the Work within the Contract Time; costs due to the bankruptcy or insolvency of any Subcontractor; and damage or losses to persons or property.

H. Insurance Deductibles. The cost of any and all insurance deductibles payable by the Construction Manager and costs due to the failure of Construction Manager or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.

I. Costs in Excess of GMP. Any and all costs that would cause the Guaranteed Maximum Price to be exceeded.

J. Other Unidentified Costs. Any and all costs not specifically identified as an element of the Direct Construction Costs.

3.5 Competitive Bidding and Sub-Bids.

A. Subcontractor Selection. The Construction Manager will develop Subcontractor interest, submit the names of a minimum of three qualified Subcontractors for each trade in the Project for approval by the City and solicit bids for the various Work categories. If there are not three qualified Subcontractors available for a specific trade, the Construction Manager will request approval by the City's Project Manager to submit less than three names. No change in the City approved Subcontractors will be allowed without prior, written approval by the City.

B. City Objections. If, prior to receipt of sub-bids or prior to award of Subcontractors or suppliers, the City objects to any nominated Subcontractor or supplier or to any self-performed Work for good reason, the Construction Manager will nominate a substitute Subcontractor or supplier, preferably if such option is still available, from those who submitted sub-bids for the Work affected. Once such substitute Subcontractors and suppliers are consented to by the City, the Construction Manager's proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.

C. Documents; Pre-bid Conference. The Construction Manager will distribute Construction Documents, and when appropriate, conduct a pre-bid conference with prospective Subcontractors.

D. Subcontractor Bid Submittal. The Construction Manager, at the required time, will close the bidding and collect all sub-bids received within the prescribed deadline for receipt of sub-bids. Promptly, after the closing of sub-bids, the Construction Manager will (in the presence of the City's Project Manager and Project Designers) open and read all properly and timely submitted sub-bids. The Construction Manager will submit a completed Sub-Bid tabulation form to the City's Project Manager within a reasonable time after the closing of the sub-bid opening proceedings.

E. Subcontractor Bid Evaluation. The Construction Manager, upon opening of sub-bids will evaluate them including, but not limited to, the evaluation of lower tier Subcontractors, Subcontractor qualification submittals and prospective suppliers selected by each apparent low sub-bidder. The Construction Manager will resolve any sub-bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.

F. Notice of Intent for Subcontracts. Within 15 Days after sub-bid opening, the Construction Manager will deliver to the City's Project Manager a written notice of intent to award subcontracts, itemizing the Subcontractors and suppliers selected by the Construction Manager. The notice of intent to award subcontracts will detail (1) for each Subcontract the amount of the sub-bid and the corresponding Subcontractor or supplier, (2) the sum of sub-bids received for all intended Subcontract, (3) trade work that the Construction Manager intends to self-perform, if any.

G. Pre-award Conference. Promptly after receipt of the notice of intent to award subcontracts, the City will conduct a pre-award conference with the Construction Manager and other Project team members. At the pre-award conference, the Construction Manager will (1) review the nominated slate of Subcontractors and suppliers and discuss any concerns with or objections that the City has to any nominated Subcontractor or supplier; (2) discuss City concerns relating to any proposed self-performed Work; (3) review the Construction Manager's proposed Contract Price for the Work during the construction phase; (4) resolve possible time frames for the commencement date of the Contract Time for the construction phase Work; (5) schedule the pre-construction conference; and (6) discuss other matters as necessary.

3.6 Submittal Requirements. The Construction Manager shall include with each GMP Proposal a written statement of its basis, which shall include:

A. Detailed Scope. A detailed scope of services related to the respective GMP Proposal, including a breakdown of the GMP as it relates to the applicable part of the overall Scope.

B. Documents. A list of the Construction Documents, including all addenda, that were used in preparation of the respective GMP Proposal.

C. Allowances. A list of allowances and a statement of their basis.

D. Assumptions. A list of the assumptions and clarifications made by the Construction Manager in the preparation of the respective GMP Proposal to supplement the information contained in the Construction Documents.

E. Substantial Completion. The Substantial Completion date, if applicable, upon which the respective GMP Proposal is based and the Master Schedule for the Work upon which the respective Substantial Completion date is based, including a clear statement of the number of rain delay days included within the Master Schedule.

F. Alternate Prices. A schedule of applicable alternate prices.

G. Unit Prices. A schedule of applicable unit prices.

H. Additional Services. A statement of Additional Services included, if any.

I. Acceptance Period. The time limit for acceptance of the GMP Proposal.

3.7 GMP Proposal Review. The Construction Manager shall meet with the City and the Project Designers to review each GMP Proposal. In the event that the City discovers any inconsistencies or inaccuracies in the information presented, the City shall give written notice to the Construction Manager, who shall make appropriate adjustments to the GMP, its basis or both.

A. Independent Estimate. Upon receipt of any GMP Proposal from the Construction Manager, the City may submit the same documents that were used by Construction Manager in developing its GMP to an independent third party or to the Project Designers for review and verification. The third party or Project Designers will develop an independent estimate of the Cost of the Work and review the Master Schedule for the associated scope of the GMP Proposals.

B. GMP Exceeding Independent Estimate. If the Construction Manager's GMP Proposal is greater than the independent third party or Project Designers' estimate, the City may require the Construction Manager to reconfirm its GMP Proposal. The Construction Manager will accept the independent third party's or Project Designer's estimate for the Cost of the Work as part of its GMP or present a written request, within seven Days of receiving the estimates, to the City identifying, explaining and substantiating the differences. The Construction Manager may be requested to, or at its own discretion may, submit a revised GMP Proposal for consideration by the City. At that time the City may do one of the following.

1. Accept the Construction Manager's original or revised GMP Proposal, if within the City's budget, without comment.

2. Accept the Construction Manager's original or revised GMP Proposal that exceeds the City's budget, and indicate in writing to the Construction Manager that the Project budget has been increased to fund the differences.

3. Reject the Construction Manager's original or revised GMP Proposal because it exceeds either or both the City's budget and the independent third party's or Project Designers' estimate, in which event, the City may terminate this Agreement.

C. Design Changes During Negotiation. If, during the review and negotiation of GMP Proposals, design changes are required, the City will authorize and cause the Project Designers to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the Construction Manager. The Construction Manager will promptly notify the Project Designers and City's Project Manager if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.

3.8 No Prior Costs. Prior to the City's acceptance of a GMP Proposal, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work related to such GMP Proposal, except as provided in this Agreement or as the City may specifically authorize in writing.

3.9 Acceptance; Effect. Upon acceptance by the City of each GMP Proposal, the GMP contained therein and its basis shall be set forth in the applicable GMP Amendment. Once established, the GMP and the corresponding Substantial Completion date shall be subject to modification only as provided in Articles 6 and 8 below. The City's approval of the GMP Amendment will include the amount of the City's Contingency. The amount of the City's Contingency will be set solely by the City and will be in addition to the Project costs included in the Construction Manager's GMP Proposals. Use and management of the City's Contingency is at the City's sole direction.

3.10 GMP Effective Date. Each GMP Proposal shall not become a part of this Agreement until the City accepts such GMP Proposal in writing by executing the applicable GMP Amendment, on or before the date specified in each such GMP Proposal for such acceptance.

3.11 Failure to Agree Upon GMP. If the City and the Construction Manager do not agree to any provisions of the GMP Proposal, including the designated Default Neutral Arbitrator, all references in this Agreement to the GMP shall not be applicable, and the Parties shall proceed on the basis of reimbursement as provided in Article 7 below.

ARTICLE 4 CONSTRUCTION SERVICES

4.1 Control of Construction. After the date any Amendment to this Agreement is executed by the City and the Construction Manager approving a GMP Proposal, the Construction Manager shall become responsible for the means, methods, sequences and procedures used in the construction of the portion of the Project related to such GMP Proposal and shall proceed with the Construction Manager's Construction Services related to the GMP Proposal under this Agreement.

4.2 Completeness and Accuracy of Construction Manager Work. The Construction Manager will be responsible for the completeness and accuracy of its reviews, reports, supporting

data, and other pre-construction deliverables prepared or compiled pursuant to its obligations under this Agreement and will at its sole own expense correct its work or deliverables. The fact that the City has accepted or approved the Construction Manager's work or deliverables will in no way relieve the Construction Manager of any of its responsibilities under the Agreement, nor does this requirement to correct the work or deliverable constitute a waiver of any claims or damages otherwise available by law or contract to the City.

4.3 Alteration in Character of Work. In the event an alteration or modification in the character of work or deliverable materially increases or decreases the scope of service, cost of performance, or Master Schedule as determined by the City, the Work or deliverable will nonetheless be performed as directed by the City. However, before any altered or modified work begins, a Change Directive or Change Order must be approved and executed by the City and the Construction Manager to address such change. Such Change Directive or Change Order will not be effective until approved by the City. Additions to, modifications to, or deletions from the Project provided herein may be made, and the compensation to be paid to the Construction Manager may be adjusted accordingly, only by mutual agreement of the Parties. No claim for extra work done or materials furnished by the Construction Manager will be allowed by the City except as provided herein, nor will the Construction Manager do any work or furnish any material(s) not covered by this Agreement unless such work or material is first authorized in writing by the City. Work or material(s) furnished by the Construction Manager without such prior written authorization will be the Construction Manager's sole jeopardy, cost, and expense, and the Construction Manager hereby agrees that, without prior written authorization, no claim for compensation for such work or materials furnished will be made.

4.4 Construction Phase General Services. The Construction Manager shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all Work for the construction of the Project, and to completely and totally construct the same and install the material therein for the City. All Work will be performed in a good and workmanlike and substantial manner according to the standards set forth in Subsection 1.6(A) above. The Work shall be to the satisfaction of the City and strictly pursuant to and in conformity with the Project's Contract Documents, as modified and agreed to by the City. Construction Manager's Representative shall be reasonably available to City and shall have the necessary expertise and experience required to supervise the Work. Construction Manager's Representative shall communicate regularly with City but not less than once each week and shall be vested with the authority to act on behalf of Construction Manager. Construction Manager's Representative may be replaced only with the written consent of City.

A. Government Approvals and Permits.

1. The Construction Manager shall be primarily responsible to obtain all necessary permits, approvals and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. The Contractor is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices. The City will be the applicant for the following permits; however, the Construction Manager shall be responsible for any work associated with obtaining the permits, as directed by the City:

- a. Aquifer Protection Permit (APP) No. P-100573
- b. MAG 208 Amendment
- c. Maricopa County Environmental Services Department
 - i. Approval to Construct
 - ii. Approval of Construction
 - iii. Air Quality Permit 980869, for plant operations and generators
- d. Well Drilling Permit
- e. Flood Plain Use Permit
- f. Arizona Pollution Discharge Elimination Systems (AZPDES), AZ0023281
- g. Architectural Approval; Site Plan/Conditional Use Permit Approval; Building Permit
- h. Stormwater Multi-Sector General Permit (AZMSG2010-002) relating to the WRF's industrial operations; provided that any construction permit necessary in conjunction with this permit shall be obtained by the Construction Manager.

2. Copies of the required permits and notices must be provided to the City's Representative prior to starting the permitted activity. In the case of Fire Department permits, a copy of the application for permit shall also be provided to the City's Representative. This provision does not constitute an assumption by the City of an obligation of any kind for violation of said permit or notice requirements.

3. City shall be responsible for permit(s) and fees for building and demolition permits. City will also pay review fees for grading and drainage, water, sewer, and landscaping. City shall also pay for utility design fees for permanent services.

4. Construction Manager shall be responsible for all other permits and review fees not specifically listed in Subsection 4.4(A)(1) above.

5. Construction Manager is responsible for all water bills on the Project meters until Substantial Completion of the Project. Arrangements for construction water are the Construction Manager's responsibility.

B. Pre-construction Activities.

1. Prior to the commencement of any Work, the City's Representative will schedule a pre-construction conference. The purpose of this conference is to establish a working relationship between the Construction Manager, utility firms, various City agencies and other entities as may be appropriate or beneficial. The agenda will include critical elements of the Work and Master Schedule, submittal schedule, cost breakdown of major lump sum items, payment requests and processing, coordination with the involved utility firms, the level of Project Record Documents required and emergency telephone numbers for all representatives involved in the course of construction. Minimum attendance at the preconstruction conference shall be the Construction Manager's Representative, the job superintendent, the Construction Manager's safety officer and the individuals deemed necessary by the City.

2. The Notice to Proceed date will be set by the City. At or after the pre-construction conference and upon delivery of the required bonds and insurance in a City-approved format or at such other time as the City may elect, a Notice to Proceed letter will be issued confirming the construction start date, the Contract Time and the Substantial Completion date. Failure by the Construction Manager to provide the properly executed bond and insurance forms in a timely manner may delay the construction start date; however, it will not alter the proposed Substantial Completion date nor be a basis for any time extension request or other claims.

3. The Construction Manager shall update the Schedule of Values based on the categories used in the buy out of the Work but not greater than the approved GMP; the update shall identify the Construction Manager's Contingency. The Schedule of Values will subdivide the Work into all items comprising the Work.

C. Project Management.

1. The Construction Manager shall refine the Management Plan for the Project. In refining the Management Plan, the Construction Manager shall consider the City's schedule, cost and design requirements for the Project. The Construction Manager shall then develop various alternatives for the sequencing and management of the Project and shall make recommendations to the City. The Management Plan shall also include a description of the various proposal packages recommended for the Project. The Management Plan shall be presented to the City for acceptance.

2. The Construction Manager shall conduct periodic Project meetings attended by the City's Representative, the Project Designers and other necessary parties. Such meetings shall serve as a forum for the exchange of information concerning the Project and the view of construction progress. The Construction Manager shall prepare and distribute minutes of these meetings to the City's Representative, the Project Designers and others in attendance.

3. The Construction Manager shall coordinate transmittal of documents to regulatory agencies for review and shall advise the City of potential problems in completing such reviews.

4. The Construction Manager shall assist the City in public relations activities and shall prepare information for and attend public meetings regarding the Project.

D. Reports.

1. The Construction Manager shall prepare and distribute design phase change reports monthly to the City that shall list all City-approved Change Directives and Change Orders as of the date of the report and shall state the effect of the Change Directives and Change Orders on the Project budget and the Master Schedule.

2. The Construction Manager shall prepare and distribute schedule maintenance reports monthly to the City comparing the actual and scheduled dates for Subcontractors' contract awards and completion of each such Subcontractor's portion of the Project.

3. The Construction Manager shall prepare and distribute the Project cost reports monthly to the City specifying actual award prices and construction costs for each of the individually awarded components of the Project as compared to the Project budget.

4. The Construction Manager shall prepare and distribute cash flow reports monthly to the City specifying actual cash flow for each of the individually awarded components of the Project as compared to the projected cash flow.

5. The requirements for filing reports set forth in this Subsection 4.4(D) shall not be deemed to meet the requirements for requests for extensions of time or requests for Change Directives and Change Orders as set forth in Section 6 and Section 8 below.

4.5 Work Management.

A. Construction Manager Resources. Unless otherwise provided in the Contract Documents to be the responsibility of City or a separate contractor, Construction Manager shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Construction Manager to complete the Work according to the Contract Documents. The Construction Manager shall provide and maintain a management team on the Site to provide contract administration. The Construction Manager shall establish and implement coordination and communication procedures among the Construction Manager, the City, the Project Designers and Subcontractors.

B. Means, Methods and Techniques. Construction Manager shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Construction Manager shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

C. Supervisor Presence. Construction Manager's Representative or the Construction Manager's Superintendent shall be present at the Site at all times that construction activities are taking place.

1. All elements of the Work shall be under the direct supervision of a foreman or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the Work.

2. In the event of noncompliance with this Subsection, the City may require the Construction Manager to stop or suspend the Work in whole or in part.

D. Manufacturer Requirements. Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is the Construction Manager's responsibility to ensure the Subcontractor employed for such work is approved by the manufacturer.

E. Measurements. Before ordering materials or doing work, the Construction Manager and each Subcontractor shall verify measurements at the Site and shall be responsible for the accuracy of such measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the plans; differences shall be submitted to the City for resolution before proceeding with the Work.

F. Field Measurements and Conditions. The Construction Manager shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Construction Manager with the Construction Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the City immediately.

G. Grades, Lines, Levels and Bench Marks. The Construction Manager shall establish and maintain all building and construction grades, lines, levels, and bench marks, and shall be responsible for accuracy and protection of same. This Work shall be performed or supervised by a civil engineer or surveyor licensed as such in the State of Arizona.

H. Proper Employee Conduct. Any person employed by the Construction Manager or any Subcontractor who, in the opinion of the City, does not perform his work in a proper, skillful and safe manner or is intemperate or disorderly or is otherwise found to be inappropriate due to the setting of the Site, shall, at the written request of the City, be removed from the Site by Construction Manager or Subcontractor employing such person, and the person shall not be employed again in any portion of Work without the written approval of the City. The Construction Manager or Subcontractor shall hold the City harmless from damages or claims which may occur in the enforcement of this Subsection.

I. Coordination of Activities. Construction Manager shall coordinate the activities of all Subcontractors. If City performs other work on the Project or at the Site with separate contractors under City's control, Construction Manager agrees to reasonably cooperate

and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

J. Change Processing. The Construction Manager shall establish and implement procedures for expediting and processing requests for information, Shop Drawings, material and equipment sample submittals, contract schedule adjustments, Change Directives, Change Orders, substitutes, payment requests and the maintenance of logs. The Construction Manager shall maintain daily job reports. The Construction Manager shall be the party to whom requests for information, submittals, Subcontractor schedule adjustments, substitutions, Change Directive requests, Change Order requests and payment requests shall be submitted.

K. Subcontractor Meetings. Periodically, the Construction Manager shall conduct meetings at the Site with each Subcontractor. The Construction Manager shall conduct coordination meetings with all Subcontractors. The Construction Manager shall record, transcribe and distribute minutes to all attendees, the City and the Project Designers.

L. Coordination of Inspections and Testing. Technical inspection and testing provided by the Project Designers or others who are not Subcontractors shall be coordinated with the Construction Manager. The Construction Manager shall be provided a copy of all inspection and testing reports on or before the next business day after the inspection or test. The Construction Manager is not responsible for providing, nor does the Construction Manager control, the actual performance of such technical inspection and testing. The Construction Manager is performing a coordination function and is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of such inspection and testing.

M. Self-Performed Work. The Construction Manager shall perform, with its own forces, construction work that amounts to not less than 45% of the total Contract Price for construction of the Project. For the purposes of this paragraph, the total Contract Price for construction of the Project (1) includes the total of the GMP amounts as agreed upon by the Construction Manager and the City and (2) does not include the cost of preconstruction services, design services or any other related services or the costs to procure any right-of-way or other costs of condemnation.

N. No Subcontractor Reliance. Construction Manager shall ensure that each Subcontractor (1) has inspected the Site and has thoroughly reviewed this Agreement as the same may be revised by the City, and is not relying on any opinions or representations of the City, (2) agrees to perform and complete the Work in strict accordance with this Agreement and under the Construction Manager's direction, (3) agrees that any exclusions of any Work must be approved in writing by the Construction Manager prior to acceptance of any agreement between Construction Manager and a Subcontractor or same shall not be excluded hereunder, (4) is responsible for all safety precautions and programs and shall provide all protection and necessary supervision to implement said precautions and programs as set forth in Section 4.13 below, (5) shall provide all competent supervision necessary to execute all Work and any work incidental thereto in a thorough, first-class, workmanlike manner and (6) has acknowledged that it is Subcontractor's responsibility that all of the Work and any work incidental thereto conforms to, and is performed in accordance with, Applicable Law.

O. Subcontractor Change Request. The Construction Manager shall review the contents of a request for changes to the subcontract time or price submitted by a Subcontractor, assemble information concerning the request and endeavor to determine the cause of the requests. In instances where the Construction Manager's analysis reveals that the request is valid, the Construction Manager shall prepare a detailed report to the City for approval in accordance with Articles 6 and 8 below, as applicable. The Construction Manager shall also prepare and timely deliver a detailed report to the City of other such requests and requests found to be invalid and timely inform the Subcontractor of any such determination. The Construction Manager shall prepare the necessary change documents for signature by the Subcontractor.

P. Quality Control. The Construction Manager shall establish and implement a program to monitor the quality of construction by itself and by Subcontractors. The purpose of the program shall be to protect the City against defects and deficiency in the Work of the Construction Manager or the Subcontractors. The Construction Manager shall reject the Work and transmit to the Subcontractor a notice of nonconforming work when the Construction Manager believes the Work does not conform to the requirements of the Contract Documents. Except for minor variations as stated herein, the Construction Manager is not authorized as part of this service to change, enlarge, relax, alter, or release any requirement of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents.

Q. Subcontractor Document Request. The Construction Manager shall coordinate and expedite submittals of information from the Subcontractors for record drawings and specification preparations and shall coordinate and expedite the transmittal of Project Record Documents to the City.

R. Traffic Control. All traffic affected by the Work under this Agreement shall be regulated in accordance with the most recent revision of the United States Department of Transportation *Manual on Uniform Traffic Control Devices* (the "MUTCD") and the City of Phoenix Traffic Barricade Manual (the "Barricade Manual") (the MUTCD and the Barricade Manual are collectively referred to herein as the "Traffic Control Requirements"), which are incorporated herein by reference; provided, however, that this Agreement shall govern in a conflict with the terms of the MUTCD or the Barricade Manual. At the time of the pre-construction conference, each Subcontractor shall designate an employee who is well qualified and experienced in construction traffic control and safety to be responsible for implementing, monitoring and altering traffic control measures, as necessary. At the same time the Construction Manager will designate a representative who will be responsible to see that all traffic control and any alterations are implemented and monitored to the extent that traffic is carried through the Work area in an effective manner and that motorists, pedestrians, bicyclists and workers are protected from hazard and accidents. The Construction Manager shall ensure that Subcontractors adhere to the following:

1. All traffic control devices and advance warning signs (such as REDUCE SPEED, LOOSE GRAVEL, 25 MPH SPEED LIMIT and DO NOT PASS) required for the Work under this Agreement shall be placed in accordance with the Traffic Control Requirements.

2. The Subcontractor provide, erect and maintain all necessary flashing arrow boards, barricades, suitable and sufficient warning lights, signals and signs and shall

take all necessary precautions for the protection of the Work and safety of the public. The Subcontractor shall provide, erect and maintain acceptable and adequate detour signs at all closures and along detour routes.

3. All barricades and obstructions shall be illuminated at night, and all safety lights shall be kept burning from sunset until sunrise. All barricades and signs used by the Subcontractor shall conform to the standard design generally accepted for such purposes and payment for all such services and materials shall be considered as included in the other pay items of the Agreement.

4. The Subcontractor shall ensure that all existing traffic signs are erect, clean and in full view of the intended traffic at all times. Street name signs at major street intersections shall be maintained erect at all times. If these signs should interfere with construction, the Subcontractor shall notify the City at least 48 hours in advance for City personnel to temporarily relocate said signs. The City will direct the Subcontractor as to the correct positions to re-set all traffic and street name signs to permanent locations when notified by the Subcontractor that construction is complete.

5. When construction activities or traffic hazards at the Site require the use of flagmen, it shall be the Subcontractor's responsibility to provide trained flagmen to direct traffic safely.

6. Manual traffic control shall be in conformity with the MUTCD, except that the designated liaison officer shall be contacted at the Avondale Police Department.

7. When traffic hazards at the Site warrant the use of certified police personnel to direct traffic, arrangements must be made with the liaison officer at the Avondale Police Department.

8. The assembly and turnarounds of the Subcontractor's equipment shall be accomplished using adjacent local streets when possible.

9. Equipment used and/or directed by the Subcontractor shall travel with traffic at all times. Supply trucks shall travel with traffic except when being spotted. Subcontractor shall provide a flagman or off-duty, uniformed law enforcement officer to assist with spotting.

10. During construction, it may be necessary to alter traffic control. Any such alterations shall be in accordance with the Traffic Control Requirements.

11. No street within the Project area may be closed to through traffic or to local emergency traffic without prior written approval of the City. The City may give written approval at its sole discretion and only if sufficient time exists to allow for notification of the public at least two Days in advance of such closing. Partial closure of streets within the Project shall be done in strict conformity with the City's written directions.

12. Caution should be used when excavating near intersections with traffic signal underground cable. Subcontractor shall notify the City 24 hours in advance of any work at such intersections. The Subcontractor shall install and maintain temporary overhead traffic signal cable as specified by the City when underground conduit is to be severed by excavations at intersections. The Subcontractor shall provide an off-duty uniformed City of Avondale police officer to direct traffic while the traffic signal is turned off and the wiring is transferred. All damaged or modified traffic signal overhead and underground items shall be repaired and restored to the City's satisfaction. Magnetic detector loops shall, under no circumstances, be spliced.

13. The Subcontractor shall accommodate local access to adjacent properties in accordance with the specification set forth below.

14. Where crossings of existing pavement occurs, no open trenches shall be permitted overnight, but plating may be permitted if conditions allow, as determined by the City or its authorized representative in his sole discretion. If plates cannot be used, crossings shall either be back-filled or the Subcontractor shall provide a detour.

4.6 Control of the Work Site.

A. Debris Removal. Throughout all phases of construction, including suspension of Work, Construction Manager shall keep the Site reasonably free from debris, trash and construction wastes to permit Construction Manager to perform its Construction Services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or an agreed upon portion of the Work, Construction Manager shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit City to occupy the Project or an agreed upon portion of the Project for its intended use.

B. Dust Control. Construction Manager shall take whatever steps, procedures or means necessary to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City and in accordance with the requirements of Applicable law and such other Specifications as the Parties may agree to in writing.

C. Accessibility. Construction Manager shall maintain "ADA" and "ANSI" accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. Construction Manager shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.

D. Material and Equipment Storage. Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Site by the Construction Manager. When equipment or materials are no longer required for the Work, each shall be removed promptly from the Site.

E. Protection of Site. Protection of the Work, the Site, and construction materials and equipment stored at the Site from weather, theft, damage and all other adverse conditions is solely the responsibility of the Construction Manager.

4.7 Time Management.

A. Master Schedule Updates. The Construction Manager shall, not less than monthly, adjust and update the Master Schedule and distribute copies to the City and the Project Designers. All adjustments to the Master Schedule must be (1) made for the benefit of the Project and (2) acceptable to the City; provided, however, that such adjustments or updates shall not extend the time for performance of the Work beyond the Substantial Completion date unless such extension is requested by the Construction Manager and approved by the City in accordance with Section 6 below.

B. Subcontractor Schedule Verification. The Construction Manager shall review each Subcontractor's construction schedule and shall verify that the schedule is prepared in accordance with the requirements of the Contract Documents and that it establishes completion dates that comply with the requirements of the Master Schedule.

C. Subcontractor Progress Monitoring. The Construction Manager shall (1) review the progress of construction of each Subcontractor on a monthly basis, (2) evaluate the percentage completion of each construction activity as indicated in the Subcontractor's construction schedule and (3) review such percentages with the Subcontractor. This evaluation shall serve as data for input to the periodic construction schedule report that the Construction Manager shall prepare and distribute to the appropriate Subcontractor, the City's Representatives and the Project Designers. The report shall serve as the basis for (i) determining the actual progress compared to scheduled progress and (ii) determining the progress payment due to the Subcontractor. The Construction Manager shall determine and implement alternative courses of action that may be necessary to achieve contract compliance by the Subcontractor.

D. Change Evaluation. The Construction Manager shall, prior to the issuance of a Change Directive or Change Order, determine the effect on the Master Schedule of time extensions requested by a Subcontractor. The Construction Manager may require a Subcontractor to prepare and submit a recovery schedule in the event the Subcontractor fails to meet the Master Schedule.

E. Minor Schedule Revisions. The Master Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve the Construction Manager of its obligations to complete the Work within the Contract Time, as such dates may be adjusted in accordance with the Contract Documents.

F. Payment Requests. An updated Master Schedule shall be submitted monthly to the City as part of the Payment Request.

1. The Construction Manager shall provide City with a monthly status report for the Master Schedule detailing the progress of the Work, including (a) if the Work

is proceeding according to schedule, (b) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (c) other items that require resolution so as not to jeopardize ability to complete the Work as presented in the applicable GMP and within the Contract Time.

2. With each schedule submittal the Construction Manager shall include a transmittal letter including the following:

- a. Description of problem tasks (referenced to field instructions and requests for information), as appropriate.
- b. Current and anticipated delays including:
 - i. Cause of the delay.
 - ii. Corrective action and schedule adjustments to correct the delay.
 - iii. Known or potential impact of the delay on other activities, milestones, and the Substantial Completion date.
- c. Changes in construction sequence.
- d. Pending items and status thereof including but not limited to:
 - i. Time Extension requests.
 - ii. Other items.
- e. Substantial Completion date status:
 - i. If ahead of schedule, the number of Days ahead.
 - ii. If behind schedule, the number of Days behind.
- f. Other project or scheduling concerns.

G. City Review. City's review of and response to the Master Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not: (1) relieve the Construction Manager from (a) compliance with the requirements of the Contract Documents or (b) the time extension request process set forth in Section 6 below; or (2) be construed as relieving the Construction Manager of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

H. CPM Diagram. The updated Master Schedule shall include a CPM diagram schedule that shows the sequence of activities, the interdependence of each activity and indicate the Critical Path.

1. The CPM diagram schedule shall be in Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format for the Project as a whole.

2. The CPM diagram schedule shall indicate all relationships between activities.

3. The activities making up the Master Schedule shall be in sufficient detail to ensure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.

4. The CPM diagram schedule shall be based upon activities that coincide with the Schedule of Values.

5. The CPM diagram schedule shall show all submittals associated with each Work activity and the review time for each submittal.

6. The schedule shall show milestones, including milestones for City-furnished information, and shall include activities for City-furnished equipment and furniture when those activities are interrelated with the Construction Manager activities.

7. The schedule shall include a Critical Path activity that reflects anticipated rain and weather delay during the performance of the Agreement. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the Site. Weather data shall be based on information provided by the National Weather Services or other source approved in writing by the City.

I. Occupancy Consideration. The Master Schedule shall consider the City's occupancy requirements showing portions of the Project having occupancy priority.

J. Float Time. Float time shall be as prescribed below:

1. The total Float within the overall Master Schedule, is not for the exclusive use of either the City or the Construction Manager, but is jointly owned by both and is a resource available to and shared by both Parties as needed to meet contract milestones and the Project completion dates.

2. The Construction Manager shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing. Float time within the schedule is jointly owned; no time extensions will be considered or granted nor delay

damages considered or paid until a delay occurs that extends the Work beyond the Substantial Completion date.

3. City-caused delays on the Project may be offset by City-caused time savings (i.e., Critical Path submittals returned in less time than anticipated by the Master Schedule; approval of substitution requests and credit changes which result in savings of time to the Construction Manager). In such an event, the Construction Manager shall not be entitled to have considered or receive a time extension or delay damages until all City-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

K. Occupancy/Use Plan. The Construction Manager shall prepare an occupancy plan for the Project. This plan shall be provided to the City not later than 60 Days prior to the scheduled Substantial Completion date.

4.8 Cost Management.

A. Subcontract Schedule of Values. The Construction Manager shall, in participation with the Subcontractors, determine a Schedule of Values for each of the construction subcontracts. The Schedule of Values shall be the basis for the allocation of the Contract Price to the activities shown on the Subcontractors' construction schedule. The City shall approve the subcontract Schedule of Values before acceptance for progress billings.

B. Contract Price Allocation Each Subcontractor's construction schedule shall have the applicable portions of the Contract Price allocated among the Subcontractor's scheduled activities so that each of the Subcontractor's activities shall be allocated a price and the sum of the prices of the activities shall equal to or less than the total Contract Price. The Construction Manager shall review the Contract Price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents. Progress payments to a Subcontractor and Construction Manager shall be based on the Subcontractor's percentage of completion of the scheduled activities as set out in each Subcontractor's construction schedule report and the Subcontractor's compliance in accordance with the Contract Documents.

C. Additional Information. In instances where a lump sum or unit price is not determined prior to performing Work described in a request for changes to the Contract Price, the Construction Manager shall request from the Subcontractor records for the cost of payroll, materials and equipment and the amount of payments to its Subcontractors, if any, incurred by the Subcontractor in performing the Work.

D. Trade-off Studies. The Construction Manager shall provide trade-off studies for various minor construction components. The results of the trade-off studies shall be in report form and distributed to the City's Representative and the Project Designers.

E. Payment Applications. In consultation with the Project Designers, the Construction Manager shall review the payment applications submitted by each Subcontractor and determine whether the amount requested reflects the progress of the Subcontractor's work. The Construction Manager shall make appropriate adjustments to each payment application and shall

prepare and forward a progress payment report to the City. The progress payment report shall state the total Contract Price, payments to date, current payment requested, open book buyout detail, retainage and actual amounts owed for the current period. Included in this report shall be a certificate for payment that shall be signed by the Construction Manager and delivered to the City. The Construction Manager shall keep the Project and the Site free and clear of all liens and claims from its Subcontractors, suppliers or materialmen.

4.9 Shop Drawings, Product Data and Samples.

A. Purpose. Shop Drawings, product data, samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Construction Manager proposes to conform to the information given and the design concept expressed in the Contract Documents.

B. Review. The Construction Manager shall review, approve, verify, and submit to the Project Designers five copies of each Shop Drawing, product data, sample, and similar submittal required by the Contract Documents as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals made by the Construction Manager that are not required by the Contract Documents may be returned without action.

C. Project Designer Approval. The Construction Manager shall perform no portion of the Work requiring submittal and review of Shop Drawings, product data, samples, or similar submittals until the respective submittal has been approved by the Project Designers. Such Work shall be in accordance with approved submittals.

D. Construction Manager Verification. By approving, verifying and submitting Shop Drawings, product data, samples and similar submittals, the Construction Manager represents that the Construction Manager has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

E. No Deviation Approval; Errors. The Construction Manager shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Project Designer's approval of Shop Drawings, product data, samples or similar submittals unless the Construction Manager has specifically informed the Project Designer in writing of such deviation at the time of submittal and the Project Designer has given written approval to the specific deviation. The Construction Manager shall not be relieved of responsibility for errors or omissions in Shop Drawings, product data, samples, or similar submittals by the Project Designer's approval thereof.

F. Highlight Changes. The Construction Manager shall direct specific attention, in writing or on resubmitted Shop Drawings, product data, samples, or similar submittals, to revisions other than those requested by the Project Designers on previous submittals.

G. Informational Submittals. Informational submittals upon which the Project Designer is not expected to take responsive action may be so identified in the Contract Documents.

H. Other Certifications. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Project Designer shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

4.10 Quality Control, Testing and Inspection.

A. New Materials. All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.

B. Inspection and Approval. All construction materials to be used in the Work or incorporated into the Work, equipment, plant, tools, appliances or methods to be used in the Work may be subject to the inspection and approval or rejection by the City or the Project Designers. Any material rejected by the City or the Project Designers shall be removed immediately and replaced in an acceptable manner.

C. Test Methods. The procedures and methods used to sample and test material will be determined by the Project Designers. Unless otherwise specified, samples and tests shall be made in accordance with MAG 700 Series and the standard methods of AASHTO or ASTM as referenced in the MAG 700 Series.

D. Testing Facility. The Construction Manager will select a pre-qualified independent testing laboratory and will pay for initial City acceptance testing.

1. When the first and subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance and retesting will be paid for by the Construction Manager. Construction Manager's Contingency cannot be utilized for the cost of re-testing.

2. When the first and subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the same testing agency.

E. Cooperation. The Construction Manager will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the Work and shall provide the laboratory's employees or agents access to the Work at all times.

F. At-source Approval. At the option of the City, materials may be approved at the source of supply before delivery.

G. Code Compliance. Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority shall be the responsibility of and shall be paid by the Construction Manager, unless otherwise provided in the Contract Documents.

H. Responsibility. Construction Manager's quality control testing and inspections shall be the sole responsibility of the Construction Manager and shall be paid solely by the Construction Manager.

4.11 Trade Names and Substitutions.

A. Substitutions. Substitute or alternate items to Contract Document references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number may be permitted, unless indicated that no substitutions are permitted, and if permitted are subject to the following:

1. The substitution shall be submitted by Construction Manager in writing to the Project Designers.

2. The Construction Manager shall certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.

3. The submittal shall outline any required changes in the Contract Documents to adapt the design to the proposed substitution.

4. The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include any request for adjustment in the Contract Time created by the substitution.

B. Samples; Additional Information. The Construction Manager, if requested by the Project Designers, shall submit samples or any additional information that may be necessary to evaluate the acceptability of the substitution.

C. Project Designer Determination. The Project Designers will make the final decision and will notify the Construction Manager in writing as to whether the substitution has been accepted or rejected.

D. Presumed Rejection. If the Project Designers do not respond in a timely manner, the Construction Manager shall continue to perform the Work in accordance with the Contract Documents and the substitution will be considered rejected.

4.12 Project Record Documents.

A. Redline Prints. During the construction period, the Construction Manager shall maintain at the Site a set of redline, blueline or blackline prints of the Construction Documents and Shop Drawings for Project Record Document purposes. The Construction Manager will certify that these documents are up to date when it submits its monthly pay application. The Construction Manager shall also:

1. Mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents and give particular attention to information regarding concealed elements that would be difficult to

identify or measure and record later. Items required to be marked include, but are not limited to:

- Dimensional changes to the drawings.
- Revisions to details shown on drawings.
- Depths of foundations below first floor.
- Locations and depths of underground utilities.
- Revisions to routing of piping and conduits.
- Revisions to electrical circuitry.
- Actual equipment locations.
- Duct size and routing.
- Locations of concealed internal utilities.
- Changes made by Change Order or Change Directive.
- Details not on original Contract Documents.
- Similar deviations, variations and modifications.

2. Mark completely and accurately Project Record Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on the Construction Documents.

3. Mark Project Record Document sets with red erasable colored pencil.

4. Note Change Order or Change Directive numbers, as required to identify the source of the change to the Construction Documents.

5. As a condition of Substantial Completion, submit Project Record Documents and Shop Drawings to the City Representative for review and comment.

B. Corrections. Upon receipt of the reviewed Project Record Documents from the City, the Construction Manager shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to the City within 14 Days:

1. A complete set of electronic Project Record Documents prepared in AutoCAD format compatible with City CADD technology. The Project Designers will provide files of the original Construction Documents to the Construction Manager for the

use of preparing these final Project Record Documents or the Construction Manager may contract with the Project Designers to revise and update the electronic drawing files. Each drawing shall be clearly marked with “As-Built Document.”

2. The original copy of the Project Record Documents (including all redline mark-ups).

4.13 Project Safety. Construction Manager recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.

A. Responsibility. Construction Manager assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.

B. Safety Representative. Construction Manager shall, prior to commencing construction, designate a safety representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Construction Manager’s safety representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety.

C. Daily Inspections. The safety representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Construction Manager’s personnel, Subcontractors and others as applicable. Construction Manager shall provide the City copies of daily inspection reports and weekly safety meeting minutes, with the monthly payment applications.

D. Legal Requirements. Construction Manager and Subcontractors shall comply with Applicable Law relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate Applicable Law. If Construction Manager believes a City-specific requirement violates Applicable Law, the Construction Manager shall notify the City of such violation within 24 hours of discovery.

E. Reporting. Construction Manager will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to City’s Representative and, to the extent mandated by Applicable Law, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

F. Subcontractor Responsibility. Construction Manager’s responsibility for safety under this Section is not intended in any way to relieve Subcontractors of their own contractual and legal obligations and responsibility for (1) complying with Applicable Law, including those related to health and safety matters, and (2) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

4.14 Substantial Completion. When the Construction Manager considers that the Work has reached Substantial Completion, it shall submit a request to the City's Project Manager for a certificate of Substantial Completion. Substantial Completion must occur not later than the date set forth in the applicable GMP Amendment, subject to modification by changes in the Contract Time according to Article 6 below. A prerequisite for Substantial Completion, over and above the extent of construction completion required, is receipt by the City of acceptable documentation that Construction Manager has successfully tested and demonstrated all systems for their intended uses. In consultation with the Project Designers, the City shall determine when the Project and the Construction Manager's Work is substantially complete. The Substantial Completion date shall be confirmed by a Certificate of Substantial Completion signed by the City and Construction Manager. The Certificate of Substantial Completion shall state the respective responsibilities of the City and the Construction Manager for security, maintenance and damage to the work and insurance. The Certificate of Substantial Completion shall also include the Punch List as created by the Construction Manager and modified by the Project Designers in consultation with the City and establish the time for completion and correction of all Punch List items. The Construction Manager shall proceed promptly to complete and correct Punch List items. Failure to include an item on the Punch List does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. If the City and the Construction Manager cannot agree as to the appropriate Substantial Completion date, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in Article 13 below. Notwithstanding such disagreement, the Construction Manager shall diligently proceed with completion of the Punch List items. Warranties required by the Contract Documents shall commence on the Substantial Completion date or designated portion thereof unless otherwise provided in the Contract Documents.

4.15 Final Completion. In consultation with the Project Designers, the City shall determine when the Project and the Construction Manager's Work has reached Final Completion. Final Completion must occur not later than 60 Days after the Substantial Completion date, subject to modification by changes in the Contract Time in Article 6 below. Final Completion shall be achieved only upon the City's written acceptance of (A) the construction, (B) all testing, (C) demonstration by the Construction Manager that the Work functions as required by the Contract Documents and meets all Contract Document requirements, (D) resolution of all outstanding system deficiencies and Punch List items, if any, (E) delivery of all as-built documentation, drawings, completed Project Record Documents (with revisions made after Substantial Completion), annotated submittals and design document deliverables, (F) submittal, acceptance, and delivery of the 100% complete O&M manuals, (G) delivery of warranties, inspection certificates, bonds and all other required documents, (H) all pre-requisites for final payment and (I) submittal of Construction Manager's request for final payment and acceptance enclosing all required documentation. Upon Final Completion the City shall issue a Certificate of Final Completion to the Construction Manager on behalf of the City. Following receipt of payment from the City, the Construction Manager shall make all payments due to the Subcontractors.

4.16 Correction of Defective Work.

A. During the Work. During the Work, Construction Manager shall take meaningful steps to commence correction of such nonconforming Work as notified by the City.

This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work.

B. During Warranty Period. Construction Manager agrees to correct any Work that is found to not be in conformance with the Contract Documents within the warranty period described in Subsection 5.6(A) below, or within such longer period to the extent required by the Contract Documents or as may be allowed by law. A progress payment, or partial or entire use or occupancy of the Project by the City, shall not constitute acceptance of Work not in accordance with the Contract Documents.

C. Commencement by Construction Manager. Construction Manager shall take meaningful steps to commence correction of nonconforming Work subject to Subsections 4.16(A) and (B) above within seven Days of receipt of written notice from the City. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Construction Manager fails to commence the necessary steps within such seven-Day period, the City, in addition to any other remedies provided under the Contract Documents or allowed by law, may provide Construction Manager with written notice that the City will commence correction of such nonconforming Work with its own forces. If the City corrects such nonconforming Work with its own forces, the GMP will be adjusted to deduct the cost to the City. If the City performs corrective Work after final payment, Construction Manager shall be responsible for all reasonable costs incurred by the City in performing such correction.

D. Emergencies. In the event nonconforming Work creates an emergency requiring an immediate response, the Construction Manager will respond and initiate corrections within 24 hours.

E. No Effect on Limitations Period. The two-year period referenced in Subsection 5.6(A) below applies only to Construction Manager's obligation to correct nonconforming Work as provided in this Section and is not intended to constitute a period of limitations for any other rights or remedies the City may have regarding Construction Manager's obligations under the Contract Documents or as may be allowed by law.

4.17 Additional Services. Any Additional Services must be authorized in advance by the City in writing; the Construction Manager shall furnish or obtain from others such authorized services. The Construction Manager shall be paid for these Additional Services by the City as herein provided to the extent they exceed reasonably inferable obligations of the Construction Manager under this Agreement. Potential Additional Services include:

A. Planning. Providing additional planning surveys or alternative site evaluations other than as required or reasonably inferred in this Article 4.

B. Future/Outside of Project Design. Providing design services relative to future facilities, systems and equipment that are not intended to be constructed as part of the Project, other than general planning and master planning for future work as indicated by the City's Project program. Providing design and engineering of any work outside the Site if said work is not expressly identified and included in the Scope.

C. Major Document Revisions/Additional Documents. Making major revisions in the construction documents, or other documents when such revisions are inconsistent with written approvals or instructions previously given by the City or are due to causes beyond the control and without the fault and negligence or partial fault or negligence of the Construction Manager or its consultants or agents. Preparing additional documents for alternate, separate, or sequential bids or providing services in connection with bidding, negotiation, or construction prior to the completion of the construction phase, other than as required or reasonably inferred in this Article 4. Making revisions to Construction Documents after the City has approved them when revisions are due to causes beyond the control and not the fault or partial fault of the Construction Manager.

D. Advanced Soils Analysis. Providing additional soils sampling, classification, and analysis other than as required or reasonably inferred in the foregoing sections of Article 4. Construction Manager is entitled to rely upon the soils analysis and recommendations as provided by a geotechnical consultant, however, Construction Manager is responsible for interpretation of such data for the purpose of establishing the means and methods of construction and such interpretation shall not be considered Additional Services during the design phase or the construction phase.

E. Expert Testimony. Preparing to serve or serving as an expert witness for the City in connection with any public hearing, arbitration proceeding, or legal proceeding wherein the Construction Manager or Subcontractor of the Construction Manager is not a party or allegedly at fault; provided, however, preparing to serve or serving as a fact witness for the City or rendering testimony necessary to secure governmental approval for the Project shall not constitute an additional service.

F. Survey. Providing surveying services such as platting, mapping, subdivision agreements, or recording subdivision plats other than as required or reasonably inferred in this Article 4.

G. Additional Travel. Providing Additional Services and costs necessitated by out-of-town travel required of and approved in writing by the City other than visits to the Project and other than for travel required to accomplish the Work.

H. Unrelated Services. Providing any other services not otherwise included in this Agreement, not reasonably inferred by this Agreement or not customarily furnished in accordance with generally accepted contractual practices consistent with the term of this Agreement.

I. Replacement Work. Providing consultation concerning replacement of Work damaged by fire or other causes and not due in whole or in part to Construction Manager's action or inaction during construction, or furnishing services required in connection with the replacement of such work.

J. Special Studies. Providing additional special surveys, environmental studies, and submissions required for approvals of governmental authorities or others having jurisdiction over the Project, other than as required or reasonably inferred in this Article 4.

K. O&M Analysis. Providing analyses of operating and maintenance costs other than as required for value analysis in Subsection 2.2(E) above, unless provided for in the Scope.

L. Assisting with City-Performed Work. Designing, and providing other services supporting the procurement of materials to be obtained, or work, if any, to be performed by the City, that are not a part of the Work.

ARTICLE 5 POST-CONSTRUCTION PHASE

5.1 Final Accounting and Close-out. At the conclusion of the Project, the Construction Manager shall prepare final Project accounting and close-out reports.

5.2 Occupancy Plans. The Construction Manager shall prepare and distribute reports as necessary associated with the occupancy plan.

5.3 Certificates. The Construction Manager shall secure required certificates of inspection, testing or approval and deliver them to the City.

5.4 Manufacturer Manuals and Warranties. The Construction Manager shall require the Subcontractors to provide manufacturers' operations and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project. Prior to Final Completion of the Project, the Construction Manager shall compile such manuals, warranties and guarantees, bind same in an organized manner and deliver the bound materials to the City; the City shall not be required to issue the final payment to the Construction Manager pursuant to Section 9.6 below until after the compiled manuals, warranties and guarantees have been delivered to the City. At the discretion of the City, electronic records may be substituted for the bound materials required in this section.

5.5 Inspection and Testing. With the assistance of the City's maintenance personnel, the Construction Manager shall direct the inspection of utilities and operations of systems and equipment for readiness, and assist in their initial start-up and testing.

5.6 Warranties.

A. Warranty for the Work. Construction Manager or its assignee shall give to the City a two-year warranty against deficiencies in material and workmanship for all Work on the Project or other such warranty as required by the City Engineer, which warranty shall begin on the Substantial Completion date. Any material deficiencies in material or workmanship identified by City staff during the two-year warranty period shall be brought to the attention of the Construction Manager or its assignee that provided the warranty, which both shall promptly remedy or cause to be remedied such deficiencies to the reasonable satisfaction of the City Engineer. Continuing

material deficiencies in a particular portion of the Work shall be sufficient grounds for the City to require (1) an extension of the warranty for an additional two-year period and (2) the proper repair of or the removal and reinstallation of, that portion of the Work that is subject to such continuing deficiencies. Regardless of whether the applicable warranty period has expired, the Construction Manager agrees to repair any damage to the Work caused by construction activities on the Site. Nothing contained herein shall prevent the City or the Construction Manager from seeking recourse against any other third party for damage to the Work caused by such third party.

B. New Materials. The Construction Manager warrants that all materials and equipment furnished under construction phase(s) of this Agreement are (1) new unless otherwise specified and approved by the City, (2) of good quality, (3) in conformance with the Contract Documents and (4) free from defective workmanship, defective materials and Hazardous Materials. Warranties shall commence on the date of Substantial Completion of the Work or of a designated portion if the warranted items are fully installed, operational and available for use and if not, at such time after the date of Substantial Completion as they are fully installed, operational and available for use.

C. Actions by Others. Construction Manager's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than Construction Manager or anyone for whose acts Construction Manager may be responsible and/or liable.

D. No Limitation on Other Warranties. Nothing in this warranty is intended to limit any manufacturer's warranty that provides City with greater warranty rights than set forth in this Section or the Contract Documents.

E. No Limitation on Legal Remedies. Nothing in this warranty is intended to limit any other remedy at law that may be available to the City.

ARTICLE 6 CONTRACT TIME

6.1 Progress and Completion. The City and the Construction Manager agree the time limits stated in the Contract Documents, as the same may be amended and updated by the Parties, are of the essence of this Agreement.

6.2 Commencement of the Work. The Work, except for the (A) environmental investigation services set forth in Section 2.1 above, (B) review of Construction Documents and design remedies services set forth in Section 2.2 above, and (C) Pre-Construction Phase General Services set forth in Section 2.3 above, shall commence on the Notice to Proceed date of the applicable GMP Amendment, and shall proceed in general accordance with the Schedule for the Work set forth therein. Each GMP Amendment shall establish a separate Notice to Proceed date, Substantial Completion date and portion of the Contract Time applicable to that GMP. The Substantial Completion dates may be sequential or may run consecutively.

6.3 Prosecution of the Work. The Construction Manager shall prosecute the Work so that the portion of the Work completed at any point in time shall be not less than as required by

the Master Schedule. If the delay is an Inexcusable Delay, as defined below, the Construction Manager shall prepare a recovery schedule for the City's review and approval, showing how the Construction Manager will compensate for the delays and achieve Substantial Completion by the date shown on the Master Schedule. If the Construction Manager is unable to demonstrate how it will overcome Inexcusable Delays, the City may order the Construction Manager to employ such extraordinary measures as are necessary to bring the Work into conformity with the date of Substantial Completion set forth therein, the costs of which shall be included as part of the Cost of the Work. If the delay is an Excusable Delay, as defined below, the City shall either (A) authorize an equitable extension in the Master Schedule to account for such delay, and equitably adjust the GMP on account of such delay or (B) request that the Construction Manager prepare a recovery schedule showing how (if possible) the Construction Manager can achieve Substantial Completion by the date shown on the Master Schedule, and equitably adjust the applicable GMP in accordance with the Change Order provisions of this Agreement related to any extraordinary activities required of the Construction Manager on account of such recovery schedule.

6.4 Critical Path Activities. To the extent the Construction Manager completes activities on the Critical Path earlier than scheduled, the savings in time on account thereof shall belong solely to the Construction Manager.

6.5 Construction Activities. At such time as the Construction Documents, or any portion thereof, are complete, the Construction Manager shall submit a revised Master Schedule to the City for incorporation into the Contract Documents, which will expand the Master Schedule approved to date, but which will not, in and of itself, change the Substantial Completion date for the Project. This revised Master Schedule shall be based upon a CPM and shall show in complete detail starting and completion time of detail activities, the sequence of the Work and all significant activities.

6.6 Extensions of Time.

A. Limited to Excusable Delay. An extension in the scheduled Substantial Completion date will only be granted in the event of Excusable Delays affecting Work activities on the Critical Path. The Construction Manager shall be entitled to general condition costs and extra costs related to the Excusable Delay for idle labor, equipment inefficiency and lost productivity of the performance of the Work; however, the Construction Manager must submit evidence reasonably satisfactory to the City substantiating such costs. Such adjustment to the contract sum and Substantial Completion date shall be issued in an amendment to this Agreement.

B. Excusable Delays. To the extent any of the following events results in an actual delay in the Work affecting activities on the Critical Path, such shall constitute an "Excusable Delay" (to the extent not set forth below, a delay will be considered an "Inexcusable Delay"):

1. Delays resulting from Force Majeure events. 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, floods, 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. The Force Majeure shall be deemed to commence when the Party declaring Force Majeure notifies the other Party, in accordance with Subsection 14.6, of the existence of the Force Majeure and shall be deemed to continue as long as the results or effects of the Force Majeure prevent the Party from resuming performance in accordance with this Agreement. Force Majeure shall not include: (a) late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies or similar occurrences, or (b) late performance by a Subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Subsection 6.6(B). 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. The delayed Party shall cause such delay to cease as soon as practicable and shall notify the other Party in writing. The time of Substantial Completion or Final Completion shall be extended by written amendment for a period of time equal to the time that the results or effects of such delay prevent the delayed Party from performing in accordance with this Agreement.

2. Differing, unusual or concealed Site conditions that could not reasonably have been anticipated by the Construction Manager in preparing the Master Schedule, including, without limitation, archaeological finds and unusual soil conditions (including rock or other geological conditions), underground foundations, abandoned or not properly identified utility lines and water conditions.

3. Delays resulting from the existence or discovery of Hazardous Materials on the Site not brought to the Site by or on behalf of the Construction Manager.

4. Delays resulting from changes in Applicable Law occurring after the date of execution of this Agreement.

5. Delays occurring due to the acts or omissions of the City and those within the control of the City.

6. Delays occurring due to the acts or omissions of a utility, so long as Construction Manager has coordinated with the utility causing the delay and the delay occurs despite reasonable steps taken by Construction Manager to avoid the delay.

7. Delays resulting from weather conditions that make it unreasonable to perform the Work in accordance with the Master Schedule.

C. Process for Requesting Extension of Time. In order to obtain an extension of time due to an Excusable Delay, the Construction Manager must comply with the following requirements: The Construction Manager shall notify the City of the Excusable Delay as soon as practicable, but in no event more than seven Days after the Construction Manager becomes aware of the occurrence of the Excusable Delay. Such notice shall describe the Excusable Delay and shall state the approximate number of Days the Construction Manager expects to be delayed. After

the cessation of the Excusable Delay, the Construction Manager shall notify the City of the number of Days the Construction Manager believes that its activities were in fact delayed by the Excusable Delay. In the event that the delay arises as a result of a Change Order request by the City, the request for an extension of time contained in the resulting Change Order proposal or amendment to this Agreement, as applicable, shall be deemed sufficient for purposes of this Subsection.

D. City Determination. Within 10 Days after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the Parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the Parties as to the then-current status of Excusable Delays and Inexcusable Delays, the City will provide the Construction Manager with written notice of City's determination of the number of Days of Excusable Delay and/or Inexcusable Delay within 10 Days after receipt by the City of the Construction Manager's written request for such determination. The Construction Manager shall not, however, deem an issuance by the City of such a determination to be a concurrence with any matters set forth in the Construction Manager's request. The Construction Manager may invoke the dispute resolution procedures set forth in Article 13 below with respect to such determination.

6.7 Concurrent Delays. To the extent the Construction Manager may be entitled to an extension of time due to an Excusable Delay, but the performance of the Work would have been suspended, delayed or interrupted by the fault or neglect of the Construction Manager or by an Inexcusable Delay, the Construction Manager shall not be entitled to any additional costs for the period of such concurrency.

6.8 Weather Delays. The Construction Manager shall include and clearly identify an appropriate number of Days of weather-related delays within (A) the aggregate Master Schedule for the Work and within the portions of the Master Schedule submitted with each GMP Proposal relating to any phase of the Project and (B) each GMP Amendment. If the Construction Manager experiences additional weather-related delays beyond the number of Days set forth in the Master Schedule and the GMP Amendment, the Construction Manager shall be entitled to commensurate extension of time and reimbursement of costs associated with such delay; provided such requests for extensions of time are submitted and approved according to the process set forth in Section 6.6 above. If the Construction Manager fails to include an appropriate number of Days of weather-related delays within the applicable GMP Proposal for any portion of the Project, the Construction Manager shall not be eligible for any extension of time or reimbursement of costs related to otherwise Excusable Delays relating to weather for the applicable GMP Proposal.

6.9 Liquidated Damages.

A. Established. The Construction Manager and the City acknowledge that in the event that the Construction Manager fails to achieve Substantial Completion or Final Completion of the Project by the dates established therefore in the applicable GMP Amendment, as adjusted, the City will incur substantial damages and the extent of such damages shall be incapable of accurate measurement. Nonetheless, the Parties acknowledge that on the date of this Agreement, the amount of liquidated damages set forth below represents a good faith estimate as to the actual potential damages that the City would incur as a result of late Substantial Completion or Final Completion of the Project. Such liquidated damages shall be the sole and exclusive

remedy of the City for late completion of the Project, and the City hereby waives all other remedies available at law or in equity with respect to losses resulting from late completion. The amount of the liquidated damages calculated hereunder does not include any penalty.

B. Amount of Liquidated Damages.

1. If the Construction Manager fails to achieve Substantial Completion of for that portion of the Work applicable to a particular GMP Proposal on or before the Substantial Completion date set forth in the applicable GMP Proposal, as adjusted, for any reason other than Excusable Delays, the Construction Manager shall pay to the City liquidated damages in the amount per Day as determined by the Maricopa Association of Governments specifications existing on the date this Agreement is approved by the City Council (the "MAG Specifications") for each Day Substantial Completion is delayed beyond the Substantial Completion date set forth in the applicable GMP Amendment.

2. If the Construction Manager fails to achieve Final Completion of for that portion of the Work applicable to a particular GMP Proposal on or before the Final Completion date, as adjusted, for any reason other than Excusable Delays, the Construction Manager shall pay to the City liquidated damages in the amount per Day as determined by MAG Specifications for each Day Final Completion is delayed beyond the Final Completion date established according to the applicable GMP Amendment.

3. In no case may the amount of liquidated damages due under this Subsection 6.9(B) for any single Day of delay exceed the highest amount, as determined according to MAG Specifications, that would be charged for any single Inexcusable Delay existing on such Day.

4. Payment of liquidated damages is to be made contemporaneously with any required payment to the Construction Manager, and such payments may be offset against each other.

**ARTICLE 7
CONTRACT PRICE**

7.1 Pre-construction Phase Compensation.

A. Project Designers' Services Not Included. The cost of services performed directly by the Project Designers are not included in the Construction Manager's compensation.

B. Amount. The City shall pay the Construction Manager an amount not to exceed \$_____ for services performed during the Pre-construction Phase, as set forth in Article 2 above, and as more particularly described in the Pre-Construction cost summary, attached hereto as Exhibit J and incorporated herein by reference, including all cost items, allowances and reimbursable expenses.

C. Equitable Adjustment. Compensation of Pre-construction Services shall be equitably adjusted if such services extend beyond _____, for reasons beyond the reasonable

control and not the fault or partial fault of the Construction Manager or as provided in Section 8.2 below. For changes in Pre-construction Services, compensation shall be adjusted as mutually agreed upon by the City and the Construction Manager at the time of such extended services.

D. Payments. Payments for Pre-construction Services shall be due and payable within 30 Days following approval of the Construction Manager's monthly invoice by the City. Payments due the Construction Manager that are unpaid for more than 30 Days from the due date of the invoice shall bear interest at the statutory rate.

7.2 Construction Phase Compensation. The portion of Contract Price applicable to the Construction Services shall be the aggregate of all approved GMP Amendments.

A. GMP. The Guaranteed Maximum Price is composed of the Direct Construction Costs and the Construction Fee. The Construction Manager is at risk to cover any additional Project costs. To the extent the combined total of the Direct Construction Costs and the Construction Fee at the conclusion of the Project is less than the GMP, the difference shall be retained by the City.

B. GMP Adjustment. If a GMP requires an adjustment due to changes in the Work, the cost of such changes is determined subject to Article 8. The markups permitted on such changes shall be no greater than the markups delineated in the approved GMP.

C. City's Contingency. City's Contingency funds are to be used at the discretion of the City to cover any increases in Project costs that result from City-directed changes or unforeseen Site conditions. City's Contingency will be approved in conjunction with the applicable GMP Amendment but will not be included in the full Contract Price. Markups for Construction Fee and taxes will be applied by the Construction Manager at the time that City's Contingency is used. The amount of contingency for each GMP amendment will be negotiated separately.

D. Payment Data. The Construction Manager shall submit to the City, upon request, all payrolls, reports, estimates, records and any other data concerning the Work performed or to be performed or concerning materials supplied or to be supplied, as well as Subcontractor or Consultant payment applications or invoices and such Subcontractor's or Consultant progress payment checks. The requirements of this Section shall be included in all contracts between the Construction Manager and its Subcontractors and Consultants. The City may exercise its rights under this Section as often as reasonably necessary in the City's sole judgment to ensure the City has a complete and accurate understanding of all Project costs.

7.3 Adjustment in the Contract Price. Adjustment to the respective components of the Contract Price shall be made as follows:

A. Changes in the Work. For changes in the Work as provided in Article 8 below, the applicable Contract Price shall be adjusted as mutually agreed by the Parties, in writing, prior to commencement of any work pursuant to such changes.

B. Delays in the Work. For delays in the Work not caused, in whole or in part, by the Construction Manager, Subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, there will be an equitable adjustment in the Contract Price to compensate the Construction Manager for increased expenses due to unforeseeable circumstances, according to the requirements of Article 6 above.

C. Replacement Work. If the Construction Manager is placed in charge of managing the replacement of an insured or uninsured loss not caused by or the fault of the Construction Manager or other parties identified in Subsection 7.3(B) above, the Construction Manager shall be paid an additional fee in the same proportion that the applicable portion of the Contract Price bears to the estimated applicable Cost of the Work, or as otherwise agreed to by the Parties.

ARTICLE 8 CHANGES IN THE WORK

8.1 Prescribed Methods for Changes. Changes in Construction Manager's Services shall only be made by a written Change Directive or Change Order to this Agreement signed by the City and the Construction Manager. Changes involving (A) a change in the lump sum for the Pre-Construction Services set forth in Section 7.1 above or (B) a change in any GMP, shall be considered a Change Order and must be approved as an amendment to this Agreement and executed by the City and the Construction Manager. The Construction Manager shall not (A) perform any additional Services or (B) eliminate any duties included in the Services until a written amendment addressing the Change Order has been properly approved and executed by both Parties. The Construction Manager shall proceed to perform the Services required by the Change Order only after receiving written notice from the City directing the Construction Manager to proceed.

8.2 Change Control System. The Construction Manager shall establish and implement a change control system. All proposed changes shall first be described in detail in writing by the requesting party. The requesting party shall submit detailed information to the Construction Manager for evaluation concerning the costs and time adjustments, if any, necessary to perform the proposed changed work. The Construction Manager shall discuss the proposed change with the appropriate Subcontractor and endeavor to determine the Subcontractor's basis for the cost to perform the work and the effect, if any, on the applicable GMP. The Construction Manager shall make a recommendation to the City pursuant to this Article 8 prior to the City's acceptance of all change requests.

8.3 Change Directives; Change Orders; GMP Adjustments. Changes in the Work that are within the general scope of this Agreement may be accomplished by Change Directive without invalidating this Agreement; provided, however, that any change in the Work that will result in an increase to a GMP or extension of the Substantial Completion date shall be pursuant to a Change Order approved by a written amendment to this Agreement clearly delineating the amounts attributable to compensation for the General Conditions Costs, the Construction Fee and other Cost of the Work.

8.4 Determination of Cost. An increase or decrease in a GMP resulting from a change in the Work shall be determined by one or more of the following methods:

- A. Unit prices set forth in this Agreement or as subsequently agreed.
- B. Mutually accepted, itemized lump sum.
- C. Costs determined as defined in Article 3 above.

D. If an increase or decrease cannot be agreed to as set forth in Subsections 8.4(A) and (B) and the City issues a written order for the Construction Manager to proceed with the change, the cost of the change in the Work shall be determined by the reasonable expense or savings of the performance of the Work resulting from the change.

8.5 No Obligation to Perform. The Construction Manager shall not be obligated to perform changed Work until a Change Directive or a Change Order/amendment to this Agreement, as applicable, has been executed by the City and the Construction Manager, except as provided in Subsection 8.4(D) above.

8.6 Adjustment of Unit Prices. If a proposed change alters original quantities to a degree that application of previously agreed to unit prices would be inequitable to either the City or the Construction Manager, the unit prices shall be equitably adjusted and, if the result is an increase to a GMP, an amendment to this Agreement shall be executed.

8.7 Unknown Conditions. If, in the performance of the Work, the Construction Manager or its Subcontractor finds latent, concealed or subsurface physical conditions that (A) differ from the conditions the Construction Manager or its Subcontractor should have reasonably anticipated, (B) differ substantially from available soils reports or (C) differ substantially and materially from those normally encountered and generally recognized as inherent in the kind of work provided for in this Agreement at this location (occurrence of shifting and expansive soils, including clay soils and sandstone expressly noted as commonly occurring in the Project area), then the applicable GMP compensation and/or the Substantial Completion date may be equitably adjusted only if the Construction Manager notifies the City within seven Days after the conditions are first observed in accordance with Article 6 above.

8.8 Emergencies. In any emergency affecting the safety of persons and/or property, the Construction Manager shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in a GMP, compensation for Pre-construction Services, the Contract Price and/or extension of the Substantial Completion date on account of emergency work shall be determined as provided in this Agreement.

ARTICLE 9 PAYMENT

9.1 Progress Payments.

A. Submittal Process. On or before the 15th day of each month after the construction phase has commenced, the Construction Manager shall submit to the City an "Application for Payment" consisting of the Cost of the Work performed up to the end of the prior month, including the cost of material stored on the Site or at other locations approved by the City, along with a proportionate share of the Construction Fee. For the purpose of audit, prior to submission of the next Application for Payment, the Construction Manager shall make available at the request of the City a statement accounting for the disbursement of funds received under the previous Application. The form and extent of such statement shall be as agreed upon between the City and Construction Manager.

B. City's Payment. Within seven Days after approval of each monthly Application for Payment, the City shall pay directly to the Construction Manager the appropriate amount for which Application for Payment is made, less amounts (1) previously paid by the City, (2) sufficient to pay expenses the City reasonably expects to incur in correcting deficiencies that are set forth in writing and provided to the Construction Manager and (3) any retainage as set forth in Section 9.2 below.

C. No Liens. The Construction Manager warrants and guarantees that the title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the City upon receipt of such payment by the Construction Manager free and clear of all liens, claims, security interests or encumbrances.

D. Non-Conforming Work. The City's progress payment, occupancy or use of the Project, whether in whole or in part, shall not be deemed as acceptance of any Work not conforming to the requirements of this Agreement or the Contract Documents.

E. Unfinished Items. Upon Substantial Completion of the Work, the City shall pay the Construction Manager the unpaid balance of the Cost of the Work, General Conditions Costs and the Construction Fee, less a sum equal to the Construction Manager's estimated cost of completing any unfinished items as agreed to between the City and the Construction Manager as to extent and time for completion. The City thereafter shall pay the Construction Manager monthly the amount retained for unfinished items as each item is completed.

9.2 Retainage.

A. Exceptions to Retainage Requirement. No retainage shall be withheld with respect to gross receipts tax and premiums for bonds and insurance.

B. Amount Retained. With respect to the Work, the City shall retain 10% of the amount of each estimate until Final Completion and acceptance of all material, equipment and work covered by the Contract Documents.

1. Any securities submitted by Construction Manager in lieu of retainage as may be allowed by law, shall be deposited in an escrow account by the City. The City shall be listed as payee or multiple payee with Construction Manager on all such securities.

2. When the Work is 50% completed, one-half of the amount retained including any securities substituted pursuant to Subsection 9.2(B)(1) shall be paid to the Construction Manager upon the Construction Manager's request, provided the Construction Manager is making satisfactory progress on the Work and there is no specific cause or claim requiring a greater amount to be retained. After the construction Work is 50% completed, no more than 5% of the amount of any subsequent progress payments made under the Contract Documents may be retained, provided the Construction Manager is making satisfactory progress on the Project. If, at any time, the City determines satisfactory progress is not being made, 10% retention shall be reinstated for all progress payments made under the Contract Documents after the determination.

9.3 Payment for On-site and Off-site Stored Materials. Payment shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. Payment may similarly be made for materials and equipment suitably stored off the Site, conditioned upon the Construction Manager furnishing evidence to the Owner that (A) title to the materials and equipment will pass to the City upon payment therefore, (B) the materials and equipment are adequately insured and (C) such other matters as the City may reasonably request in order to protect its interests.

9.4 Title to Construction Work. The Construction Manager warrants that title to all Work covered by an Application for Payment shall pass to the City no later than the time of payment. The Construction Manager further warrants that, upon submittal of an Application for Payment, all Work for which Applications for Payment have been previously issued and payments received from the City shall be free and clear of liens, claims, security interests or encumbrances in favor of the Construction Manager, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

9.5 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the City may offset against any money due to the Construction Manager any amounts Construction Manager owes to the City for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The City may offset against any money due to the Construction Manager any amounts Construction Manager owes to the City for delinquent fees, transaction privilege use taxes and property taxes, including any interest or penalties.

9.6 Final Payment.

A. Fully Completed Work. Final payment, consisting of the unpaid balance of (1) the Cost of the Work, (2) compensation for Pre-Construction Services and (3) the Construction Fee, shall be due and payable when the Work is fully completed and accepted by the City. Before issuance of final payment, the City may request satisfactory evidence that all payrolls, materials bills and other indebtedness connected with the Work have been paid or otherwise satisfied.

B. Waiver of Claims. In making final payment, the City waives all claims against the Construction Manager except for:

1. Outstanding liens.
2. Improper workmanship or defective materials.
3. Work not in conformance with the Contract Documents or work not completed.
4. Terms of any special warranties required by the Contract Documents.
5. Delivery to City of all warranties, operation and maintenance manuals, record drawings and other documents as required by the Contract Documents.
6. Right to audit Construction Manager records for a period of three years.
7. Claims previously made in writing that remain unsettled.

C. Acceptance as Waiver. Acceptance of final payment by the Construction Manager shall constitute a waiver of affirmative claims by the Construction Manager against the City, its employees, elected officials and agents, except those previously made in writing and identified as unsettled at the time of final payment.

9.7 Payments to Subcontractors.

A. The Construction Manager shall pay its Subcontractors or suppliers within seven Days of receipt of each progress payment from the City and as required by Arizona law. The Construction Manager shall pay for the amount of Work performed or materials supplied by each Subcontractor or Supplier as accepted and approved by the City with each progress payment. In addition, any reduction of retention by the City to the Construction Manager shall result in a corresponding reduction to Subcontractors or suppliers who have performed satisfactory work. The Construction Manager shall pay Subcontractors or suppliers the reduced retention within 14 Days of the payment of the reduction of the retention to the Construction Manager. No Contract between the Construction Manager and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment and retention reduction as provided herein or by Arizona law.

B. Failure to Timely Pay. The Construction Manager agrees that if it fails to make payments in accordance with these provisions, the City may take any one or more of the following actions:

1. Hold the Construction Manager in default under this Agreement.

2. Withhold future payments, including retention, until proper payment has been made to Subcontractors or suppliers in accordance with these provisions.

3. Reject all future offers to perform work for the City from the Construction Manager for a period not to exceed one year from Substantial Completion date of this Project.

4. Terminate this Agreement.

5. Make a claim against the bonds required pursuant to Article 11.

C. No Waiver. Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.

D. Inclusion in Subcontracts. The Construction Manager shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

9.8 Record Keeping and Finance Controls.

A. Retention Requirement. Records of the Construction Manager's direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the City and the Construction Manager shall be kept on a generally recognized accounting basis and shall be available for three years after Final Completion of the Project.

B. Audit Rights. The City, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the Construction Manager's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any Change Orders.

C. Pricing Data Inaccuracies. The City reserves the right to decrease Contract Price and/or payments made on this Agreement, in an amount determined by the City in its sole discretion, if, upon audit of the Construction Manager's records, the audit discloses the Construction Manager has provided false, misleading, or inaccurate cost and pricing data.

D. Inclusion in Subcontracts. The Construction Manager shall include a similar provision in all of its agreements with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.

E. City Remedies. The City reserves the right to decrease Contract Price and/or payments made under this Agreement, in an amount determined by the City in its sole discretion, if the above provision is not included in Subconsultant's and Subcontractor's contracts,

and one or more Subconsultants and/or Subcontractors do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.

ARTICLE 10 INSURANCE AND INDEMNITY

10.1 Insurance Representations and Requirements.

A. General.

1. Insurer Qualifications. Without limiting any obligations or liabilities of the Construction Manager, the Construction Manager shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the City. Failure to maintain insurance as specified herein may result in termination of this Agreement at the City's option.

2. No Representation of Coverage Adequacy. By requiring insurance herein, the City does not represent that coverage and limits will be adequate to protect the Construction Manager. The City reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Construction Manager from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

3. Additional Insured. All insurance coverage, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees as Additional Named Insured as specified under the respective coverage sections of this Agreement.

4. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the City, unless specified otherwise in this Agreement.

5. Primary Insurance. Construction Manager's insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the City as an Additional Insured.

6. Claims Made. In the event any insurance policies required by this Agreement are written on a "claims made" basis, coverage shall extend, either by keeping

coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance and necessary endorsements citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

7. Waiver. All policies, excluding Professional Liability but including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the City, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Construction Manager. Construction Manager shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

8. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City. Construction Manager shall be solely responsible for any such deductible or self-insured retention amount.

9. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Construction Manager shall execute written agreements with its subcontractors containing the indemnification provisions set forth below and insurance requirements set forth herein protecting the City and Construction Manager. Construction Manager shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

10. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Construction Manager will provide the City with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Construction Manager's insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The City shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Construction Manager's responsibility to forward renewal certificates and declaration page(s) to the City 30 Days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing this Agreement. A \$25.00 administrative fee shall be assessed for all certificates or declarations received without a reference to this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing this Agreement will be subject to rejection and may

be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

a. The City, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

i. Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.

ii. Auto Liability – Under ISO Form CA 20 48 or equivalent.

iii. Excess Liability – Follow Form to underlying insurance.

b. Construction Manager’s insurance shall be primary insurance with respect to performance of this Agreement.

c. All policies, except for Professional Liability, including Workers’ Compensation, waive rights of recovery (subrogation) against City, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Construction Manager under this Agreement.

d. ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

11. Endorsements. Construction Manager shall provide the City with the necessary endorsements to ensure City is provided the insurance coverage set forth in this Article.

B. Required Insurance Coverage.

1. Commercial General Liability. Construction Manager shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10

03 97, or equivalent, which shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this Subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

2. Vehicle Liability. Construction Manager shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Construction Manager’s owned, hired and non-owned vehicles assigned to or used in the performance of the Construction Manager’s work or services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the City, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this Subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

3. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Construction Manager engages in any professional services or work in any way related to performing the work under this Agreement, the Construction Manager shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Construction Manager, or anyone employed by the Construction Manager, or anyone for whose negligent acts, mistakes, errors and omissions the Construction Manager is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.

4. Workers’ Compensation Insurance. Construction Manager shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Construction Manager’s employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

5. Builder’s Risk Insurance. Unless expressly waived by the City in a written amendment to this Agreement, the Construction Manager shall be responsible for purchasing and maintaining insurance to protect the Project from perils of physical loss. The insurance shall provide for the full cost of replacement for the entire Project at the time of any loss. The insurance shall include as named insureds the City, the Construction Manager, and the Construction Manager’s Subcontractors and shall insure against loss from the perils of fire and all-risk coverage for physical loss or damage due to theft, vandalism, collapse, malicious mischief, transit, flood, earthquake, testing, resulting loss arising from defective design, negligent workmanship or defective material. The Construction Manager shall increase the coverage limits as necessary to reflect changes in the estimated replacement cost.

C. Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without 30 Days' prior written notice to the City.

10.2 Indemnity. To the fullest extent permitted by law, the Construction Manager shall indemnify and hold harmless the City and each council member, officer, employee or agent thereof (the City and any such person being herein called an "Indemnified Party"), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims") to the extent that such Claims (or actions in respect thereof) are caused by the negligent acts, recklessness or intentional misconduct of the Construction Manager, its officers, employees, agents, or any tier of subcontractor in connection with Construction Manager's work or services in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

ARTICLE 11 BONDS

11.1 Performance Bond. After the City and the Construction Manager have agreed to a GMP but prior to commencing the Construction Services attributable to such GMP, the Construction Manager shall be required to furnish the City with an irrevocable security binding the Construction Manager to provide faithful performance of the Agreement in the amount of 100% of the percentage of the GMP attributable to the Construction Services, payable to the City, and shall not include the cost of any design services, preconstruction services, finance services, maintenance services, operations services or any other related services. Performance security shall be in the form of a performance bond, certified check or cashier's check. If the Construction Manager fails to execute the security document as required, the Construction Manager may be found in material default of this Agreement, permitting the City to terminate this Agreement for cause as set forth in Section 12 below. In case of default the City reserves all rights. All performance bonds shall be executed on the form attached hereto as Exhibit K, duly executed by the Construction Manager as Principal and having as Surety thereon a Surety company approved by the City and holding a Certificate of Authority issued by the Arizona Department of Insurance to transact surety business in the State of Arizona. Individual sureties are unacceptable. All Insurers and Sureties shall have at the time of submission of the proposal an A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

11.2 Payment Bond. After the City and the Construction Manager have agreed to a GMP but prior to commencing the Construction Services attributable to such GMP, the Construction Manager shall be required to furnish the City with an irrevocable security for the protection of claimants supplying labor or materials to the Construction Manager or any Subcontractor in the prosecution of the construction and not for the protection of persons providing any design services, preconstruction services, finance services, maintenance services, operations services or other related services related to the Agreement. Payment security shall be in the amount of 100% of the portion of the GMP attributable to the Construction Services and be payable to the City. Payment security shall be in the form of a payment bond, certified check or cashier's check. If the Construction Manager fails to execute the security document as required, the Construction

Manager may be found in material default of this Agreement, permitting the City to terminate this Agreement for cause as set forth in Section 12 below. All payment bonds shall be executed on a the form attached hereto as Exhibit L, duly executed by the Construction Manager as Principal and having as Surety thereon a Surety company approved by the City and holding a Certificate of Authority issued by the Arizona Department of Insurance to transact surety business in the State of Arizona. Individual sureties are unacceptable. All Insurers and Sureties shall have at the time of submission of the proposal an A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

ARTICLE 12 TERMINATION AND SUSPENSION

12.1 Termination by the Construction Manager.

A. Procedure. Upon 30 Days' written notice to the City of one of the reasons set forth below, and if the City fails to cure or initiate reasonable action to cure within 30 Days of receipt of said notice, the Construction Manager may terminate this Agreement for any of the following:

1. If the Work has been stopped for a 60-Day period:
 - a. Under court order or order of other governmental authorities having jurisdiction; or
 - b. As a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Construction Manager, materials are not available.
2. If the Work is suspended by the City for more than 60 Days.
3. If the City materially delays the Construction Manager in the performance of the Work.
4. If the City otherwise materially breaches this Agreement.

B. Payment to Construction Manager. Upon termination by the Construction Manager in accordance with Subsection 12.1(A) above, the Construction Manager shall be entitled to recover from the City payment for all Work completed to the date of termination plus reasonable demobilization costs, subcontract and purchase order termination costs, reasonable overhead, extended general conditions and profit on the Work performed. The City may subtract reasonable estimates of costs for deficient work from the payments noted above.

12.2 Termination by the City for Cause.

A. Construction Manager Default. If the Construction Manager refuses or fails, except in cases for which extension of time is provided, to supply sufficient properly skilled staff or proper materials, or disregards laws, ordinances, rules, regulations, or orders of any public

authority jurisdiction, or otherwise substantially violates or materially breaches any term or provision of this Agreement, and such nonperformance or violation continues without cure for 15 Days after the Construction Manager receives written notice of such nonperformance or violation from the City, then the City may, without prejudice to any right or remedy otherwise available to the City, terminate this Agreement.

B. Construction Manager Insolvency. Upon the appointment of a receiver for the Construction Manager, or if the Construction Manager makes a general assignment for the benefit of creditors, the City may terminate this Agreement, without prejudice to any right or remedy otherwise available to the City, upon giving three Days' written notice to the Construction Manager. If an order for relief is entered under the bankruptcy code with respect to the Construction Manager, the City may terminate this Agreement by giving three Days' written notice to the Construction Manager unless the Construction Manager or the trustee does all of the following:

1. Promptly cures all breaches within such three-Day period.
2. Provides adequate assurances of future performance.
3. Compensates the City for actual pecuniary loss resulting from such breach(es).
4. Assumes the obligations of the Construction Manager within the established time limits.

C. Failure to Agree on a GMP. If the City and the Construction Manager fail, after good faith efforts, to agree upon a GMP, this Agreement may be terminated upon 15 Days' notice from either Party to the other. In the event of a termination for failure to agree on a GMP, the Construction Manager's sole and exclusive right and remedy shall be to be paid for all Work performed and to receive equitable adjustment for all Work performed through the date of termination plus reasonable demobilization costs, subcontract and purchase order termination costs, reasonable overhead and profit on the Work performed. The Construction Manager shall not be entitled to be paid any amount as profit for unperformed Work or Services or consideration for the termination under this Subsection.

12.3 Termination by the City for Convenience. The City may, upon 30 Days' written notice to the Construction Manager, terminate this Agreement, in whole or in part, for the convenience of the City, without prejudice to any right or remedy otherwise available to the City. Upon receipt of such notice, the Construction Manager shall immediately discontinue all services affected unless such notice directs otherwise. In the event of a termination for convenience of the City, the Construction Manager's sole and exclusive right and remedy shall be to be paid for all Work performed and to receive equitable adjustment for all Work performed through the date of termination plus reasonable demobilization costs, subcontract and purchase order termination costs, reasonable overhead and profit on the Work performed. The Construction Manager shall not be entitled to be paid any amount as profit for unperformed Work or Services or consideration for the termination of convenience by the City.

12.4 Set Off. Upon termination of this Agreement by the City, the City shall be entitled to furnish or have furnished the Services to be performed hereunder by the Construction Manager by whatever method the City may deem expedient. Also, in such case, the Construction Manager shall not be entitled to receive any further payment until completion of the Work and the total compensation to the Construction Manager under this Agreement shall be the amount that is equitable under the circumstances. If the City and the Construction Manager are unable to agree on the amount to be paid under the foregoing sentence, the City shall fix an amount, if any, that it deems appropriate in consideration of all of the circumstances surrounding such termination, and shall make payment accordingly. The Construction Manager may dispute the City's assessment of the termination amount by the method of dispute resolution under Article 13 of this Agreement.

12.5 Suspension by the City for Convenience.

A. Procedure. The City may order the Construction Manager in writing to suspend, delay or interrupt all or any part of the Work without cause for such period of time as the City may determine to be appropriate for its convenience, but not in abrogation of the rights given Construction Manager in Section 12.1 above.

B. Adjustments to GMP and Schedule. Adjustments caused by suspension, delay or interruption shall be made for increases in the applicable GMP and/or the applicable Substantial Completion date. No adjustment shall be made if the Construction Manager is or otherwise would have been responsible for the suspension, delay or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.

ARTICLE 13 DISPUTE RESOLUTION

13.1 Scope. Notwithstanding anything to the contrary provided elsewhere in the Contract Documents, except for Subsection 13.4 (G) below, the alternative dispute resolution ("ADR") process provided for herein shall be the exclusive means for resolution of claims or disputes arising under, relating to or touching upon the Agreement, the interpretation thereof or the performance or breach by any party thereto, including but not limited to original claims or disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to agreements containing this ADR provision.

13.2 Neutral Evaluator, Arbitrators. The City will select a Neutral Evaluator to serve as set forth in this ADR process. The City and Construction Manager shall each select an arbitrator to serve as set forth in this ADR process. Each arbitrator selected shall be a member of the State Bar of the State of Arizona and shall have experience in the field of construction law. None of the arbitrators nor any of the arbitrator's firms shall have presently, or in the past, represented any party to the arbitration.

13.3 Neutral Evaluation Process. If the Parties have been unable to resolve the disputes after discussions and partnering, the following neutral evaluation process shall be used to resolve any such dispute.

A. Notification of Dispute. The City shall notify the Neutral Evaluator in writing of the existence of a dispute within 10 Days of the City or the Construction Manager declaring need to commence the neutral evaluation process.

B. Non-Binding Informal Hearing. The Neutral Evaluator shall schedule a non-binding informal hearing of the matter to be held within seven Days from receipt of notification of the existence of a dispute. The Neutral Evaluator may conduct the hearing in such manner as he deems appropriate and shall notify each party of the hearing and of its opportunity to present evidence it believes will resolve the dispute. Each party to the dispute shall be notified by the Neutral Evaluator that it shall submit a written outline of the issues and evidence intended to be introduced at the hearing and the proposed resolution of the dispute to the Neutral Evaluator before the hearing commences. Arbitrators shall not participate in such informal hearing or proceedings process. The Neutral Evaluator is not bound by the rules of evidence when admitting evidence in the hearing and may limit the length of the hearing, the number of witnesses or any evidence introduced to the extent deemed relevant and efficient.

C. Non-Binding Decision. The Neutral Evaluator shall render a non-binding written decision as soon as possible, but not later than five Days after the hearing.

13.4 Binding Arbitration Procedure. The following binding arbitration procedure, except as provided in Subsection 13.4(G) below, shall serve as the exclusive method to resolve a dispute if any party chooses not to accept the decision of the Neutral Evaluator. The party requesting binding arbitration shall notify the Neutral Evaluator in writing within three Days of receipt of the Neutral Evaluator's decision of a request for arbitration. If the Construction Manager requests arbitration it shall post a cash bond with the Neutral Evaluator in an amount agreed upon by the Parties or, in the event of no agreement, the Neutral Evaluator shall establish the amount of the cash bond to defray the cost of the arbitration as set forth in Subsection 13.4(M) and the proceeds from the bond shall be allocated in accordance with Subsection 13.4(M) by the Arbitration Panel.

A. Arbitration Panel. The Arbitration Panel shall consist of three arbitrators: the City's appointed arbitrator, the Construction Manager's appointed arbitrator and a third arbitrator (or "Neutral Arbitrator") who shall be selected by the Parties' arbitrators as set forth in Subsection 13.4(B) below. If one or more Subcontractor(s) is (are) involved in a dispute, the Subcontractors shall agree on an appointee to serve as arbitrator on behalf of all such Subcontractors. The Neutral Evaluator shall not participate in the proceedings.

B. Selection of Neutral Arbitrator. The Parties' arbitrators shall choose the Neutral Arbitrator within five Days of receipt of notification of a dispute from the Neutral Evaluator. The Neutral Arbitrator shall have the same qualifications as those of the arbitrators set forth in Section 13.2 above. In the event that the selected arbitrators cannot agree on the Neutral Arbitrator as set forth above, the Neutral Arbitrator shall be the "Default Neutral Arbitrator." The Default Neutral Arbitrator shall be selected as follows: the City and the Construction Manager shall each submit two names to the presiding judge of the Maricopa County Superior Court, who shall select one person to serve as the Default Neutral Arbitrator.

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

D. Procedure. The Arbitration Panel will select a chairman and will conduct the hearing in such a manner that will resolve disputes in a prompt, cost-effective manner giving regard to the rights of all parties. Each Party shall supply to the Arbitration Panel a written pre-hearing statement which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. The Arbitration Panel shall review and consider the Neutral Evaluator decision. The chairman shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with deadlines provided herein, and the Parties' objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of any materials or information for which a privilege is recognized by Arizona law. 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.

E. Hearing Days. In order to effectuate Parties' goals, the hearing once commenced, will proceed from Day to Day until concluded, absent a showing of emergency circumstances.

F. Award. The Arbitration Panel shall, within 10 Days from the conclusion of any hearing, by majority vote issue its award. The award shall include an allocation of fees and costs pursuant to Subsection 13.4(M) below. The award is to be rendered in accordance with this Agreement and the laws of the State of Arizona.

G. Scope of Award. The Arbitration Panel shall be without authority to award punitive damages, and any such punitive damage award shall be void. The Arbitration Panel shall be without any authority to issue an award against any individual Party in excess of 20% of the original Agreement amount, but in no event shall any award exceed \$2,000,000, exclusive of interest, arbitration fees, costs and attorneys' fees. If an award is made against any individual Party in excess of \$100,000, exclusive of interest, arbitration fees, costs and attorneys' fees, it must be supported by written findings of fact, conclusions of law and a statement as to how damages were calculated. Any claim in excess of 20% of the original Agreement amount or in excess \$2,000,000 shall be subject to the jurisdiction of the Superior Court of Arizona, Maricopa County. Any Party may contest the validity of the amount claimed if an action is filed in the Superior Court.

H. Jurisdiction. The Arbitration Panel shall not be bound for jurisdictional purposes by the amount asserted in any Party's claim, but shall conduct a preliminary hearing into the question of jurisdiction upon application of any Party at the earliest convenient time, but not later than the commencement of the arbitration hearing.

I. Entry of Judgment. Any Party can make application to the Maricopa County Superior Court for confirmation of an award, and for entry of judgment on it.

J. Severance and Joinder. To reduce the possibility of inconsistent adjudications, the Neutral Evaluator or the Arbitration Panel, may: (1) at the request of any Party, join and/or sever Parties, and/or claims arising under other contracts containing this ADR provision and (2) the Neutral Evaluator, on his own authority, or the Arbitration Panel may, on its own authority, join or sever Parties and/or claims subject to this ADR process as they deem necessary for a just resolution of the dispute, consistent with the Parties' goal of the prompt and efficient resolution of disputes; provided, however, that the Construction Manager, the Project Designers and other Project professionals shall not be joined as a Party to any claim made by a Subcontractor. Nothing herein shall create the right by any Party to assert claims against another Party not germane to the Agreement or not recognized under the substantive law applicable to the dispute. Neither the Neutral Evaluator nor the Arbitration Panel is authorized to join to the proceeding Parties not in privity with the City. The Construction Manager cannot be joined to any pending arbitration proceeding, without the Construction Manager's express written consent, unless the Construction Manager is given the opportunity to participate in the selection of the non-City appointed arbitrator.

K. Appeal. Any party may appeal (1) errors of law by the Arbitration Panel if, but only if, the errors arise in an award in excess of \$100,000, (2) the exercise by the chairman or Arbitration Panel of any powers contrary to or inconsistent with this Agreement or (3) on the basis of any of the grounds provided in ARIZ. REV. STAT. § 12-1512. Appeals shall be to the Maricopa County Superior Court within 15 Days of entry of the award. The standard of review in such cases shall be that applicable to the consideration of a motion for judgment notwithstanding the verdict, and the Maricopa County Superior Court shall have the authority to confirm, vacate, modify or remand an award appealed under this Section, but not to conduct a trial, entertain the introduction of new evidence or conduct a hearing *de novo*.

L. Uniform Arbitration Act. Except as otherwise provided herein, binding arbitration pursued under this provision shall be governed by the Uniform Arbitration Act as codified in Arizona in ARIZ. REV. STAT. § 12-1501, *et seq.*

M. Fees and Costs. Each Party shall bear its own fees and costs in connection with any informal hearing before the Neutral Evaluator. All fees and costs associated with any arbitration before the Arbitration Panel, including without limitation the Arbitration Panelists' fees, and the prevailing Party's reasonable attorneys' fees, expert witness fees and costs, will be paid by the non-prevailing Party, except as provided for herein. In no event shall any Arbitrator's hourly fees be awarded in an amount in excess of \$200 per hour and (1) costs shall not include any travel expenses in excess of mileage at the rate paid by the City, not to exceed a one way trip of 150 miles, and (2) all travel expenses, including meals, shall be reimbursed pursuant to the travel policy of the City in effect at the time of the hearing. The determination of prevailing and non-

prevailing Parties, and the appropriate allocation of fees and costs, will be included in the award by the Arbitration Panel. Fees for the Neutral Evaluator shall be paid by the City.

N. Confidentiality. Any proceeding initiated under ADR shall be deemed confidential to the maximum extent allowed by Arizona law and no Party shall, except for disclosures to a Party's attorneys or accountants, make any disclosure related to the disputed matter or to the outcome of any proceeding except to the extent required by law, or to seek interim equitable relief, or to enforce an agreement reached by the Parties or an award made hereunder.

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

P. Change Order. Any award in favor of the Construction Manager against the City or in favor of the City against the Construction Manager shall be reduced to a Change Order amendment to this Agreement and executed by the Parties in accordance with the award and the provisions of this Agreement.

Q. Merger and Bar. Any claim asserted pursuant to this ADR process shall be deemed to include all claims, demands, and requests for compensation for costs and losses or other relief, including the extension of the Agreement performance period which reasonably should have or could have been brought against any Party that was or could have been brought into this ADR process, with respect to the subject claim. The Arbitration Panel shall apply legal principles commonly known as merger and bar to deny any claim or claims against any Party regarding which claim or claims recovery has been sought or should have been sought in a previously adjudicated claim for an alleged cost, loss, breach, error, or omission.

R. Inclusion in Other Contracts. The Construction Manager shall cooperate with the City in efforts to include this ADR provision in all other Project subcontracts. The Construction Manager agrees that any modification to this ADR provision that is included in the construction or other subcontracts shall also apply to the Construction Manager. It is the intent of the Parties that any changes to this ADR provision in later contracts will be evolutionary and designed to incorporate the terms of this ADR provision without material changes to the substance or procedure of this ADR provision.

ARTICLE 14

ADDITIONAL PROVISIONS

14.1 Confidentiality. The Construction Manager shall not disclose or permit the disclosure of any confidential information except to its agents, employees and Subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement.

14.2 Limitation and Assignment. The City and the Construction Manager each bind themselves, their successors, assigns and legal representatives to the terms of this Agreement. Neither the City nor the Construction Manager shall assign or transfer its interest in this Agreement without the written consent of the other, except that the Construction Manager may assign accounts receivable to a commercial bank for securing loans without approval of the City. Nothing contained in this Section shall prevent the Construction Manager from employing such consultants, associates or Subcontractors as the Construction Manager may deem appropriate to assist in performance of the Services hereunder.

14.3 Entire Agreement. This Agreement represents the entire and integrated agreement between the City and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the City and the Construction Manager. Nothing contained in this Agreement is intended to benefit any third party. Subcontractors, if any, and the Project Designers are not intended third-party beneficiaries of this Agreement.

14.4 Severability. If any provision of this Agreement is held as a matter of law to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be enforceable without such provision.

14.5 Meaning of Terms. References made in the singular shall include the plural and the masculine shall include the feminine or neuter.

14.6 Notices and Requests. 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:

With copies to: City of Avondale
 11465 West Civic Center Drive
 Avondale, Arizona 85323
 Attn: Procurement Officer

City of Avondale
11465 West Civic Center Drive
Avondale, Arizona 85323
Attn: City Attorney

If to Project Designers: _____

 Attn: _____

If to Construction Manager: _____

Attn: _____

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 Section. 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.

14.7 Governing Law. This Agreement shall be governed by the laws of the State of Arizona and venue shall be in Maricopa County.

14.8 No Waiver of Performance. The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition right with respect to further performance.

14.9 Headings. The headings given to any of the provisions of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.10 Asbestos Free Materials. The Project is to be constructed by the Construction Manager with asbestos free materials. A written, notarized statement on company letterhead shall be submitted to the City by the Construction Manager with the final payment request certifying that the Construction Manager has incorporated no asbestos material into the Project. Final payment shall be withheld until such statement is submitted. The Construction Manager shall agree that if materials containing asbestos are subsequently discovered at any future time to have been included in the construction done by the Construction Manager or any of its Subcontractors or agents and were not specified in the design or required by the Contract Documents, the Construction Manager shall be liable for all costs related to the abatement of such asbestos and damages or claims against the City notwithstanding any statute of limitations or other legal bar to any claim by the City.

14.11 Cancellation. This Agreement may be cancelled by the City pursuant to ARIZ. REV. STAT. § 38-511.

14.12 Survival of Representations and Warranties. Notwithstanding any other provision of this Agreement, the representations, warranties and covenants herein shall survive termination of this Agreement.

14.13 Endangered Hardwoods Prohibited. Construction Manager shall ensure that products containing endangered wood species shall not be utilized in the construction of the Project unless exempted pursuant to ARIZ. REV. STAT. § 34-201(J), as amended.

14.14 Records and Audit Rights. Construction Manager's and its Subcontractor's books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Construction Manager and its Subcontractors' employees who perform any work or Services pursuant to this Agreement to ensure that the Construction Manager and its Subcontractors are complying with the warranty under Subsection 14.15 below (all the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the City, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Construction Manager's and its Subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Construction Manager's and its Subcontractors' compliance with the Arizona employer sanctions laws referenced in Subsection 14.15 below. To the extent necessary for the City to audit Records as set forth in this Subsection, Construction Manager and its Subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the City shall have access to said Records, even if located at its Subcontractors' facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the City to Construction Manager pursuant to this Agreement. Construction Manager and its Subcontractors shall provide the City with adequate and appropriate workspace so that the City can conduct audits in compliance with the provisions of this Subsection. The City shall give Construction Manager or its Subcontractors reasonable advance notice of intended audits. Construction Manager shall require its Subcontractors to comply with the provisions of this Subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

14.15 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Construction Manager and its Subcontractors 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). Construction Manager's 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.

14.16 Israel. Consultant certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in, a boycott of Israel, as that term is defined in ARIZ. REV. STAT. § 35-393.

14.17 Independent Contractor. The Construction Manager is and will be an independent contractor and whatever measure of control the City exercises over the work or deliverable pursuant to the Contract will be as to the results of the work only. No provision in this Agreement will give or be construed to give the City the right to direct the Construction Manager as to the details of accomplishing the work or deliverable. These results will comply with all applicable laws and ordinances.

14.18 Agreement Subject to Appropriation. The City is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the City's then-current fiscal year. The City's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative

discretion of the City concerning budgeted purposes and appropriation of funds. Should the City Council elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the City shall be relieved of any subsequent obligation under this Agreement. The Parties agree that the City has no obligation or duty of good faith to budget or appropriate the payment of the City's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The City Council shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The City shall keep Construction Manager informed as to the availability of funds for this Agreement. The obligation of the City to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the City. Construction Manager hereby waives any and all rights to bring any claim against the City from or relating in any way to the City's termination of this Agreement pursuant to this Section.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above.

“City”

CITY OF AVONDALE,
an Arizona municipal corporation

Charles A. Montoya, City Manager

ATTEST:

Marcella Carrillo, City Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On _____, 2020, before me personally appeared Charles A. Montoya, the City Manager of the CITY OF AVONDALE, an Arizona municipal corporation, 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 the above document, on behalf of the City of Avondale.

Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

“Construction Manager”

_____,
a(n) _____

By: _____

Name: _____

Title: _____

(ACKNOWLEDGMENT)

STATE OF _____)
) ss.
COUNTY OF _____)

On _____, 2020, before me personally appeared _____
_____, the _____ of _____,
a(n) _____, whose identity was proven to me on the basis of
satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she
signed the above document on behalf of the _____.

Notary Public

(Affix notary seal here)

EXHIBIT A
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND

[Construction Documents]

See following pages.

EXHIBIT B
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND

[Amendments]

See following pages.

EXHIBIT C
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND

[GMP Proposals]

See following pages.

EXHIBIT D
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND

[Master Schedule]

See following pages.

EXHIBIT E
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND

[The City's RFQ]

See following pages.

EXHIBIT F
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND

[Construction Manager's Response to the RFQ]

See following pages.

EXHIBIT G
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND

[Subcontractor Selection Program]

See following pages.

EXHIBIT H
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND

[Traffic Control/Construction Sequencing]

See following pages.

EXHIBIT I
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND

[Allowable General Conditions Cost Line Items]

See following pages.

ALLOWABLE GENERAL CONDITIONS COST LINE ITEMS

On-Site Project Management Staff

Safety Coordinator/Assistant(s)
Project Executive
Office Engineer(s)
Project Expeditor(s)
Assistant Superintendent(s)

CPM Scheduler
Superintendent(s)
Project Manager(s)
Project Support Staff
Out-of-State Project Specific Travel*

Bonds and Insurance

Builder's Risk Insurance
General Liability Insurance
Payment and Performance Bonds
Other Project Insurance as Required by Contract

Temporary Project Utilities

Non-LEED Recycling Dumpsters
Project Electricity
Monthly Telephone / Internet Service
Street Rental and Barricades
Fencing and Covered Walkways
Site Erosion Control (BMP) and Project Entrance(s)

Temporary Toilets
Temporary Fire Protection
Telephone / Internet System Installation
Temporary Water Distribution and Meters
Temporary Electrical Distribution and Meters
Project Water, Ice and Supplements to Prevent Dehydration

Field Offices & Office Supplies

Partnering Costs
Job Photos/Videos
Project Specific Signage
Postage/Special Shipping
Project/As-Built (Record) Drawings
Project Milestone Event(s)*
Move-In/Out and Office Setup
Employee Identification System
Small Tools and Storage Trailers
Monthly Office Trailer Rental Costs
Mobilization and Demobilization (Equipment Only)

First Aid Supplies
Reproduction Services
Monthly Office Supplies
Remote Parking Expenses
Project Reference Manuals
Security System/Watchman
Safety Material and Equipment
Drinking Water and Accessories (Including Ice)
Office Clean-Up/Janitorial Services
Field Engineering

- * Specific justification and all estimated costs shall be submitted and approved by the City prior to any travel or event.

EXHIBIT J
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND

[Pre-Construction Cost Summary]

See following pages.

EXHIBIT K
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND

[Performance Bond]

See following page.

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, _____ (hereinafter called Principal), as Principal, and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Avondale (hereinafter called the Oblige) in the amount of _____ (Dollars) (\$ _____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Oblige, dated the _____ day of _____ 2020, for the material, service or construction described as _____ is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

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

PROVIDED, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this agreement.

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

Witness our hands this _____ day of _____ 2020

Principal Seal

By: _____

Surety Seal

By: _____

Agency of Record

EXHIBIT L
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND

[Payment Bond]

See following page.

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, _____ (hereinafter called Principal), as Principal, and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Avondale (hereinafter called the Obligee) in the amount of _____ (Dollars) (\$_____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the _____ day of _____ 2020, for the material, service or construction described as _____ which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all monies due to all persons supplying labor or materials to the Principal or the Principal's Subcontractors in the prosecution of the Work provided for in the Contract, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if they were copied at length in this agreement.

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

Witness our hands this _____ day of _____, 2020.

Principal Seal

By: _____

Surety Seal

By: _____

Agency of Record

EXHIBIT F
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND
WILLMENG CONSTRUCTION, INC.

[Construction Manager's Response to the RFQ]

See following pages.

City of Avondale

Solicitation No.: EN 20-012

Permanent Fire Station CMAR: 127th Ave. & Van Buren St.

September 22, 2020



willmeng

480.968.4755 | AZ ROC B-01 082904 | AZ ROC A 323741 | WILLMENG.COM



A General Information
Page 1



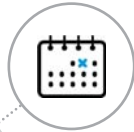
B Experience & Qualifications of the Firm
Page 2



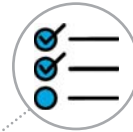
C Key Positions
Page 5



D Project Understanding & Approach
Page 7



E Project Schedule
Page 12



A-1 Appendix Forms



A-2 Resumes

SECTION A

GENERAL INFORMATION

A.1 Cover Letter

September 22, 2020

Loretta Browning
lbrowning@avondaleaz.gov
623-333-2029

RE: City of Avondale - CMAR Solicitation No.: EN 20-012, Permanent Fire Station: 127th Ave. & Van Buren St.

Dear Members of the Selection Committee,

The city of Avondale is one of the fastest growing, young communities in the West Valley, with more than 85,000 residents with the population doubling in the last 10 years. The need for this new fire station is obvious. Located in the center of the emerging Blvd entertainment development, adjacent to the Health-Tech Corridor and less than 10 blocks from Historic Avondale, the fire station will be critical to this growth. Additionally, the two largest residential growth areas of Avondale last year were Coldwater Springs and Rancho Santa Fe - both areas that this station would serve. Willmeng is dedicated to teaming with you in making this happen. When it comes to building a fire station where firefighters feel at home and enjoy ready access to the tools to safely and comfortably complete their shifts, nothing matters more than experience. As fire station experts, we bring decades of experience, and will be able to provide unparalleled insight into the project.

Preconstruction Services to Drive Value. We will provide the City of Avondale with a reliable and accurate budget early in the design process, and then manage to that budget throughout design. For example, on Fire Station 304 in the City of Surprise, our GMP was 1.5% lower than our initial program budget. Based on decades-long experience building fire stations throughout Arizona, our team not only understands the right questions to ask during design, but also has the ability to vet multiple design options during preconstruction to help the City of Avondale and the architect make informed decisions. We are keenly aware of the budget constraints that public entities face, and our team is ready to help the City deliver quality with wise budget management.

Caring for the Fire Fighting Community. Firefighter health and wellness will be a priority throughout the entire project. During the programming and conceptual design phases, Fire Station Program Manager Ken Leake will be available to provide insight into health and wellness issues and needs garnered over a career of 30 years as a firefighter, most recently as the Deputy Fire Chief for the City of Phoenix. As the Deputy Fire Chief, Ken oversaw the maintenance of more than 70 fire stations, and he is prepared to help you serve your community with the same sense of commitment.

Expertise in Building Fire Stations. Together, our team brings **160 years** of expertise in building a combined total of **55 fire stations in Arizona**, including stations completed by Keith Sabia, Ken Leake, Jason Alvarado, and Brian Kearney in the Cities of Phoenix, Mesa, Buckeye, Glendale, Peoria, Surprise, Gilbert, Maricopa, and Flagstaff. Each of our team members possesses the knowledge and expertise that could only be borne of decades of experience in their respective fields. Keith Sabia has completed **37 fire stations in Arizona** and brings unparalleled knowledge and expertise to the project. Keith and the Willmeng team will be invested in the Avondale Fire Station CMAR project from preconstruction to close-out, monitoring the budget every step of the way.

Ultimately, we want to help you fulfill your goals with ease and confidence. I ask that you consider Willmeng for your Fire Station CMAR project. As your partner, we are extremely dedicated to and passionate about fire station construction, and will continually demonstrate our understanding of just how critical the fire station is to your community and the firefighters who will call this station home.

We look forward to meeting with you to discuss how we may be of service.

Sincerely,



James Murphy
CEO

A.2 Firm Identification Information. Explain the firm's legal organization.

Legal Name: Willmeng Construction, Inc.

Identification Number: 86-0410806

Legal Form: Willmeng is an S-Corporation incorporated in 1980 in the State of Arizona but has been locally owned and operated since 1977.

Contact Person Info: James Murphy, jmurphy@willmeng.com, (480) 968-4755

A.3 Location of principal office.

Willmeng's principal office is located at 2048 N. 44th Street, Suite 200, Phoenix, AZ 85008. As a general contractor licensed to do business in Arizona, our ROC number is 082904 and we are a corporation in good standing with the state.

A.4 General description of firm including years in business.

Incorporated in 1977, Willmeng Construction, Inc. is a 100% Arizona established, owned and operated General Contractor specializing in municipal, office and industrial projects through design-build, Construction Manager-at-Risk and negotiated delivery methods. Over the past 41 years, Willmeng has completed over 600 municipal, TI, industrial and office projects similar to the Avondale Fire Station project.

The collective experience of the Willmeng team will provide the City of Avondale with a qualified CMAR partner to plan, design, and construct your new Fire Station. Willmeng firmly believes that our construction team possesses the most outstanding experience of fire station construction in Arizona. Having the right combination of more than 90+ fire station and municipal projects and more than 55 combined CMAR projects; our team is uniquely positioned to anticipate issues related to this Fire Station project.



A.5 Contracts or subcontract held by firm or officers of the firm that have been terminated in the last five years.

Neither Willmeng nor its officers has had a contract or subcontract terminated.

A.6 Claims arising from a contract that resulted in litigation or arbitration within the last five years.

Willmeng has had no claims arising from a contract which resulted in litigation or arbitration.

A.7 Provide the Arizona professional and contractor license numbers held by the CMAR Firm/team and the key personnel who will be assigned to this Project. Indicate if held by firm or individual.

Willmeng is an Arizona licensed general contractor. All licenses listed below are held by the firm:

AZ Corporation Commission:

File Number: 01334704

Corporation in Good Standing

AZ General Contractors

License: AZ ROC B-01 082904

Exp. 04/30/2022

A.8 CMAR Firm Information Form, with a signature.

Please refer to the Appendix for the completed form.

A.9 Provide a statement from a surety company if selected as a finalist for this project.

If selected as a finalist, Willmeng will provide a statement from our surety company describing the company's bonding capacity. Willmeng is bonded by Great American Insurance Company. They are a Treasury Listed, "A+" (Excellent) Best rated surety company and have been able to meet the surety needs of Willmeng.

55
AZ FIRE
STATIONS
COMPLETED
BY TEAM

168
YEARS OF
COMBINED
TEAM
EXPERIENCE

55
CMAR
PROJECTS
COMPLETED
IN LAST FIVE
YEARS

SECTION B

EXPERIENCE AND QUALIFICATIONS OF THE FIRM

B.1 Comparable CMAR Projects



SIMILAR EXPERIENCE

- CMAR Project
- Fire Fighter Health & Wellness
- Strategic Value Options
- Full Preconstruction Services
- Same Team Members
- Site Development
- Architect: HDA Design

"When you walk through our fire station, you can see that the team building these really cares about a good product and build with tremendous quality." - Assistant Fire Chief Rob Duggan, Gilbert Fire Station No. 9



Project #1 - Gilbert Fire Station No. 9 GILBERT, AZ

A. Description: Gilbert Fire Station No. 9 is a 13,700 SF, four-bay fire and rescue station developed on 3.1 acres in southeast Gilbert. The station includes living quarters, an exercise room, a kitchen, a dispatch room, offices, a decontamination room, and apparatus space to support up to four engines and/or rescue equipment. The ICF and masonry structure includes insulated concrete walls to provide higher energy efficiency. The facility reflects the Town of Gilbert's prototype fire station design while incorporating many improvements from the previous Town of Gilbert facilities. Firefighter wellness was an overriding theme throughout design and construction.

B. Role of CMAR: CMAR Contractor; 0% Self-Performed; Provided multiple estimates leading to a GMP. Other services included constructibility review, options analysis, integrated project scheduling, and on-going dynamic estimating.

C. Fire Station Construction Services: Sound, Durability, Maintenance, Hot/Cold Zone Separation, Apparatus per NFPA #1500, #1710, #1851 Standards

D. Original/Final Costs: Org.: \$4,998,603 | Final: \$4,749,453 *Under Budget*

E. Original/Final Completion Dates: 09/18 – 09/18 *Completed On Schedule*

F. Project Owner: Town of Gilbert

G. Project References: Chris Scott, (480) 503-6620, christopher.scott@gilbertaz.gov | Assistant Fire Chief, Rob Duggan, (480) 694-3330, rob.duggan@gilbertaz.gov

SIMILAR EXPERIENCE

- CMAR Project
- Fire Fighter Health & Wellness
- Strategic Value Options
- Full Preconstruction Services
- Same Team Members
- Site Development
- Architect: Perlman Design

Project #2 - Surprise Fire Station No. 304 SURPRISE, AZ

A. Description: Fire Station No.304 is approximately 20,650 SF on 4.8 acres. The new station includes five apparatus bays, 16 dorms, a fitness room, work/living space, and dedicated quarters for the battalion chief. General fire station support areas include a decontamination room, a turnout gear locker room, a self-contained breathing apparatus room, a workshop, infectious disease control transition spaces, an EMS room, a laundry, a dining room, a patio, a day room, a fire fighters office, a kitchen, a public lobby, restrooms, an exam room, and a conference room. The structure was built with a combination of insulated concrete forms (ICF) and masonry. The work also entailed modifications to 163rd Ave. to accommodate traffic flow for the new station.

B. Role of CMAR: CMAR Contractor - Design/Construction; 0% self performed; Provided multiple estimates leading to a GMP. Other services included constructibility review, option analysis, integrated project scheduling, and on-going dynamic estimating.

C. Fire Station Construction Services: Sound, Durability, Maintenance, Hot/Cold Zone Separation, Apparatus per NFPA #1500, #1710, #1851 Standards, Multiple Cost Estimate Updates-Current Costs to Drive Fire Stations, Options Analysis- Maximizing Value with Options Early in Precon

D. Original/Final Costs: Orig.: \$6,981,054 | Est. Final: \$6,981,054 *Completed on Budget*

E. Original/Final Completion Dates: 8/20 – 8/20 *Completed On Schedule*

F. Project Owner: City of Surprise | **G. Project References:** Jeff Martin, (623) 824-6950, jeffery.martin@surpriseaz.gov | Chief Tom Abbott, (480) 250-5404, tom.abbott@surpriseaz.gov

B.1 Comparable CMAR Projects



SIMILAR EXPERIENCE

- CMAR Project
- Fire Fighter Health & Wellness
- Strategic Value Options
- Full Preconstruction Services
- Same Team Members
- Site Development
- Architect: Perlman Design

Project #3 - Maricopa Fire Administration Building MARICOPA, AZ

A. Description: Located adjacent to an existing fire station **built by the same team proposed** (Fire Station 575), the Fire Administration Building is adjacent to a Public Works fleet facility and storage yard; the overall area is approximately 6.3-acres in size. The goal of the proposed site plan was to use as little as possible of the existing site and only develop the minimum required to meet the function of the facility in order to allow for expansion and other possible uses in the future. The Warehouse and service drives are located behind secured access points and are fully screened from public view.

B. Role of CMAR: CMAR Contractor; 0% Self-Performed; Provided multiple estimates leading to a GMP. Other services included constructibility review, options analysis, integrated project scheduling, and on-going dynamic estimating.

C. Fire Station Construction Services: Options Analysis for Exterior Skins and Structure of the Building, Sound Mitigation Planning (Building Adjacent to Railroad Tracks), Planning per NFPA Standards to Store Fire Equipment, Apparatus Bay Storage, Early Preconstruction

D. Original/Final Costs: Org.: \$5,305,335 | Final: \$5,305,335
Completed On Budget

E. Original/Final Completion Dates: 4/20 – 6/20, Scope Change Delayed Original Scheduled Completion Date - *Delivered On Time*

F. Project Owner: City of Maricopa

G. Project References: Ross Renner, (520) 316-6952, ross.renner@maricopa-az.gov | Brady Leffler, Fire Chief, (480) 682-7761, brady.leffler@maricopa-az.gov

ADDITIONAL FIRE STATION CMAR PROJECTS

Surprise Fire Station No. 308 (in preconstruction)

- April 2020/Construction begins November 2020
- 14,500 SF, four bay fire station designed and built to the latest standards of health and wellness of the firefighters within the station. The station will also be equipped with training and lab space.

Queen Creek Fire Stations No. 2 and No. 5 (in preconstruction)

- Fire Station No. 2 July 2020/Construction begins November 2020
- Fire Station No. 5 July 2020/Construction begins January 2021
- Both fire stations are 13,353 SF, both have three apparatus bays, and both are designed based on the original prototypical station created by Perlman Architects.

Tucson Fire Stations Renovation Program (in preconstruction)

- 4 Fire Stations - No. 7, No. 15, No. 16, No. 18
- Currently in the design phase. All four stations are getting upgraded with expansions/additions to each station with an emphasis of upgrading the Decon areas, as well as adding space for new exercise rooms, while improving the functionality and performance of each apparatus bay.



Rendering of Queen Creek Fire Station No. 2

B.2 List all Arizona projects, whether completed, ongoing, or selected, but not yet under contract in the last three years.

As a leading contractor in Arizona, Willmeng has had the fortunate opportunity to work on many projects each year in a variety of delivery methods, predominately CMAR. As such, we have completed **477 projects, totaling \$700 million in the last three years** (a detailed list can be provided upon request), and specifically, the following CMAR and Design-Build projects listed in this table.

Project Name	Delivery Method	Project Name	Delivery Method	Project Name	Delivery Method
Allred Park Place Buildings 15 & 16	CM@Risk	Swift Travel Center - Flagstaff	CM@Risk	City of Surprise Fire Station 304	CM@Risk
Amazon Tempe / Alameda TI	CM@Risk	The Grand Management Office & Lounge	CM@Risk	City of Surprise Fire Station 308	CM@Risk
American Airlines**	CM@Risk	Tolleson Logistics Center	CM@Risk	City of Buckeye - Sundance Park	CM@Risk
Antelope Canyon Visitors Center	CM@Risk	Town of Gilbert Fire Station No. 9	CM@Risk	Copper Sun Renovation	Negotiated
Aspen Dental	CM@Risk	Town of Gilbert Municipal Building 1	CM@Risk	Covetrus Grandview TI	Negotiated
Avila Retail at Sky Harbor Airport	CM@Risk	Upgrade Inc.	CM@Risk	Edkey Buckeye Elementary	Negotiated
AZ Spine & Joint Hospital Reno.	CM@Risk	USAA White Thorn Guardhouse Relo.	CM@Risk	Project Hustle	Negotiated
Banner Health**	CM@Risk	W.L. Gore Precon	CM@Risk	I-10 Spec Suite #200	Design/Build
BARD Anti Room	Design/Build	3930 W. Watkins Spec Suite	Design/Build	Jomax Water Reclam. Facility Op.Precon	CM@Risk
Basis Flagstaff Campus Expansion	CM@Risk	Additions to VW Charging Station	Design/Build	LBA - FedEx TI	Negotiated
Basis Phoenix Central - Reno.	CM@Risk	Agiliti TI	Negotiated	MarWest - Landing 202 - Phase III	Negotiated
Basis San Antonio Shavano	CM@Risk	Banner Ortho Paseo	Negotiated	Marwest Logic Park 91	Negotiated
City of Maricopa Fire-Medical Bldg.	CM@Risk	Dandelion Outlet	Negotiated	Northrop Grumman - Satellite Div. Prod. Facility	Negotiated
Consumer Cellular	CM@Risk	ES OPCO - H Occupancy	Negotiated	Notre Dame Prep Performing Arts Center	CM@Risk
Deer Valley Freeway Corporate Ctr. II	Design/Build	Gilbert Crossroads - Phase 2	Negotiated	Park 303	Hard Bid
Derma Health Peoria	CM@Risk	KBR TI @ I-17 Bldg 4	Negotiated	Pillar Logistics	Negotiated
Gilbert Christian Schools Greenfield Campus	CM@Risk	Quetico TI	Negotiated	Portales Renovation	Negotiated
Huhtamaki Manufacturing & Dist. Ctr.	Design/Build	Ren 1 Concierge	Negotiated	Prescott Regional Airport New Passenger Terminal	CM@Risk
Infusionsoft Building 4 TI	CM@Risk	Spoke Custom Products	Negotiated	Queen Creek FS #2 Precon	CM@Risk
Insys - Building 2	CM@Risk	SRP TSC Bld 2&9 Admin/Restroom	Hard Bid	Queen Creek FS #5 Precon	CM@Risk
Mosaic Retail Shops - T3 (DB)	Design/Build	Suite 1725 @ Ren 1	Negotiated	Raintree Office Building & Parking Garage	Hard Bid
Offerpad TI	CM@Risk	The Common	Negotiated	Spec Suites at Kyrene Commons	Negotiated
Papa John's Pizza Expansion	Design/Build	ViaWest Goodyear Crossings	Negotiated	Spec Suites at Log Park - BLDG 2	Negotiated
Papago HBI International	CM@Risk	Wickenburg Golf Maintenance Facility	CM@Risk	Surprise Fire Station No. 303 Fuel Repl.	JOC/MSA
PCI - Office TI	Design/Build	ZipRecruiter - 1st and 2nd Floor	Negotiated	The Cliffs - Castillo Nuevo Renovation	Negotiated
Phoenix-Mesa Gateway Airport Remodel	CM@Risk	Amazon**	Negotiated	Tucson FS Remodels Precon	CM@Risk
Phoenix-Mesa Gateway Airport Pre-Con	CM@Risk	Arrowhead Dealerships**	Negotiated	United Foods Inc	Negotiated
PMGAA - Terminal Concessions Exp. Pre-Con	CM@Risk	ATF @ Ren 2	Negotiated	W.L. Gore Echo Ridge Office and Lunch Room Expansion	Negotiated
PMGAA Able Engineering Expansion	CM@Risk	Bang Energy Phase II	Negotiated	Washington E.S. District Media Panels	JOC/MSA
Prescott Airport Precon	CM@Risk	Banner Country Club	Negotiated	Willmeng Fann JV Prescott Airport	CM@Risk
Northrop Grumman Launch Vehicle HQ	Design/Build	Banner Queen Creek Health Ctr. Exp.	CM@Risk		
San Tan Montessori High School	Design/Build	Basis Austin - Crestview Remodel	CM@Risk		
Spec Suite - 12th Floor	CM@Risk	Bell 17 Flex / Building 5	CM@Risk		
St. Mary's Food Bank Dist. Warehouse	CM@Risk	Career Success School - District Office	Negotiated		
		CAZ 6 Bldgs 2 & 1 w/Parking Deck	Negotiated		
		City of Surprise WRF Admin Bldg.	CM@Risk		

LEGEND

Project Completed Not Started

In Progress ** Multiple Projects

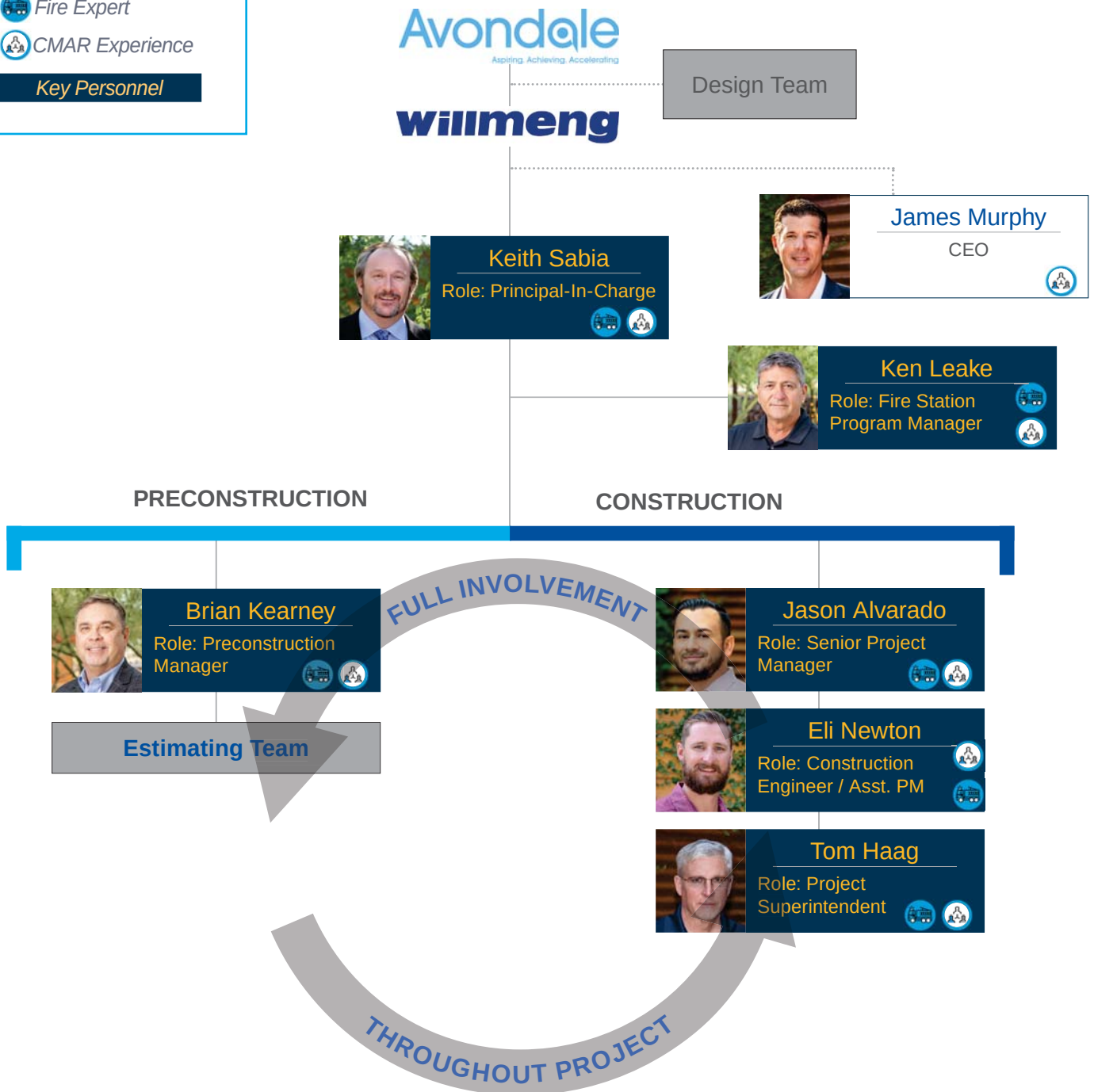
SECTION C

KEY POSITIONS

C.1 Organizational Chart



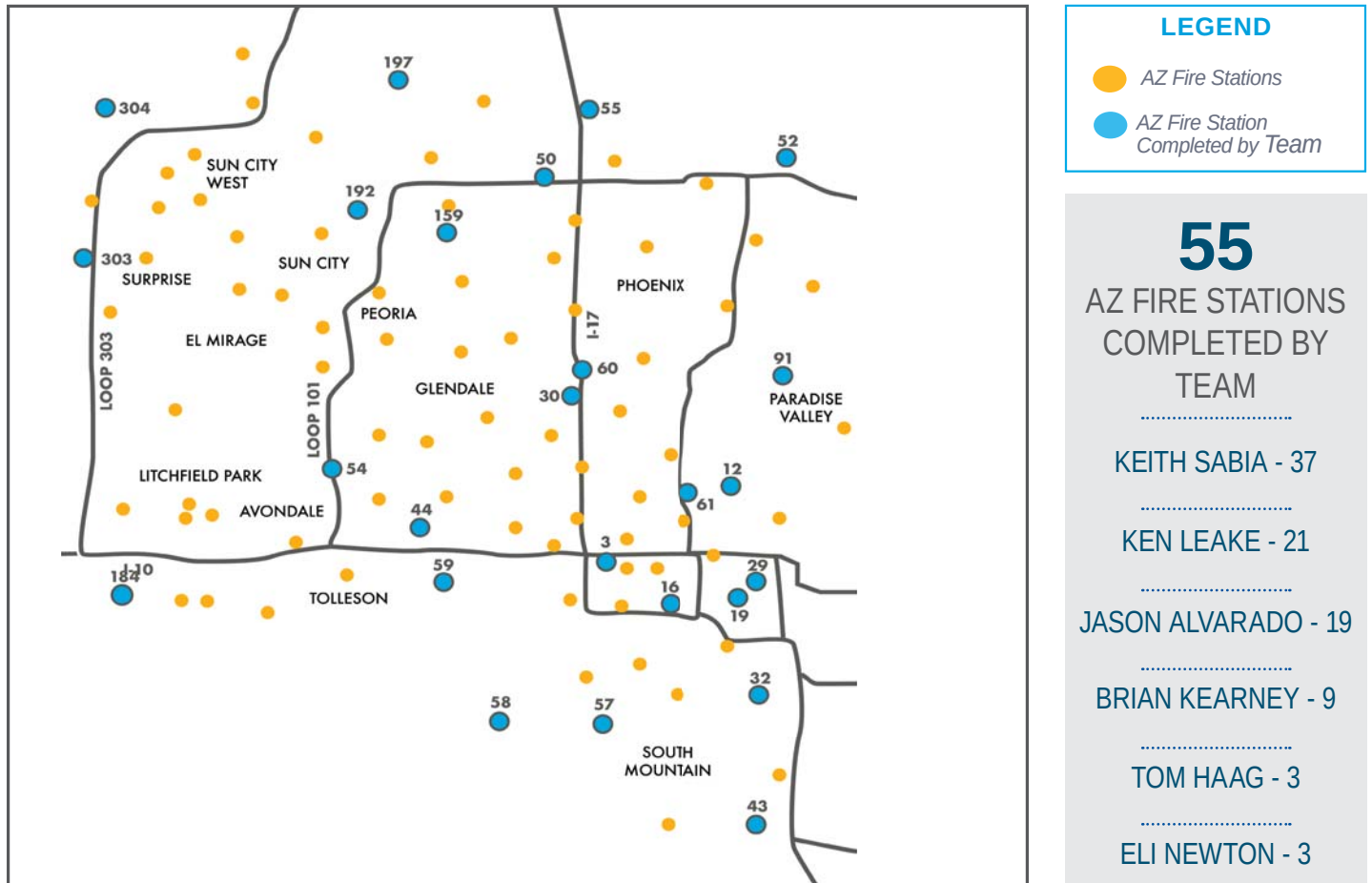
The Willmeng team has completed 55 fire stations in the Valley and two of the team members built their careers as firefighters prior to joining Willmeng.



Willmeng brings the benefit of local decision making and CEO commitment to the team, providing support, resources, and participating in the selection of the right team for the City of Avondale.

Arizona Fire Stations Completed by the Proposed Team

The Willmeng team has built their careers in the fire and public safety industry, having constructed some of the most recent and significant fire stations in the Valley to serve the growing population. This map below shows all of the fire stations currently on-line in the Valley and indicates the ones that have been built by this team. It is our desire to impart this knowledge in evaluating alternatives and staying within your budget for the Avondale Fire Station CMAR.



C.2 Identify the home location of key personnel, length of time with the firm and the percent of work to be done locally.

Please find the team's respective length of time with the firm and home location on their resume located in the Appendix. 100% of work will be completed locally.

C.3 If a subcontractor will be used for all work of a certain type, include information on this subcontractor.

Once we are in design, we may solicit a subcontractor using an RFP format for select subtrades for early precon involvement and product input. Subcontractors are selected based on a combination of qualifications and price. In addition to our subcontractor selection process, we also collaborate to get input from the City of Avondale on preferred subcontractors.

C.4 Resumes

See Appendix for resumes

Willmeng is under construction and in the preconstruction phase of 7 fire stations currently. This is a distinct advantage to Avondale because the team will bring current costs, trends and subcontractors with relevant experience and competitive pricing to complete the work.

SECTION D

PROJECT UNDERSTANDING & APPROACH

D.1 Discuss your understanding of this Project. Include major issues your firm/team has identified and how you intend to address those issues.

The City of Avondale needs specialized expertise in building state-of-the-art fire stations. With only one chance to build your Fire Station right, it should fulfill your current and future needs, and it should last for decades. The Willmeng team has taken the time to visit the site, investigate site issues, and consider fire station related issues that we can address proactively in the preconstruction phase.

LEGEND

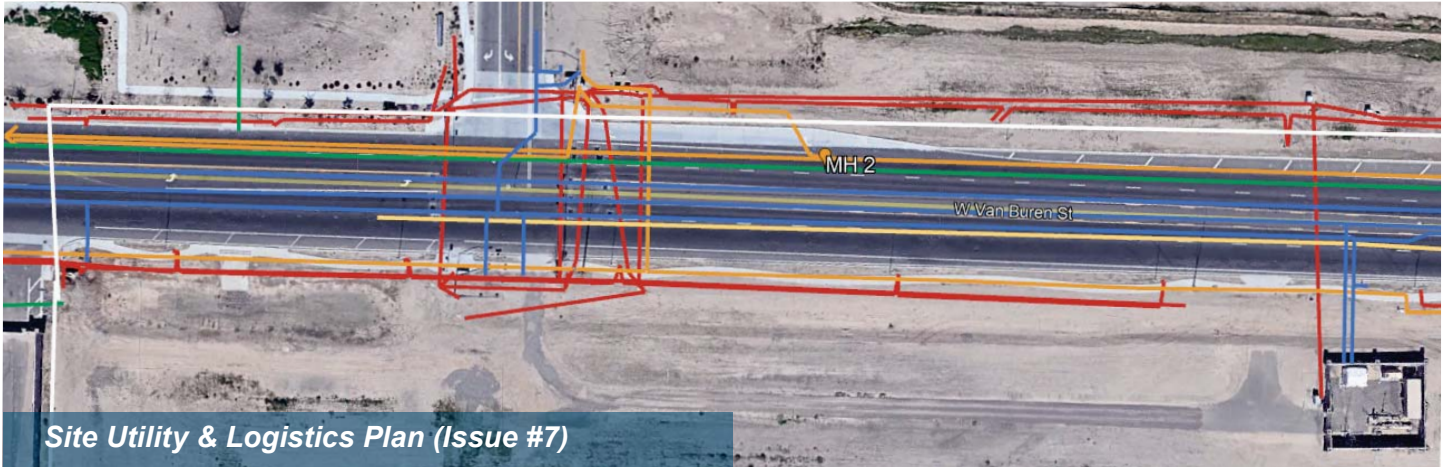
Low Importance

Medium Importance

High Importance

KEY ISSUES IDENTIFIED	Plan in Preconstruction	Impact to Cost	Impact to Schedule	Impact to Quality	SOLUTIONS
Issue #1 Site Soil Conditions: This site and the region at large is known for and subject to differential settlement due to removal of water from the aquifer via well sites.					Extra care will be taken during all excavation operations to visually inspect the soil to identify fissures and stratification that may be evidence of subsurface, differential settlement. In the event that such conditions are identified/confirmed within the building footprint or in proximity to any foundations, the geotechnical engineer and civil engineer will be called to the site to propose a remedy that is appropriate for the condition to avoid future cracking and differential settlement that is common as a result of subsurface voids.
Issue #2 Multi-purpose Function of the Station: Achieving the goal of making the station a public service location is one of the goals of the City.					During preconstruction, Willmeng will participate in the planning of the community room to make it accessible, correctly sized, etc.
Issue #3 Site Drainage: Stormwater Prevention on the site. 					The fire station is located between Well Site 25 and the Avondale Coldwater BPS. The transmission line connecting the two facilities is located in the street on Van Buren. There should be no coordination issue, but the awareness on the facilities allows us to plan around this and avoid any disruption to service. 
Issue #4 Location of the Station between Water Treatment Facilities: The location of the site is sandwiched in between municipal water facilities. The contractor will need to be aware of these and prevent any disruptions associated with service. 					This site is a major stormwater flow point, located near an office retention basin and having stormwater outflow equalizer pipes located to the south side of the site. Willmeng will plan for this infrastructure and pay close attention to SWPPP during preconstruction to address this issue.
Issue #5 Traffic Lights: The intersection at 127th Ave and Van Buren will need to be signalized. 					Currently, there are 3 signals at 127th and Van Buren and we will need to plan and coordinate a fourth signal installation to provide the proper signalized entrance out of the station.
Issue #6 Location of the Station related to serving the community: The City's growth and surrounding developments, including The Blvd., the Health-Tech Corridor, make planning for the use and function of the station critical.					This station will be in the center of new development, the historic area of Avondale and adjacent to the Health-Tech Corridor. We must plan for this in order to maximize the use and exposure from all of these areas.

KEY ISSUES IDENTIFIED	Plan in Preconstruction	Impact to Cost	Impact to Schedule	Impact to Quality	SOLUTIONS
Issue #7 Site Utilities: The general contractor will need to be aware of the utilities that exist on the site and determine the best approach. 					Power lines are run overhead along Van Buren with SRP power for the street lights running underground in the utility easement. The primary power will need to be pulled from the north side of Van Buren. Willmeng engaged SafeSite to run a utility survey to confirm the locations on the site to be proactive in the issues identification. See Site Utility and Logistics Plan on page 9.
Issue #8 Decontamination: Traditional fire stations have certain areas designated for decontamination that are separated from contamination areas to keep contaminants out of the living areas.					We will conduct constructibility reviews at each major phase of design, thoroughly vetting decontamination strategies for firefighters, and provide cost saving recommendations based on our fire station experience.
Issue #9 Firefighter Comfort: HVAC and electrical plans that are not conducive to overall firefighter comfort. E.g., in stations designed with larger packaged units, occupants seldom have control over multiple zones. If one unit malfunctions, the entire station can suffer. Split systems, on the other hand, are smaller. Although it takes a greater quantity of units to achieve the same cooling tonnage as packaged units, they can be deployed more efficiently to have greater control over more zones.					We will obtain input from firefighters on what constitutes “comfortable space”. We will also conduct early meetings with mechanical/electrical engineers and subcontractors to address occupant comfort, such as location of HVAC split systems, thermostat locations, and the locations of duplex outlets with USB connectivity. We will place apparatus bay air compressors and generators in locations removed from living quarters. The noise from these pieces of equipment can be very disturbing and disruptive.
Issue #10 Firefighter Wellness: Firefighter wellness will be an overriding theme throughout design and construction. As part of the overall team, Willmeng is committed to assuring that the necessary steps are taken to mitigate firefighter exposure to carcinogens. This is a design and construction quality issue.					To ensure Firefighter wellness, we will implement quality control measures to assure apparatus bay exhaust systems are interlocked with bay doors. We will allow appropriate time during station commissioning to test all CO2 sensors, assuring fumes do not enter living quarters from apparatus bay. We will proactively engage controls contractor to assure that apparatus bay interlock system and pressurization meet sequence of operation for desired air exchanges.
Issue #11 Sulfates in Soil: Upon a visit to the site, it became evident that the land had previous use as a cotton gin; potentially resulting in sulfates in the soil. Sulfates in the upper layers of soils can occur due to saline-sulfate rich groundwater in some agricultural areas. When soil is undisturbed, the presence of sulfates is typically benign, but when these soils are disturbed and exposed to oxygen, sulfuric acid forms. The presence of Acid Sulfates are very destructive to concrete structures, causing foundations and slabs to erode and degrade over time.					If the soils report identifies the presence of sulfates in the soil, Willmeng recommends using Type V Portland Cement in concrete mixtures coming in contact with soils. Type V cement is designed to be resistant to sulfate attack and prevents severe damage to concrete structures in the presence of soil sulfates. Although more expensive than other types of Portland Cement, Type V will be a necessary part of the concrete specification. During Willmeng’s constructability reviews, we will assure that this type of cement is specified in the documents and priced accordingly. Even with a Type V cement, water within soils can migrate deep into concrete structures, and these additional measures serve as another barrier to prevent long-term degradation.
Issue #12 Multi-Use Path Under Construction: After visiting the site, we know that the \$4.2 million, 1.5-mile multi modal trail system is going to be completed in December 2020 just across the street from the fire station, which could increased pedestrian traffic in the area.					Although this project will not impact the Fire Station footprint, the multi-use path on the north side of Van Buren (between 113th Avenue and 127th Avenue) will be an important stakeholder. Sunland Asphalt is constructing this pathway through December of 2020 (through ADOT) as a part of a long term project to further the regional Maricopa County Multimodal Trail System. As a result, this will increase the amount of pedestrians and cyclists along the corridor in front of the City’s new Fire Station. Our approach will be to incorporate the increased pedestrian usage into our safety planning as well as our work plans during our construction efforts.



Site Utility & Logistics Plan (Issue #7)

Utility Coordination Efforts: Our team has already designated (located) the existing utility infrastructure in Van Buren Street through our partner Safesite LLC. Having this detailed information (horizontal and vertical alignments) at an early stage will help expedite the design of our utility service connections and assist our BIM (modeling) efforts to avoid utility conflicts.

D.2 Describe your approach to performing the required Scope of Work, including the following processes:

Willmeng will engage and promote, from the beginning, a collaborative team effort among Willmeng, the City, and the architect, providing experience and knowledge of the CM-at-Risk process, including:

- ▶ Developing creative solutions to maximize your project value
- ▶ Providing timely and accurate information to support intelligent decision-making when those decisions have the greatest cost and schedule impacts to the project
- ▶ Delivering a Guaranteed Maximum Price through a transparent “open book” approach
- ▶ Completing the station within the schedules agreed upon



Ken Leake: Fire Station Program Manager



Keith Sabia: Principal-In-Charge

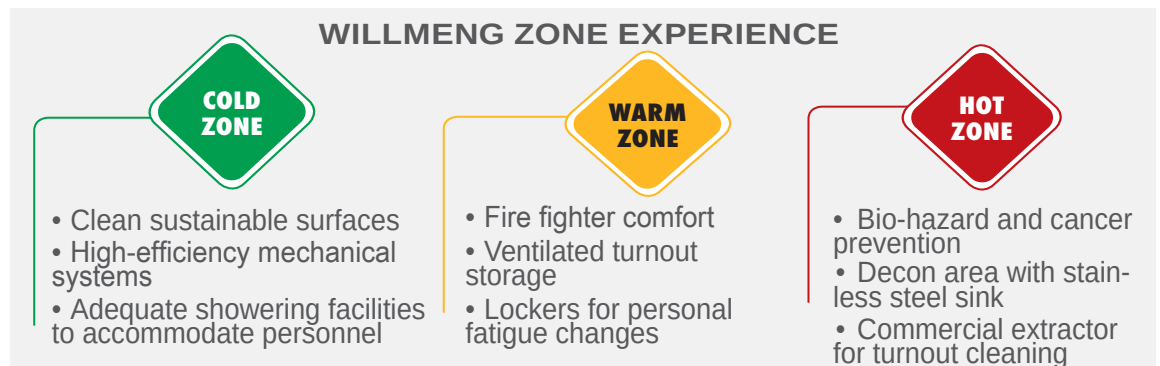
Expertise of Former Deputy Fire Chief Available to the Team Through

Programming: Fire Station Program Manager and former Deputy Fire Chief for the City of Phoenix, Ken Leake, will be available to the team to provide insight into fire station sustainability and design challenges faced over his history of 30+ years, which includes the construction of 21 new fire stations and the maintenance of more than 70 fire stations.

Fire Station Expert Builder Leads Team: From preconstruction programming through construction and warranty process, Keith Sabia is passionate about and knowledgeable on all aspects of fire stations, having built nearly 40 fire stations in Arizona and the Southwest region. An expert when it comes to knowledge of the latest cost impacts and fire station construction values, Keith’s expertise will be a tremendous benefit to the fire station.

Fire Station Zone Considerations:

The Willmeng team proposed is uniquely qualified to offer their expertise in meeting NFPA Standards in meeting Hot/Warm/Cold Zones during the preconstruction phase of the Avondale project.



BUDGET ASSURANCE EXAMPLE: CITY OF SURPRISE NO. 304 FIRE STATION

Willmeng's efforts on the City of Surprise Fire Station No. 304 provide insight into the strength of its preconstruction services. At early conceptual design, Willmeng's team of fire station experts budgeted the 20,000 SF, five bay station at \$7.1M.

Throughout design, the preconstruction team worked with the architect and the City of Surprise to find value in the station's systems and materials. For example, we evaluated seven different options for the 80' clear span roof truss system for the apparatus bay, with special attention paid to maintaining the correct clear height and an efficient top-of-wall connection detail, saving money in a key area that impacted the overall budget. This is one of many examples of the team working to maintain the right balance among program requirements, design intent and budget.



Planning/Scheduling: Establishing and managing a predictable and reliable schedule is the most critical component to a successful project. From our initial involvement in the project, we utilize MS® Project scheduling software for all project tracking and schedule production. Additionally, Ken Leake and Keith Sabia will lead the programming and conceptual design phases on behalf of Willmeng to build in critical aspects to this phase of preconstruction.

Once trades are on-boarded, our approach to managing the schedule and site operations is to utilize Last Planner Scheduling, which is the process of involving the individual trade foremen in project planning to eliminate waste and increase efficiency and ownership. By involving the field superintendent to participate in the planning process, we create a predictable and reliable workflow, which is critical for meeting schedule commitments.



Estimating: In addition to using proprietary estimating software populated with thousands of unit costs, our team uses On-Screen® Take-Off software for all material quantifications and to communicate our understanding of project components in the early design phases. Our process includes existing site verifications, the development of infrastructure costs, primary programming budgets, and detailed cost modeling to get you a precise and transparent estimate early in the design process.



Constructability Reviews: The proposed team is invaluable during the preconstruction phase, the Willmeng team provides a unique combination of practical and construction expertise. Ken and Eli are former firefighters and Keith and Jason have built the majority of the fire stations in the Valley. This experience allows the team to evaluate the constructability of the station from a few perspectives and identify obstacles before the station is actually built to reduce or prevent errors, delays and potential cost overruns.

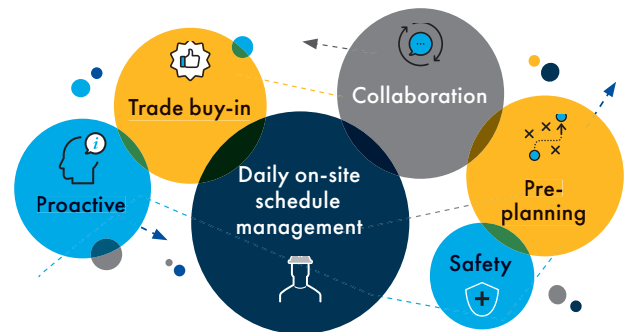


Cost Controls: One of the most apparent benefits to preconstruction done well is the true management of costs. By having the team who will be building the project involved in preconstruction, the City gains the advantage of clarifying information, identifying cost drivers, potential materials selection savings and more. Our team utilizes Procore® Management Software to organize and manage the entire project, including budget management. By sharing this information with the team in one place, decisions can be made quickly and collaboratively to better serve the project. We will always provide 100% transparent open book access to the project budget during all phases of design and construction.



Managing Construction: Procore® is a web-based software package utilized to manage all aspects of construction. It provides visual project documentation and control and provides a collaborative platform where all project documentation is maintained and tracked in real-time, including drawings, submittals, meeting minutes, RFI's, and other important project documentation.

PLANNING FOR SUCCESS



COST CONTROL ABILITY



Understand Scope Requirements



Draw On Extensive Cost Database



Utilize Trusted Trade Contractors



Early, Accurate, and Reliable Estimate



Bid Package Management: We understand the need to keep track of the bid process and not delay the responses as subcontractors participate. Our team is actively involved in this process and will review scopes to ensure that there are no overlaps and no gaps in the scope for the Fire Station. Additionally, Willmeng holds relationships with key subcontractor trades who are qualified and experienced in fire stations; we will actively solicit responses from these trade partners to give the owner the best value and quality on the project.



Management of Overhead Costs: Throughout the project, we will take an open book approach to costs, sharing our costs with the City throughout the project, giving the City the opportunity to review general conditions and fees, i.e., our overhead costs.



Managing Subcontractors: Past performance is a baseline indicator of future success. During construction we will monitor the performance of our subcontractors and conduct internal project subcontractor performance reviews. Once complete, we will document and continually update the results of their performance in our database and apply this performance marker during future considerations for subcontractor selections.



Safety Management: We maintain rigorous safety standards with a “zero tolerance” policy. Superintendent, Tom Haag, hosts safety meetings on a weekly basis. Additionally, each morning, Tom hosts a “morning safety huddle” to discuss any potential safety risks with the subcontractors on site. Our Safety Director, John Bingham is also actively involved in the site specific safety plan and management.



Dispute Resolution: To reduce the likelihood of a dispute arising, we seek to optimize each aspect of the construction process, at every stage with clear communication and upfront planning. In a CMAR project environment, disputes should be minimal, but should they arise Willmeng approaches the issues in a manner consistent with one of our Core Values of Fair 360.



Levelset, a nationally recognized construction service partner, released its list of the top 20 best-paying large contractors for the first half of 2020. Not only did Willmeng make the top 20, Willmeng was the only Arizona contractor selected for excellence in prompt payments to our subcontractors and vendor partners.



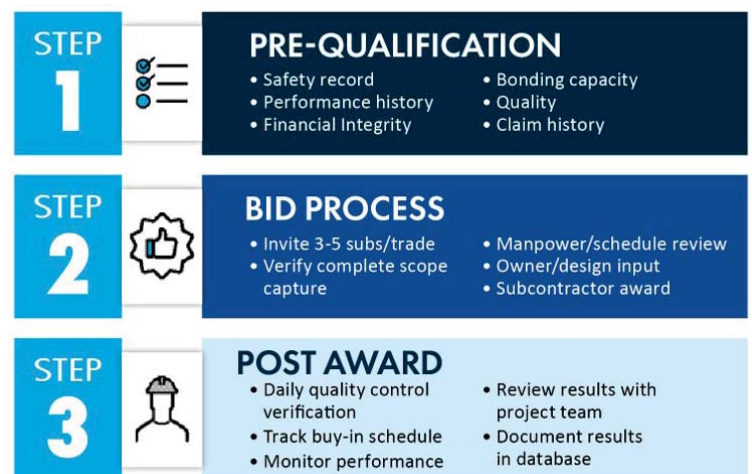
We illuminate with kindness by seeking to understand before being understood and caring more so we can achieve genuine success for all.

D.3 Submit a subcontractor selection plan. Discuss the benefits that your selection provides to the Project.

The Subcontractor Selection Plan outlined in the image below demonstrates Willmeng’s trade contractor selection process, which is built around Arizona state procurement laws. Subcontractors are selected based on a combination of qualifications and price. In addition to our subcontractor selection process, we also insist on input from the City of Avondale on preferred subcontractors.

Our subcontractor pre-qualification process is a proactive process to ensure that the most qualified trade contractors provide the greatest value to your new fire station. We consider several factors before we narrow down our trade contractor list:

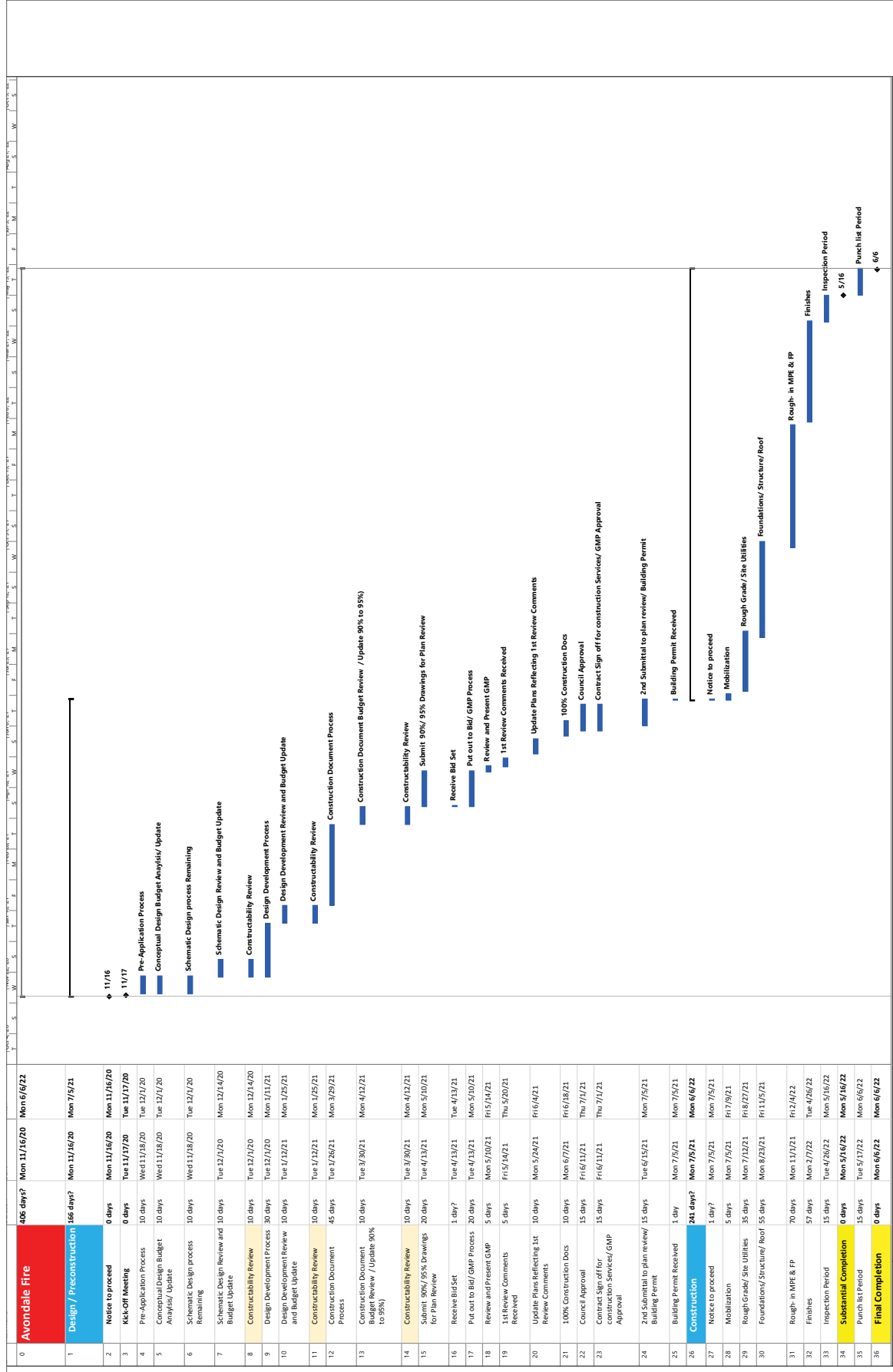
- Fire station/municipal experience
- Experience of lead personnel completing similar work
- Current workload and manpower available for the project
- Safety record
- Successful experience with Willmeng



SECTION E

PROJECT SCHEDULE

PERMANENT FIRE STATION CMAR:
127TH AVENUE & VAN BUREN STREET



APPENDIX

FORMS

PART IV. CMAR FIRM INFORMATION FORM

By submitting your Statement of Qualifications, the submitting CMAR Firm certifies that it has reviewed the administrative information and draft of the Construction Manager at Risk Agreement's terms and conditions and, if awarded the Agreement, agrees to be bound thereto.

<u>Willmeng Construction, Inc.</u> CMAR FIRM SUBMITTING SOQ	<u>86-0410806</u> FEDERAL TAX ID NUMBER						
<u>James Murphy, CEO</u> PRINTED NAME AND TITLE	 AUTHORIZED SIGNATURE						
<u>2048 N. 44th St., Suite 200</u> ADDRESS	<table border="0" style="width: 100%;"> <tr> <td style="width: 50%;"><u>602-330-3803</u></td> <td style="width: 50%;"><u>480-557-6788</u></td> </tr> <tr> <td>TELEPHONE</td> <td>FAX #</td> </tr> </table>	<u>602-330-3803</u>	<u>480-557-6788</u>	TELEPHONE	FAX #		
<u>602-330-3803</u>	<u>480-557-6788</u>						
TELEPHONE	FAX #						
<table border="0" style="width: 100%;"> <tr> <td style="width: 33%;"><u>Phoenix</u></td> <td style="width: 33%;"><u>AZ</u></td> <td style="width: 33%;"><u>85008</u></td> </tr> <tr> <td>CITY</td> <td>STATE</td> <td>ZIP</td> </tr> </table>	<u>Phoenix</u>	<u>AZ</u>	<u>85008</u>	CITY	STATE	ZIP	<u>September 22, 2020</u> DATE
<u>Phoenix</u>	<u>AZ</u>	<u>85008</u>					
CITY	STATE	ZIP					
WEB SITE: <u>www.willmeng.com</u>	EMAIL ADDRESS: <u>jmurphy@willmeng.com</u>						

MINORITY/WOMEN-OWNED SMALL BUSINESSES (check appropriate item):

☐ Disadvantaged Business Enterprise (DBE)
☐ Women-Owned Business Enterprise (WBE)
☐ Minority Business Enterprise (MBE)
☐ Small Business Enterprise (SBE)

Has your firm been certified by any jurisdiction in Arizona as a minority or woman owned business enterprise?

N/A

If yes, please provide details and documentation of the certification.

APPENDIX

RESUMES

KEITH SABIA | Principal-In-Charge



VALUE ADDED

- + Fire Station Building Expert
- + Data-Driven Decisions During Construction
- + CMAR Delivery Expert

35 YEARS
OF EXPERIENCE

39
AZ FIRE STATIONS

Experience:

Industry: 35 years
Willmeng: 4 years

Education:

General Studies, Norwalk
Community College

Board Membership:

Arizona Builders Alliance-
"2007 Leadership
Development Forum"
Arizona Builders Alliance-
2015 "Senior Executive
Program"
Northern Arizona University
– Industry Advisory Board

Home Office Location:

Phoenix

% Of Work Done Locally:

100%

With 35 years of construction experience, Keith has a reputation for his successful completion of 39 public safety facilities for municipalities throughout Arizona.

As Principal-In-Charge, Keith will work closely with the City, architect, and our team during preconstruction and construction. He will ensure the project's goals are implemented and successfully executed by the team.

As an expert in public safety construction, Keith has developed genuine relationships with firefighters to understand the functional requirements of the end user. Keith will ensure all LEED and sustainability goals are met, working seamlessly with the entire team to deliver a durable and high quality fire station.

TWO COMPARABLE PROJECTS

- **Gilbert Fire Station No. 9** - 13,700 SF//CMAR | *Gilbert, AZ*
(b) Role: Principal-In-Charge (Project #1, Page 2)
- **Surprise Fire Station No. 304** - 18,000 SF//CMAR | *Surprise, AZ*
(b) Role: Principal-In-Charge (Project #2, Page 3)
- **Maricopa Fire/Medical Administration Facility** - 88,889 SF//CMAR | *Maricopa, AZ*
(b) Role: Principal-In-Charge (Project #3, Page 4)

ACTIVE FIRE STATION CMAR PROJECTS

- **Surprise Fire Station No. 308** - 16,700 SF | *Surprise, AZ*
- **Fort Mojave Fire Station** - 7,980 SF | *Fort Mojave, AZ*
- **Queen Creek Fire Station No. 2** | *Queen Creek, AZ (pre-con)*
- **Queen Creek Fire Station No. 5** | *Queen Creek, AZ (pre-con)*

ADDITIONAL KEY CMAR AND FIRE STATION PROJECTS

- **Flagstaff Fire Station Relocation Program (Nos 1, 2, 3, 5)** | *Flagstaff, AZ*
- **Buckeye Fire House No. 3** | *Buckeye, AZ*
- **Glendale Fire Station No. 159** | *Glendale, AZ*
- **Maricopa Fire Station No. 575** | *Maricopa, AZ*

City of Phoenix

- Fire Training Academy, LEED Silver
- Fire Station No. 50, LEED
- Fire Station No. 54
- Fire Station No. 57, LEED
- Fire Station No. 72, LEED Gold

City of Mesa

- Phoenix-Mesa Airport Operations Fire/Police ARFF Facility No. 215
- Fire and Medical Station No. 203

Town of Gilbert

- Fire Station No. 5
- Fire Station No. 6
- Fire Station No. 7
- Fire Station No. 8

"I am looking forward to the opportunity of building a new fire station for some old friends who I have had the privilege to work for in the past, including Chief Jeff Case and Assist. Chief Larry Rooney." - Keith Sabia

KEN LEAKE | Fire Station Program Manager



VALUE ADDED

- + Fire Station Sustainability Expertise
- + Knowledge of Firefighter Kinship
- + Knowledge of Firefighter Health, Wellness, and Fitness Health Needs

35 YEARS
OF EXPERIENCE

21
AZ FIRE STATIONS

Experience:

Industry: 35 years
Willmeng: 3 years

Education:

B.S. Public Safety
Administration, Grand
Canyon University
MBA, Finance, Ashford
University
Ph.D. Industrial and
Organizational Psychology,
Grand Canyon University
Executive Fire Officer
Program, National Fire
Academy

Certification/Registration:

Arizona General
Contractors Association
Facility Managers
Association
Building Managers
Association
United States Green
Building Council

Home Office Location:

Phoenix

% Of Work Done Locally:

100%

Ken has built his career on fire station durability, firefighter health and wellness and lends his expertise during the preconstruction and construction phase to give back to an industry he served for over 35 years.

As Fire Station Program Manager, Ken provides invaluable insight into fire station sustainability and design challenges faced over his history of 30+ years, which includes the construction of 21 new fire stations and the maintenance of more than 70 fire stations. As former City of Phoenix Deputy Fire Chief, Ken has collaborated with many groups, applying his knowledge of firefighter health, wellness, and fitness needs; living accommodations essential for the kinship of firefighters while balancing public and private space; vehicle parking and storage; sustainability aspects for fire station construction; and end-user maintenance requirements.

He will be available to the project team through the programming phase and conceptual design, integrating fire fighting industry expertise into the design of the facility.

TWO COMPARABLE PROJECTS

- **Gilbert Fire Station No. 9** - 13,700 SF//CMAR | *Gilbert, AZ*
(b) Role: Fire Station Program Manager (Project #1, Page 2)
- **Surprise Fire Station No. 304** - 18,000 SF//CMAR | *Surprise, AZ*
(b) Role: Fire Station Program Manager (Project #2, Page 3)
- **Maricopa Fire/Medical Administration Facility** - 88,889 SF//CMAR | *Maricopa, AZ*
(b) Role: Fire Station Program Manager (Project #3, Page 4)

ACTIVE FIRE STATION CMAR PROJECTS

- **Surprise Fire Station No. 308** - **16,700 SF** | *Surprise, AZ*
- **Fort Mojave Fire Station** - **7,980 SF** | *Fort Mojave, AZ*

ADDITIONAL KEY CMAR AND FIRE STATION PROJECTS

City of Phoenix

- Fire Station No. 12
- Fire Station No. 16
- Fire Station No. 19
- Fire Station No. 29
- Fire Station No. 30
- Fire Station No. 32, LEED
- Fire Station No. 43
- Fire Station No. 44
- Fire Station No. 50, LEED
- Fire Station No. 52

- Fire Station No. 54
- Fire Station No. 55
- Fire Station No. 56, LEED Silver
- Fire Station No. 57
- Fire Station No. 59, LEED Platinum
- Fire Station No. 60
- Fire Station No. 61
- Fire Station No. 72, LEED Gold
- Fire Station No. 91
- Fire Station No. 92
- Fire Station No. 55

BRIAN KEARNEY | Preconstruction Manager



VALUE ADDED

- + Options Analysis Expert
- + CMAR Expert
- + Municipal Expertise

37 YEARS
OF EXPERIENCE

40+
CMAR PROJECTS

Experience:

Industry: 37 years
Willmeng: 1 year

Education:

B.S. Construction Science
& Environmental Design -
University of Oklahoma

Certification/Registration:

LEED v2 Accredited
Professional

American Institute of
Constructors - Certified
Professional Constructor

Design-Build Institute of
America - Designated
Design-Build Professional

Phoenix Police Reserve
Foundation - Board of
Directors

Home Office Location:

Phoenix

% Of Work Done Locally:

100%

As Preconstruction Manager, Brian works closely with the team on all budgeting, scheduling, and project coordination. His responsibilities are focused on assuring that the project will be estimated the way it will actually be built. Throughout the design process, he is responsible for maintaining the budget with accurate and reliable estimates, while maintaining the program requirements and design intent.

Starting his construction career in the field as a project engineer and working his way up to a Sr. Project Manager, Brian has high attention to detail and analytical skills in Preconstruction/Estimating. His familiarity with how construction progresses in the field is highly valuable during the estimating process. He offers a 360-degree perspective of projects from concept to completion in terms of schedule and budget.

TWO COMPARABLE PROJECTS

- **Banner Queen Creek Health Center Expansion | Queen Creek, AZ**
a.) The new 20,300 SF single-story addition will connect the south wall of the existing clinic, where the phlebotomy rooms are located, and is designed to accommodate additional future growth on the site. b.) Preconstruction Manager c.) \$5.9M, on budget d.) 4/20 – 12/20 e.) Banner Health f.) Banner Health, Patricia Beck, 616.292.3587 | Boulder Associates Inc., Jon Tucker, AIA, 949.705.3183
- **City of Tucson Fire Station Renovations – No. 7, 15, 16 and 18 | Tucson, AZ**
a.) Preconstruction for the 4 Fire Stations remodels to improve fire fighter safety from hazardous materials & infectious diseases. b.) Project Director c.) \$82,359 d.) 8/20 – 4/21 e.) City of Tucson f.) City of Tucson, Terry Gilliland, 520.837.4063 | WSM Architects, John Price, 520.275.9355

ADDITIONAL CMAR, FIRE STATION AND PUBLIC SAFETY EXPERIENCE

- **City of Phoenix Fire Training Track | Phoenix, AZ**
- **Fort Mojave Fire Station - 7,980 SF | Fort Mojave, AZ**
- **City of Phoenix Fire Station 56 - 13,500 SF | Phoenix, AZ**
- **Gilbert Fire Station 1 - 14,505 SF | Gilbert, AZ**
- **Goodyear Fire Station 184 - 13,885 SF | Goodyear, AZ**
- **Phoenix Fire Station 43 and Command Center - 21,000 SF | Phoenix, AZ**
- **Pima County Public Service Center - 257,000 SF | Tucson, AZ**
- **Westbrook Fire Station 2 - 8,968 SF | Peoria, AZ**
- **Gene Mason Memorial Fire Station 1 - 14,505 SF | Peoria, AZ**
- **Scottsdale Crime Lab and Police Evidence Facility | Scottsdale, AZ**

Brian has worked on multiple fire station projects over many years and his expertise in preconstruction and construction knowledge has been a perfect compliment to the fire building team. He has also had the opportunity to construct fire stations under Chief Larry Rooney in the past (Peoria).

JASON ALVARADO | Senior Project Manager



VALUE ADDED

- + Fire Station Options Analysis Expert
- + CMAR Expert
- + Collaborative & Proactive Team Player

20 YEARS
OF EXPERIENCE

19 FIRE
STATIONS

Experience:

Industry: 20 years
Willmeng: 3 years

Education:

B.S. Construction
Management, Arizona State
University

Home Office Location:
Phoenix

% Of Work Done Locally:
100%

As Senior Project Manager and the single point of contact, Jason will lead a unified approach coordinating with stakeholders, the architect, end users, and all city representatives. As an expert in CMAR delivery, Jason understands the intent of saving time and costs on the project. He will work hand-in-hand with the architect to clarify and simplify construction drawings to eliminate change orders, reduce the construction schedule and maintain the quality workmanship that Tucson desires. He will establish and implement coordination and communication procedures with the City, ensuring Tucson remains informed of all design and construction progress.

TWO COMPARABLE PROJECTS

- **Gilbert Fire Station No. 9** - 13,700 SF//CMAR | *Gilbert, AZ*
(b) Role: Project Manager (Project #1, Page 2)
- **Surprise Fire Station No. 304** - 18,000 SF//CMAR | *Surprise, AZ*
(b) Role: Project Manager (Project #2, Page 3)
- **Maricopa Fire/Medical Administration Facility** - 88,889 SF//CMAR | *Maricopa, AZ*
(b) Role: Sr. Project Manager (Project #3, Page 4)

ACTIVE FIRE STATION CMAR PROJECTS

- **Surprise Fire Station No. 308** - 16,700 SF | *Surprise, AZ*
- **Fort Mojave Fire Station** - 7,980 SF | *Fort Mojave, AZ*

ADDITIONAL KEY CMAR AND FIRE STATION PROJECTS

- **Buckeye Fire House No. 3** | *Buckeye, AZ*
- **Glendale Fire Station No. 159** | *Glendale, AZ*
- **Maricopa Fire Station No. 575** | *Maricopa, AZ*

City of Phoenix

- Fire Training Academy, LEED Silver
- Fire Station No. 50, LEED
- Fire Station No. 54
- Fire Station No. 72, LEED Gold
- 911 Fire Dispatch & EOC

Town of Gilbert

- Fire Station No. 2
- Fire Station No. 5
- Fire Station No. 6
- Fire Station No. 7
- Fire Station No. 8

As your central point of contact, Jason has served as a superintendent on some of the Valley's most significant fire stations and has experience as a project manager. This blend of experience is invaluable to the preconstruction and construction effort for the Avondale Fire Station.

ELI NEWTON | Construction Engineer/ Assistant Project Manager



VALUE ADDED

- + Constructibility Analysis Expertise
- + CMAR Expertise
- + Knowledge of & Creativity with Fast-Track Projects

17 YEARS
OF EXPERIENCE

Experience:

Industry: 17 years
Willmeng: 3.5 years

Education:

Northern Arizona
University, Coursework
-Fire Science
Coursework - Construction
Management

Home Office Location:

Phoenix

% Of Work Done Locally:

100%

Eli will be responsible for daily management of the project from preconstruction through construction. Eli's municipal experience and fire station knowledge will be a tremendous asset during constructibility and value engineering reviews. He will manage the daily project activity to ensure the budget and schedule are on track. He will review and manage subcontractor procurement, prepare project status reports, and manage all project documentation and cost control. Eli will lean on his knowledge as a former firefighter to assist the City in maximizing their budget while achieving the desired goals of the project without sacrificing quality.

TWO COMPARABLE PROJECTS

- **Maricopa Fire/Medical Administration Facility** - 88,889 SF//CMAR | *Maricopa, AZ*
(b) Role: Project Manager (Project #3, Page 4)
- **Gilbert Christian School - Greenfield** | *Gilbert, AZ*
(a) Description: This new 60,342 SF K-8 campus on 10 acres of newly developed site includes four separate buildings with classrooms, labs, admin facilities and a gym. (b) Role: Superintendent; (c) Orig Cost: \$8,521,565; Final Cost: \$8,521,565 (d) Const. Start: 10/2016; Const. Comp.: 8/2017; (e) Owner: Gilbert Christian Schools; (f) Reference: Jim Desmarchais (480) 699-1215, desmarchais@gcs-hs.org

As a former firefighter, Eli brings practical input into the Avondale Fire Station constructability and function of the station and also has the unique opportunity to project manage through direct construction and fire station construction experience.

ADDITIONAL CMAR PROJECTS

- **Queen Creek Fire Station No. 2** | *Queen Creek, AZ (in Pre-Con)*
- **Queen Creek Fire Station No. 5** | *Queen Creek, AZ (in Pre-Con)*
- **Banner Health Corporate Office Expansion** | *Phoenix, AZ*
- **Banner Health - Thunderbird Remodel** | *Glendale, AZ*
- **Fair Renaissance Tower Renovations** | *Phoenix, AZ*
- **Triadvocates at Renaissance Tower** | *Phoenix, AZ*
- **St. Mary's Food Bank Distribution Warehouse** | *Phoenix, AZ*



TOM HAAG | Project Superintendent

VALUE ADDED

- + Fire Station Experience
- + Effective communication & detail assisting with end-user move-in & equipment start up

24 YEARS
OF EXPERIENCE

Experience:

Industry: 24 years
Willmeng: 3 years

Home Office Location:

Phoenix

% Of Work Done Locally:

100%

Tom will remain on-site and in charge of coordinating and supervising all field construction efforts, subcontractors and vendors. He will create and implement a project specific quality control plan and lead job-site safety requirements. He will also prepare and manage all look-ahead schedules for the team and subcontractors. Tom will assist in end-user move-in and equipment start-up, as well as owner turnover and building occupancy, assuring that punch list and closeout happen expeditiously. Tom is a highly-skilled, detail-oriented Superintendent with extensive experience in all phases of construction oversight. Exhibiting excellent communication methods, Tom interfaces positively with owners, architects, developers, subcontractors and state and local building inspectors.

TWO COMPARABLE PROJECTS

- **Surprise Fire Station No. 304** - 18,000 SF//CMAR | *Surprise, AZ*
(b) Role: Project Superintendent (Project #2, Page 3)
- **Northrop Grumman Launch Vehicle Division Headquarters Parking Garage** | *Chandler, AZ* (a) Project Description: The Northrop Grumman project entails the construction of a three-story parking garage, and all associated site and infrastructure work on a 48-acre site. (b) Role: Project Superintendent (c) Original Cost/Final: \$25M / \$25M (d) Construction Dates: 4/2018 - 9/2019 (e) Owner: Douglas Allred Company (f) References: Douglas Allred Company - Cathy Exeter, (858) 793-0202 | Balmer Architectural Group - Wes Balmer, (602) 954-6718

ADDITIONAL KEY CMAR PROJECTS

- **Surprise Fire Station No. 308 CMAR** | *Surprise, AZ*
- **City of Surprise City Hall** | *Surprise, AZ*
- **City of Tempe Fire Services Building** | *Tempe, AZ*
- **City of Goodyear Public Safety Facility** | *Goodyear, AZ*

Tom has more than 24 years of experience in CMAR construction. He is particularly skilled at safety, quality control and subcontractor management. As a result, he is often requested by the same client for additional projects they are building.

willmeng

2048 N. 44th St., Suite 200 | Phoenix, AZ, 85008
480.968.4755 | WILLMENG.COM
AZ ROC: B-01 082904 | A- 246341

EXHIBIT G
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND
WILLMENG CONSTRUCTION, INC.

[Subcontractor Selection Program]

See following pages.

EXHIBIT H
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND
WILLMENG CONSTRUCTION, INC.

[Traffic Control/Construction Sequencing]

See following pages.

EXHIBIT I
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND
WILLMENG CONSTRUCTION, INC.

[Allowable General Conditions Cost Line Items]

See following pages.

ALLOWABLE GENERAL CONDITIONS COST LINE ITEMS

On-Site Project Management Staff

Safety Coordinator/Assistant(s)
Project Executive
Office Engineer(s)
Project Expeditor(s)
Assistant Superintendent(s)

CPM Scheduler
Superintendent(s)
Project Manager(s)
Project Support Staff
Out-of-State Project Specific Travel*

Bonds and Insurance

Builder's Risk Insurance
General Liability Insurance
Payment and Performance Bonds
Other Project Insurance as Required by Contract

Temporary Project Utilities

Non-LEED Recycling Dumpsters
Project Electricity
Monthly Telephone / Internet Service
Street Rental and Barricades
Fencing and Covered Walkways
Site Erosion Control (BMP) and Project Entrance(s)

Temporary Toilets
Temporary Fire Protection
Telephone / Internet System Installation
Temporary Water Distribution and Meters
Temporary Electrical Distribution and Meters
Project Water, Ice and Supplements to Prevent Dehydration

Field Offices & Office Supplies

Partnering Costs
Job Photos/Videos
Project Specific Signage
Postage/Special Shipping
Project/As-Built (Record) Drawings
Project Milestone Event(s)*
Move-In/Out and Office Setup
Employee Identification System
Small Tools and Storage Trailers
Monthly Office Trailer Rental Costs
Mobilization and Demobilization (Equipment Only)

First Aid Supplies
Reproduction Services
Monthly Office Supplies
Remote Parking Expenses
Project Reference Manuals
Security System/Watchman
Safety Material and Equipment
Drinking Water and Accessories (Including Ice)
Office Clean-Up/Janitorial Services
Field Engineering

- * Specific justification and all estimated costs shall be submitted and approved by the City prior to any travel or event.

EXHIBIT J
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND
WILLMENG CONSTRUCTION, INC.

[Pre-Construction Cost Summary]

See following pages.



October 29, 2020

City of Avondale
Rick Carr, Architect
Development & Engineering Services Department
11465 W. Civic Center Drive
Avondale, AZ 85323

CMAR Preconstruction Services Proposal – EN 21-012 Permanent Fire Station

Mr. Carr,

Willmeng is pleased to offer you and the City of Avondale our Proposal for Pre-Construction Services to assist in the design process to deliver a new Permanent Fire Station in Avondale, Arizona. This proposal includes costs for preconstruction work, with preparation and presenting the GMP for a not to exceed value of **\$80,005.00**

Our proposal is based on hours we anticipate it will take to participate / assist in all the remaining phases of design, as well as a Bid Phase, where Willmeng will present and deliver a GMP to the City for the project. Our Preconstruction Services are broken down into 5 phases of design including **Schematic Design, Design Development, Construction Documents, (No Estimating)** as well as the **Bid Phase** with presenting a GMP for approval. Our durations for each are based on the schedule presented to us in the RFQ, with our understanding that we will go into construction, the spring of 2021. Please review our anticipated services, anticipated hours and who will participate, through each of the segments of design. Here is a summary of services for each segment that will be provided.

Conceptual / Programing Design Phase

Willmeng will be providing the 1st Estimate in Schematic Design.

Schematic Design

Attend all project meetings, either in person or via conference call per City of Avondale COVID protocol. Participate in any specific site or other meetings. Update overall budget based on Schematic Design Set. Update take offs and provide any new information. Provide subsurface investigation and misc. on-site utility analysis. Spend additional time with project team and, vendors, utility companies based on SD Set and create a constructability review to be shared with team. Build an initial logistic plan for each station and discuss any phasing ideas benefiting stations at one time.

Design Development

Attend project meetings, either in person or via conference call per City of Avondale COVID protocol. Participate in any specific site meetings or utilities of logistic to both operations and / or construction of new fire station. Participate in any meetings involving franchise utility companies, or other such as modifying the dispatch system, fire alarm or other systems, including city vendors and entities. Continue to obtain data, Provide an update project budget based on the DD design. Modify any and all take offs, Obtain sub pricing on certain and specific scopes. Provide constructability review on the DD set and any Option Analysis. This is a typical exercise to look at other options to bring better value to the project and its scopes.

Willmeng

AZ ROC B-01 082904

Construction Documents

Attend project meetings, either in person or via conference call per City of Avondale COVID protocol. Participate in site meetings for utilities or logistic to both operations and / or construction. Continue to finalize data, incorporating any and all City suppliers and vendors, as needed. Identify any conflicts within the drawings and added scope not shown in the DD set.

Finalize and update take offs in preparation for the bid phase. Provide a final constructability review on the CD set, including both drawings and specifications to be used in the Bid Phase.

Bid Phase / Deliver GMP

Attend project meetings, especially any specific to the Bid Process and presenting the GMP. Hold Pre Bid meeting with subs, including site walk at station location. Final review of participating sub list to assure proper coverage. Bid project and prepare GMP documents for a presentation to the City for their approval. Prepare exhibits for GMP, including but not limited to scope of work, schedule of values including Cost of Work Summary by division, back up of all sub proposals, including bid comparisons, list of documents, list of allowances and contingencies, Provide, a construction management plan, a project schedule, logistic planning and any phasing plans, as well as any other GMP items specific to the contract.

Please review the attached worksheet proposal for the details associated with our anticipated hours and services we will be providing.

It is understood that we are prepared and are planning on utilizing the personnel that was shown in our SOQ and who interviewed for the project. In the event that this does not become possible, for reasons beyond our control, Willmeng will present changes that must meet their approval. However, at the time of this proposal, we do not anticipate any changes.

Please let me know if you have any questions,

Kind Regards,

Keith Sabia
Digitally signed by Keith Sabia
DN: C=US,
E=ksabia@willmeng.com,
OU=Principal In Charge, O=Willmeng
Construction, CN=Keith Sabia
Date: 2020.10.30 12:20:35-0700'

Keith Sabia
Willmeng Principal in Charge



**CITY OF AVONDALE FIRE STATION
PRE-CONSTRUCTION SERVICES
OCTOBER 27, 2020
CMAR - DESIGN PHASE FEE SUMMARY**

<u>Design Phase</u>	<u>CMAR Pre-Con Fees</u>	<u>TOTAL</u>
PROGRAMMING CONCEPTUAL ESTIMATING	\$0	\$0
SCHEMATIC DESIGN	\$19,027	\$19,027
DESIGN DEVELOPMENT	\$23,507	\$23,507
CONSTRUCTION DOCUMENTS	\$15,809	\$15,809
BID PHASE	\$16,663	\$16,663
CMAR PRE-CON FEES		\$75,005
Additional Services	\$5,000	\$5,000
Total Expenses & Allowances		\$5,000
CMAR PRE-CON FEE W/ALLOWANCES		\$80,005



CITY OF AVONDALE FIRE STATION
PRE-CONSTRUCTION SERVICES
OCTOBER 27, 2020
CMAR - DESIGN PHASE HOURLY COST SUMMARY

PROGRAMMING PHASE	PRINCIPAL / DIRECTOR	FIRE INDUSTRY EXPERT	PROJECT MANAGER	PRE-CON MANAGER	ESTIMATOR/ PE / SUPT	ADMIN.	TOTAL MANHOURS	TOTAL COST
TOTAL MANHOURS	0	0	0	0	0	0	0	
BASE HOURLY RATE	\$72	\$68	\$68	\$68	\$55	\$35		
TOTAL BASE COST	\$0	\$0	\$0	\$0	\$0	\$0		
LABOR BURDEN	\$0	\$0	\$0	\$0	\$0	\$0		
TOTAL LABOR	\$0	\$0	\$0	\$0	\$0	\$0		
PROFIT	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%		
TOTAL BASE COST, OVERHEAD & PROFIT	\$0	\$0	\$0	\$0	\$0	\$0		\$0

The Fee represented in the preconstruction does not represent the fee for construction

SCHEMATIC PHASE	PRINCIPAL / DIRECTOR	FIRE INDUSTRY EXPERT	PROJECT MANAGER	PRE-CON MANAGER	ESTIMATOR/ PE / SUPT	ADMIN.	TOTAL MANHOURS	TOTAL COST
Subsurface Investigation Allowance	12	16	32	56	48	6	170	
TOTAL MANHOURS								
BASE HOURLY RATE	\$72	\$68	\$68	\$68	\$55	\$35		
TOTAL BASE COST	\$864	\$1,088	\$2,176	\$3,808	\$2,640	\$210		
LABOR BURDEN	\$588	\$740	\$1,480	\$2,589	\$1,795	\$143		
TOTAL LABOR	\$1,452	\$1,828	\$3,656	\$6,397	\$4,435	\$353		
PROFIT	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%		
TOTAL BASE COST, OVERHEAD & PROFIT	\$1,524	\$1,919	\$3,838	\$6,717	\$4,657	\$370		\$19,027

The Fee represented in the preconstruction does not represent the fee for construction



**CITY OF AVONDALE FIRE STATION
PRE-CONSTRUCTION SERVICES
OCTOBER 27, 2020
CMAR - DESIGN PHASE HOURLY COST SUMMARY**

DESIGN DEVELOPMENT	PRINCIPAL / DIRECTOR	FIRE INDUSTRY EXPERT	PROJECT MANAGER	PRE-CON MANAGER	ESTIMATOR/ PE / SUPT	ADMIN.	TOTAL MANHOURS	TOTAL COST
TOTAL MANHOURS	16	22	36	60	64	18	216	
BASE HOURLY RATE	\$72	\$68	\$68	\$68	\$55	\$35		
TOTAL BASE COST	\$1,152	\$1,496	\$2,448	\$4,080	\$3,520	\$630		
LABOR BURDEN	\$783	\$1,017	\$1,665	\$2,774	\$2,394	\$428		
TOTAL LABOR	\$1,935	\$2,513	\$4,113	\$6,854	\$5,914	\$1,058		
PROFIT	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%		
TOTAL BASE COST, OVERHEAD & PROFIT	\$2,032	\$2,639	\$4,318	\$7,197	\$6,209	\$1,111		\$23,507

The Fee represented in the preconstruction does not represent the fee for construction

CONSTRUCTION DOCUMENTS	PRINCIPAL / DIRECTOR	FIRE INDUSTRY EXPERT	PROJECT MANAGER	PRE-CON MANAGER	ESTIMATOR/ PE / SUPT	ADMIN.	TOTAL MANHOURS	TOTAL COST
TOTAL MANHOURS	16	16	36	28	38	8	142	
BASE HOURLY RATE	\$72	\$68	\$68	\$68	\$55	\$35		
TOTAL BASE COST	\$1,152	\$1,088	\$2,448	\$1,904	\$2,090	\$280		
LABOR BURDEN	\$783	\$740	\$1,665	\$1,295	\$1,421	\$190		
TOTAL LABOR	\$1,935	\$1,828	\$4,113	\$3,199	\$3,511	\$470		
PROFIT	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%		
TOTAL BASE COST, OVERHEAD & PROFIT	\$2,032	\$1,919	\$4,318	\$3,359	\$3,687	\$494		\$15,809

The Fee represented in the preconstruction does not represent the fee for construction



CITY OF AVONDALE FIRE STATION
PRE-CONSTRUCTION SERVICES

OCTOBER 27, 2020

CMAR - DESIGN PHASE HOURLY COST SUMMARY

BID PHASE	PRINCIPAL / DIRECTOR	FIRE INDUSTRY EXPERT	PROJECT MANAGER	PRE-CON MANAGER	ESTIMATOR/ PE / SUPT	ADMIN.	TOTAL MANHOURS	TOTAL COST
TOTAL MANHOURS	4	4	32	50	50	16	156	
BASE HOURLY RATE	\$72	\$68	\$68	\$68	\$55	\$35		
TOTAL BASE COST	\$288	\$272	\$2,176	\$3,400	\$2,750	\$560		
LABOR BURDEN	\$196	\$185	\$1,480	\$2,312	\$1,870	\$381		
TOTAL LABOR	\$484	\$457	\$3,656	\$5,712	\$4,620	\$941		
PROFIT	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%		
TOTAL BASE COST, OVERHEAD & PROFIT	\$508	\$480	\$3,838	\$5,998	\$4,851	\$988		\$16,663

The Fee represented in the preconstruction does not represent the fee for construction

TOTAL ALL PHASES	PRINCIPAL / DIRECTOR	FIRE INDUSTRY EXPERT	PROJECT MANAGER	PRE-CON MANAGER	ESTIMATOR/ PE / SUPT	ADMIN.	TOTAL MANHOURS	TOTAL COST
TOTAL MANHOURS	48	58	136	194	200	48	684	
BASE HOURLY RATE	\$72	\$68	\$68	\$68	\$55	\$35		
TOTAL BASE COST	\$3,456	\$3,944	\$9,248	\$13,192	\$11,000	\$1,680		
LABOR BURDEN	\$2,350	\$2,682	\$6,289	\$8,971	\$7,480	\$1,142		
COST + OVERHEAD	\$5,806	\$6,626	\$15,537	\$22,163	\$18,480	\$2,822		
PROFIT	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%		
TOTAL BASE COST, OVERHEAD & PROFIT	\$6,096.38	\$6,957.22	\$16,313.47	\$23,270.69	\$19,404.00	\$2,963.52		\$75,005

The Fee represented in the preconstruction does not represent the fee for construction

EXHIBIT K
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND
WILLMENG CONSTRUCTION, INC.

[Performance Bond]

See following page.

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, _____ (hereinafter called Principal), as Principal, and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Avondale (hereinafter called the Obligee) in the amount of _____ (Dollars) (\$ _____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the _____ day of _____ 2020, for the material, service or construction described as _____ is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

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

PROVIDED, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this agreement.

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

Witness our hands this _____ day of _____ 2020.

Principal Seal

By: _____

Surety Seal

By: _____

Agency of Record

EXHIBIT L
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
CITY OF AVONDALE
AND
WILLMENG CONSTRUCTION, INC.

[Payment Bond]

See following page.

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, _____ (hereinafter called Principal), as Principal, and _____, a corporation organized and existing under the laws of the State of _____, with its principal office in the City of _____ (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Avondale (hereinafter called the Obligee) in the amount of _____ (Dollars) (\$_____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the _____ day of _____ 2020, for the material, service or construction described as _____ which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all monies due to all persons supplying labor or materials to the Principal or the Principal's Subcontractors in the prosecution of the Work provided for in the Contract, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if they were copied at length in this agreement.

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

Witness our hands this _____ day of _____, 2020.

Principal Seal

By: _____

Surety Seal

By: _____

Agency of Record

CITY COUNCIL REPORT

SUBJECT: Resolution No. 1073-1120 - Amendment to the Intergovernmental Agreement with Maricopa County and Trellis for HOME Community Housing Development Organization Funds

MEETING DATE: 11/16/2020

TO: Mayor and Council

FROM: Chris Lopez, Director of Neighborhood & Family Services, (623) 333-2711

THROUGH: Cherlene Penilla, Deputy City Manager, (623) 333-2218

STRATEGIC PLAN:

PURPOSE:

City Council will consider a request to adopt Resolution 1073-1120 approving an amendment to an Intergovernmental Agreement with Maricopa County and Trellis for HOME Community Housing Development Organization (CHDO) funds, and authorize the Mayor, City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

The City of Avondale has been a member of the Maricopa HOME Consortium since May, 2005 when the City Council adopted Resolution 2485-05 which allowed the City to enter into an Intergovernmental Agreement with Maricopa County and other municipalities in the Valley. Membership in the Consortium entitles the City to a portion of the Consortium's annual allocation of HOME funds from the US Department of Housing and Urban Development (HUD).

Each year, prior to distribution of these funds to Consortium Members, HUD regulations require that the Consortium set aside at least 15% of the total allocated HOME funds for use by Community Housing Development Organizations (CHDOs). CHDOs are specially-designated non-profit organizations recognized within the HOME Program that provide affordable housing as part of their core mission and adhere to a certain Board structure, among other requirements.

The reallocation of these set-aside funds to CHDOs is a competitive process led by Maricopa County (as the Consortium's lead agency). The County issues an RFP in the Fall of each year to solicit affordable housing proposals from qualified non-profits. The Consortium Members review these applications and make funding recommendations in late Winter for inclusion in the following year's Annual Action Plan.

DISCUSSION:

Trellis applied for and was awarded funding in FY 2018-19 (\$155,000) and 2019-20 (\$290,000) by the Maricopa County HOME Consortium, for a total of \$445,000. The funds will be used toward the construction of affordable homes in Las Ligas. Trellis is a Phoenix non-profit that develops affordable housing, and currently partners with the City to operate the Avondale First-Time Homebuyer Program using a portion of the City's annual share of HOME Consortium funding.

The currently vacant lots are located at the northwest corner of Elwood Street and El Mirage Road. This amendment represents the total gap in funding required to complete the development.

BUDGET IMPACT:

There is no budgetary impact to the City associated with this request. All grant funds will be reimbursable directly to Trellis from Maricopa County based on the City's review and approval of documented expenses. Further, the 25% required HOME match will be provided by Trellis.

RECOMMENDATION:

Staff recommends that the City Council adopt Resolution XXXX-XXXX amending an Intergovernmental Agreement with Maricopa County and Trellis and authorize the Mayor, City Manager and City Clerk to execute the necessary documents. The Council will take the appropriate action.

Contact person for document distribution:

RESOLUTION 1073-1120

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE,
ARIZONA, APPROVING AN AMENDMENT TO THE
INTERGOVERNMENTAL AGREEMENT WITH MARICOPA COUNTY AND
TRELLIS, A NON-PROFIT COMMUNITY HOUSING DEVELOPMENT
ORGANIZATION FOR FEDERAL HOME FUNDS.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The First Amendment to the Intergovernmental Agreement among the City of Avondale (the “City”), Maricopa County, Arizona and Trellis Community Housing Development, a Community Housing Development Organization for federal HOME Investment Partnership Program (HOME) funding (the “Amendment”) is hereby approved substantially in the form and substance attached hereto as Exhibit A and incorporated herein by this reference.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to cause the execution of the Amendment and to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, November 16, 2020.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1073-1120

[Amendment]

See following pages.

AMENDMENT TO THE
AGREEMENT
BETWEEN
MARICOPA COUNTY
ADMINISTERED BY ITS
HUMAN SERVICES DEPARTMENT
AND
TRELLIS COMMUNITY DEVELOPMENT
A COMMUNITY HOUSING DEVELOPMENT ORGANIZATION
AND
CITY OF AVONDALE

- I. Maricopa County ("County") administered by its Human Services Department, Trellis Community Development, a Community Housing Development Organization ("CHDO"), and the City of Avondale ("City") entered into a financial agreement ("Agreement"), which was fully executed on or about July 13, 2020. The purpose of the Agreement is for the CHDO, acting in the capacity of a developer, to construct one (1) single-family home for a low-income household in the City. The County provided the CHDO with \$155,000 in 2019 HOME Investment Partnerships Program (HOME) funds from the U.S. Department of Housing and Urban Development (HUD). The County, CHDO, and City collectively are referred to here as the "Parties."
- II. The Parties agree to enter into this Amendment No. 1 to the Agreement as follows:
- A. Add an additional "2020 Work Statement" for the CHDO to construct two (2) new single-family homes for low-income- families and provide homebuyer assistance to the qualified buyers. All work performed or costs incurred or expended under the 2020 Work Statement shall be reimbursable through September 30, 2023.
 - B. The County shall provide the CHDO with reimbursement in an amount not to exceed \$290,000 in HOME funding for the work to be performed under the 2020 Work Statement.
 - C. Upon approval of Amendment No. 1, the total reimbursement under the Agreement pertaining to the 2019 and 2020 Work Statements shall be increased to a not to exceed amount of \$445,000.
 - D. Section 4 (Compensation), Paragraph 4.0 (Reimbursement), shall be amended to provide for total financial assistance under the 2019 and 2020 Work Statements in a not to exceed amount of \$445,000.
 - E. Add to Section 1 (General Provisions) the following new paragraphs:
 - 52.0 WRITTEN CERTIFICATION UNDER A.R.S. § 35-393.01**
If the CHDO and the Administrator engage in for-profit activity and has 10 or more employees and, if this Agreement has a value of \$100,000 or more, then the CHDO and the Administrator certify they are not currently engaged in, and agree for the duration of this Agreement to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.
 - 53.0 SURVIVAL**
The indemnification, hold harmless, defense, and non-liability provisions of this Agreement shall have full force and effect notwithstanding any other provisions in this Agreement and shall survive the termination or expiration of this Agreement.

- III. The foregoing paragraph contains all the changes made by this Amendment No. 1. All other terms and conditions of the original Agreement remain the same and in full force and effect as approved.

IN WITNESS, the Parties have approved and signed this Amendment No. 1:

APPROVED BY:
CITY OF AVONDALE

APPROVED BY:
MARICOPA COUNTY

Charles A. Montoya, City Manager Date
Attested To:

Chairman, Board of Supervisors Date
Attested To:

Marcella Carrillo, City Clerk
Date

Fran McCarroll, Clerk of the Board Date

IN ACCORDANCE WITH A.R.S. §§ 9-240 and 11-952, THIS AMENDMENT NO. 1 HAS BEEN REVIEWED BY THE UNDERSIGNED ATTORNEY WHO HAS DETERMINED THIS AMENDMENT IS PROPER IN FORM AND WITHIN THE POWERS AND AUTHORITY GRANTED TO THE CITY UNDER THE LAWS OF THE STATE OF ARIZONA.

IN ACCORDANCE WITH A.R.S. §§ 11-201, 11-251, AND 11-952, THIS AMENDMENT NO. 1 HAS BEEN REVIEWED BY THE UNDERSIGNED ATTORNEY WHO HAS DETERMINED THIS AMENDMENT IS PROPER IN FORM AND WITHIN THE POWERS AND AUTHORITY GRANTED TO MARICOPA COUNTY UNDER THE LAWS OF THE STATE OF ARIZONA.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Nicholle Harris, City Attorney Date

Deputy County Attorney Date

APPROVED BY:

TRELLIS COMMUNITY DEVELOPMENT, an
Arizona nonprofit corporation (CHDO)

Patricia Duarte Garcia Date
President, CEO, and Executive Director
Signature and execution authorized by
corporate resolution number _____
dated _____, 2020.

MARICOPA COUNTY

**HOME Investment Partnerships Program
Program Year 2020**

DUNS Number CHDO: 08-066-8072

DUNS Number Administrator: 00-248-6884

Project: New construction at El Mirage Road and Elwood Street

Type of Property: Single Family Residential

1.0 FUNDING

CHDO PY2020 HOME FUNDS	MATCH	OTHER RESOURCES	TOTAL BUDGET
\$290,000	\$72,500	\$373,264	\$735,764

2.0 SCOPE OF WORK

2.1 Project Description: In June of 2006, Trellis acquired property located at the northwest corner of El Mirage Road and Elwood Street in the City of Avondale, Arizona. In 2015, Trellis split the property into three (3) south facing parcels, each accessed from Elwood Street. Lots 1 and 2 are 80 feet wide and 85 feet deep (6,800 SF). Lot 3 is 85 feet deep and 88 feet wide (7,480 SF). Trellis plans to construct energy efficient homes on all three lots. Each home will be constructed with a different building material and technique: traditional 2" x 6" framing; SIPS system; and either T-Stud or ICF. The site of this project is: 12310 West Elwood Street, Avondale, Arizona 85323.

The CHDO has secured partnerships with SRP, Mitsubishi, and the City of Avondale. Additional partners are actively being pursued. The partnership with SRP will provide data (for energy efficiency monitoring) over a pre-determined timeframe to demonstrate which type of building material provides the best efficiency versus cost of construction and the monthly burden to the homeowner.

The CHDO will construct the remaining two (2) of the three (3) new single-family homes on the interior lots (Lots 1 and 2). Trellis has designed a single-story, 1,500 - 1,600 SF, 3 -bedroom, 2.5-bathroom home, which is EnergyStar, Indoor Air Quality Plus-V3 with an anticipated HERS Index score of between 50-65. The homes are fully accessible and conserve water, reduce utility demand and maintenance costs, and foster a healthy living environment.

2.2 Project Purpose: The project will create a homeownership opportunity for a low- to moderate-income household that is rated as a high priority in the Consolidated Plan. The Trellis homes designed for these Avondale lots are consistent with the City's General Plan goals for residents to feel a sense of community and be compatible with the residential character of the neighborhood.

2.3 Project Beneficiaries: Two first-time homebuyer at or below 80% of the area median income. The CHDO will secure affordability deed restrictions.

Beneficiaries' income eligibility will be verified by the CHDO staff and will comply with 24 C.F.R. §. 92.203(d)(1).

Eligible buyers will be required to complete an approved homebuyer education class and homeownership counseling. Down payment assistance (DPA) will be provided to buyers that qualify, up to 10%, or \$14,500 of the HOME funding award. In addition, other DPA sources (for example, LIFT and WISH) will be based on the buyer's eligibility.

- 2.4 Project Staff: The CHDO shall maintain staff qualified to perform the duties of the project. The CHDO shall immediately notify the Administrator and the County regarding any changes in staff committed to the CHDO project. The Administrator and the County reserve the right to review the qualifications of new staff committed to the CHDO project after the execution of this Agreement. The CHDO will be responsible for all communications with the City of Avondale and the Maricopa HOME Consortium, providing all updates and as needed reporting. In addition, any complaints will be the responsibility of Trellis.
- 2.5 Subcontractors: The CHDO, as the developer on this project, will oversee every aspect of the project. This oversight includes, but is not limited to, day-to-day operations; preparing budgets; managing the budget, timeline, and change orders; issuing a Request for Proposal and selecting the general contractor and sub-contractors. The CHDO shall select subcontractors in accordance with the Administrative Requirements of this Agreement. The CHDO shall contract with responsible and qualified subcontractors to perform the duties of the project. The CHDO shall verify the qualifications of each subcontractor through license verification, references, and SAM.gov.
- 2.6 Project Affordability: A Deed of Trust will be recorded with the City of Avondale as the beneficiary, which will ensure that the City is notified in the event the owner attempts to refinance or transfer the property.

The family or individual acquiring the housing must qualify as low-income, as defined in 24 C.F.R. § 5.609, and maintain the housing as the principal residence throughout the period of affordability, which shall be for a period of 15 years. Recapture provisions will be used to ensure compliance with the period of affordability required by HUD at 24 C.F.R. § 92.254 of the HOME regulations.

Upon sale to an eligible buyer, a Declaration of Affirmative Land Use Restrictions (LURA) will be executed to secure the Period of Affordability and require the housing to be used as the buyer's principal residence, as required by HUD. The LURA will include a due on sale clause to ensure that funds are recaptured if the property is sold during the Affordability Period.

3.0 OBJECTIVES AND OUTCOMES:

OBJECTIVE	OUTCOMES		
	AVAILABILITY/ ACCESSIBILITY	AFFORDABILITY	SUSTAINABILITY
DECENT HOUSING	☐ Single-Family Housing Rehab and Emergency Rehab, Homebuyer Assistance	☒ Homebuyer Activities, Acq/Rehab of rental housing, Acq/New Construction of rental housing, Expansion of assisted rental units in the private marketplace	☐ Housing Activities in a targeted revitalization area

4.0 LOGIC MODEL: PERFORMANCE INDICATORS

INPUTS/ RESOURCES	OUTPUTS		OUTCOMES	OBJECTIVES
	ACTIVITIES	PARTICIPATION		
Trellis staff, funding, contractors	New construction	Two households	Increased affordable housing for two low- income families. Increased homeownership. Improved neighborhoods and quality of life.	Decent housing.

5.0 PERFORMANCE REPORTING GOALS/TIMELINE OF ACTIVITIES

<u>MILESTONES: Tasks to be Performed</u>	<u>COMPLETION DATE</u>
Application/market study	12/2019
Execute third party agreement with County and City of Avondale for HOME funds	10/21/2020
Development Plan Approved-City of Avondale	12/2020
Environmental Review approval	11/2020
Submit complete application for construction permits	1/2021
RFP for construction activities	12/2020
Homeownership counseling/buyer preparation	5/2021
Construction of project	8/2021
Sale of Unit (Pre-sale and during construction)	9/2021
Homebuyer financing secured	9/2021
Certificate of Occupancy	8/2021
Final Close-out /Project Completion Form	12/2021

Any change to the Timeline will need to be approved by the County.

6.0 ACTIVITY BUDGET SUMMARY:

ACTIVITY	PY2020 HOME FUNDS	MATCH*	OTHER RESOURCES	TOTAL ACTIVITY BUDGET
Acquisition		\$36,668		\$36,668
Site Demolition				
Development Costs	\$261,000		\$313,264	\$574,264
Professional Fees		\$25,000	\$60,000	\$85,000
Construction Interest and fees				
Down Payment Assistance	\$29,000	\$10,832		\$39,832
TOTALS	\$290,000	\$72,500	\$373,264	\$735,764

*Match dedicated to this Project only.

Note: A total of \$3,000 per activity will be withheld from the total amount of HOME funds obligated to each activity/address. \$1,500 may be reimbursed upon completion of rehabilitation/new construction (Certificate of Occupancy) and a signed purchase contract with a qualified buyer. The final \$1,500 will be reimbursed when a completion form is submitted by the CHDO to the County.

7.0 ACTIVITY MATCH:

FORM OF MATCH	SOURCE	AMOUNT
Cash- Property Acquisition	Trellis	\$36,668
Cash	Wish Funds	\$10,832
Reduced Fees	Architect	\$25,000
TOTAL		\$72,500

* Per CARES Act waiver the CHDO will not be obligated to, nor will it provide, match for HOME funds drawn in IDIS between October 1, 2019 and September 30, 2021.

8.0 SALES PRICE:

- (1) To ensure the homes are affordable for the target income group, the sales price shall be calculated so that each buyer's monthly housing expenses (including principal, interest, property taxes, and home insurance) does not exceed 35% of the buyer's gross monthly household income, unless there are documented compensating factors. In addition, the housing will have a purchase price for the type a single unit of single-family housing that does not exceed 95% of the median purchase price for the area as described in 24 C.F.R. § 92.254 (a)(2). Refer to Attachment 3 of the Agreement.
- (2) The buyer may obtain a mortgage loan with a fixed term and interest rate and lender fees may not exceed 5% of the mortgage amount. The income of the buyer shall be determined according to the requirements at 24 C.F.R. § 92.203.

9.0 CHDO PROJECT PROCEEDS:

All proceeds generated from the CHDO development activities shall be considered Project proceeds and subject to the Project proceeds requirements set forth in HOME Program

regulations. Project proceeds shall be tracked by the CHDO and reported to the Administrator. Documentation supporting the amount of Project proceeds received and expended shall be submitted to the Administrator and the County. Project proceeds shall be retained and expended by the CHDO for construction of additional properties under this Agreement, or for other HOME-eligible activities with prior approval from the Administrator and the County.

10.0 CONVERSION TO RENTAL:

If the newly constructed home has not been sold to an eligible homebuyer within nine (9) months after the receipt of a Certificate of Occupancy, it must be converted to a HOME rental unit that complies with all HOME requirements for the period of affordability applicable to such rental units, according to 24 C.F.R. § 92.254(a)(3). If the vacant property is not converted, then HOME funds must be repaid to the County.

AMENDMENT TO THE
AGREEMENT
BETWEEN
MARICOPA COUNTY
ADMINISTERED BY ITS
HUMAN SERVICES DEPARTMENT
AND
TRELLIS COMMUNITY DEVELOPMENT
A COMMUNITY HOUSING DEVELOPMENT ORGANIZATION
AND
CITY OF AVONDALE

- I. Maricopa County ("County") administered by its Human Services Department, Trellis Community Development, a Community Housing Development Organization ("CHDO"), and the City of Avondale ("City") entered into a financial agreement ("Agreement"), which was fully executed on or about July 13, 2020. The purpose of the Agreement is for the CHDO, acting in the capacity of a developer, to construct one (1) single-family home for a low-income household in the City. The County provided the CHDO with \$155,000 in 2019 HOME Investment Partnerships Program (HOME) funds from the U.S. Department of Housing and Urban Development (HUD). The County, CHDO, and City collectively are referred to here as the "Parties."
- II. The Parties agree to enter into this Amendment No. 1 to the Agreement as follows:
 - A. Add an additional "2020 Work Statement" for the CHDO to construct two (2) new single-family homes for low-income- families and provide homebuyer assistance to the qualified buyers. All work performed or costs incurred or expended under the 2020 Work Statement shall be reimbursable through September 30, 2023.
 - B. The County shall provide the CHDO with reimbursement in an amount not to exceed \$290,000 in HOME funding for the work to be performed under the 2020 Work Statement.
 - C. Upon approval of Amendment No. 1, the total reimbursement under the Agreement pertaining to the 2019 and 2020 Work Statements shall be increased to a not to exceed amount of \$445,000.
 - D. Section 4 (Compensation), Paragraph 4.0 (Reimbursement), shall be amended to provide for total financial assistance under the 2019 and 2020 Work Statements in a not to exceed amount of \$445,000.
 - E. Add to Section 1 (General Provisions) the following new paragraphs:

52.0 WRITTEN CERTIFICATION UNDER A.R.S. § 35-393.01
If the CHDO and the Administrator engage in for-profit activity and has 10 or more employees and, if this Agreement has a value of \$100,000 or more, then the CHDO and the Administrator certify they are not currently engaged in, and agree for the duration of this Agreement to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

53.0 SURVIVAL
The indemnification, hold harmless, defense, and non-liability provisions of this Agreement shall have full force and effect notwithstanding any other provisions in this Agreement and shall survive the termination or expiration of this Agreement.

Contract No. C-22-20-055-3-01

Amendment No. 1

- III. The foregoing paragraph contains all the changes made by this Amendment No. 1. All other terms and conditions of the original Agreement remain the same and in full force and effect as approved.

IN WITNESS, the Parties have approved and signed this Amendment No. 1:

APPROVED BY:
CITY OF AVONDALE

APPROVED BY:
MARICOPA COUNTY

Charles A. Montoya, City Manager Date
Attested To:

Chairman, Board of Supervisors Date
Attested To:

Marcella Carrillo, City Clerk
Date

Fran McCarroll, Clerk of the Board Date

IN ACCORDANCE WITH A.R.S. §§ 9-240 and 11-952, THIS AMENDMENT NO. 1 HAS BEEN REVIEWED BY THE UNDERSIGNED ATTORNEY WHO HAS DETERMINED THIS AMENDMENT IS PROPER IN FORM AND WITHIN THE POWERS AND AUTHORITY GRANTED TO THE CITY UNDER THE LAWS OF THE STATE OF ARIZONA.

IN ACCORDANCE WITH A.R.S. §§ 11-201, 11-251, AND 11-952, THIS AMENDMENT NO. 1 HAS BEEN REVIEWED BY THE UNDERSIGNED ATTORNEY WHO HAS DETERMINED THIS AMENDMENT IS PROPER IN FORM AND WITHIN THE POWERS AND AUTHORITY GRANTED TO MARICOPA COUNTY UNDER THE LAWS OF THE STATE OF ARIZONA.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Nicholle Harris, City Attorney Date

Deputy County Attorney Date

APPROVED BY:

TRELLIS COMMUNITY DEVELOPMENT, an
Arizona nonprofit corporation (CHDO)

DocuSigned by:

10/22/2020

Patricia Garcia Duarte

Patricia Duarte Garcia Date
President, CEO, and Executive Director
Signature and execution authorized by
corporate resolution number _____
dated _____, 2020.

Resolution 2-20, Jan 9, 2020

Contract No. C-22-20-055-3-01
2020 Work Statement

Amendment No. 1

MARICOPA COUNTY

HOME Investment Partnerships Program Program Year 2020

DUNS Number CHDO: 08-066-8072

DUNS Number Administrator: 00-248-6884

Project: New construction at El Mirage Road and Elwood Street

Type of Property: Single Family Residential

1.0 FUNDING

CHDO PY2020 HOME FUNDS	MATCH	OTHER RESOURCES	TOTAL BUDGET
\$290,000	\$72,500	\$373,264	\$735,764

2.0 SCOPE OF WORK

2.1 Project Description: In June of 2006, Trellis acquired property located at the northwest corner of El Mirage Road and Elwood Street in the City of Avondale, Arizona. In 2015, Trellis split the property into three (3) south facing parcels, each accessed from Elwood Street. Lots 1 and 2 are 80 feet wide and 85 feet deep (6,800 SF). Lot 3 is 85 feet deep and 88 feet wide (7,480 SF). Trellis plans to construct energy efficient homes on all three lots. Each home will be constructed with a different building material and technique: traditional 2" x 6" framing; SIPS system; and either T-Stud or ICF. The site of this project is: 12310 West Elwood Street, Avondale, Arizona 85323.

The CHDO has secured partnerships with SRP, Mitsubishi, and the City of Avondale. Additional partners are actively being pursued. The partnership with SRP will provide data (for energy efficiency monitoring) over a pre-determined timeframe to demonstrate which type of building material provides the best efficiency versus cost of construction and the monthly burden to the homeowner.

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Contract No. C-22-20-055-3-01
2020 Work Statement

Amendment No. 1

3.0 OBJECTIVES AND OUTCOMES:

OBJECTIVE	OUTCOMES		
	AVAILABILITY/ ACCESSIBILITY	AFFORDABILITY	SUSTAINABILITY
DECENT HOUSING	☐ Single-Family Housing Rehab and Emergency Rehab, Homebuyer Assistance	☒ Homebuyer Activities, Acq/Rehab of rental housing, Acq/New Construction of rental housing, Expansion of assisted rental units in the private marketplace	☐ Housing Activities in a targeted revitalization area

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Contract No. C-22-20-055-3-01
2020 Work Statement

Amendment No. 1

6.0 ACTIVITY BUDGET SUMMARY:

ACTIVITY	PY2020 HOME FUNDS	MATCH*	OTHER RESOURCES	TOTAL ACTIVITY BUDGET
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Site Demolition				
Development Costs	\$261,000		\$313,264	\$574,264
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*Match dedicated to this Project only.

Note: A total of \$3,000 per activity will be withheld from the total amount of HOME funds obligated to each activity/address. \$1,500 may be reimbursed upon completion of rehabilitation/new construction (Certificate of Occupancy) and a signed purchase contract with a qualified buyer. The final \$1,500 will be reimbursed when a completion form is submitted by the CHDO to the County.

7.0 ACTIVITY MATCH:

FORM OF MATCH	SOURCE	AMOUNT
Cash- Property Acquisition	Trellis	\$36,668
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Reduced Fees	Architect	\$25,000
TOTAL		\$72,500

* Per CARES Act waiver the CHDO will not be obligated to, nor will it provide, match for HOME funds drawn in IDIS between October 1, 2019 and September 30, 2021.

8.0 SALES PRICE:

- (1) To ensure the homes are affordable for the target income group, the sales price shall be calculated so that each buyer's monthly housing expenses (including principal, interest, property taxes, and home insurance) does not exceed 35% of the buyer's gross monthly household income, unless there are documented compensating factors. In addition, the housing will have a purchase price for the type a single unit of single-family housing that does not exceed 95% of the median purchase price for the area as described in 24 C.F.R. § 92.254 (a)(2). Refer to Attachment 3 of the Agreement.
- (2) The buyer may obtain a mortgage loan with a fixed term and interest rate and lender fees may not exceed 5% of the mortgage amount. The income of the buyer shall be determined according to the requirements at 24 C.F.R. § 92.203.

9.0 CHDO PROJECT PROCEEDS:

All proceeds generated from the CHDO development activities shall be considered Project proceeds and subject to the Project proceeds requirements set forth in HOME Program

Contract No. C-22-20-055-3-01
2020 Work Statement

Amendment No. 1

regulations. Project proceeds shall be tracked by the CHDO and reported to the Administrator. Documentation supporting the amount of Project proceeds received and expended shall be submitted to the Administrator and the County. Project proceeds shall be retained and expended by the CHDO for construction of additional properties under this Agreement, or for other HOME-eligible activities with prior approval from the Administrator and the County.

10.0 CONVERSION TO RENTAL:

If the newly constructed home has not been sold to an eligible homebuyer within nine (9) months after the receipt of a Certificate of Occupancy, it must be converted to a HOME rental unit that complies with all HOME requirements for the period of affordability applicable to such rental units, according to 24 C.F.R. § 92.254(a)(3). If the vacant property is not converted, then HOME funds must be repaid to the County.

CITY COUNCIL REPORT

SUBJECT: Resolution 1074-1120 – Grant Acceptance of an Urban Area Security Initiative Grant from the Arizona Department of Homeland Security

MEETING DATE: 11/16/2020

TO: Mayor and Council

FROM: Dale Nannenga, Chief of Police, (623) 333-7203

THROUGH: Gina Montes, Assistant City Manager, (623) 333-1012

STRATEGIC PLAN:

PURPOSE:

City Council will consider a request to adopt Resolution 1074-1120, authorizing the acceptance of an Urban Area Security Initiative Grant from the Arizona Department of Homeland Security (AZDOHS) relating to the Terrorism Liaison Officer sustainment and enhancement, and authorize the Mayor, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

The Avondale Police Department submitted a 2020 Urban Area Security Initiative Grant Application through the Arizona Department of Homeland Security titled “Avondale Police Department Grant project.” The purpose of our application was to help sustain and maintain the Avondale Terrorism Liaison Officer (TLO) program by providing a replacement vehicle, equipment, data resources, training, and conference costs for the police department and City of Avondale.

DISCUSSION:

This Agreement is to specify the rights and responsibilities of AZDOHS in administering the distribution of homeland security grant funds to the City of Avondale and to specify the rights and responsibilities of the City of Avondale as the recipient of these funds. The TLO has the ability to respond to areas of concern within the City of Avondale and the West Valley. On September 18, 2020, the City of Avondale was awarded \$85,000 through the U.S. Department of Homeland Security Grant. The awarded funds will be used for the purchase of a new TLO Vehicle and TLO Equipment.

It is understood and agreed that the total amount of funds used under this Agreement shall be used only for the project as described in the application and award documentation. Payment made by the AZDOHS to the City of Avondale shall be on a reimbursement basis only and is conditioned upon receipt of proof of payment and applicable, accurate and complete reimbursement documents, as deemed necessary by the AZDOHS, to be submitted by the City of Avondale.

This Agreement shall become effective on October 1, 2020, and shall terminate on September 30, 2021.

BUDGET IMPACT:

There is no funding impact to the current budget and future vehicle and equipment replacement for this program is anticipated to be funded through future grant funding. The revenue and expenditures for this grant will be recorded in a separate account within the grant special revenue fund.

RECOMMENDATION:

Staff recommends that the City Council approve a resolution authorizing the Agreement between The Arizona Department of Homeland Security and the City of Avondale.

Contact person for document distribution:

RESOLUTION NO. 1074-1120

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AUTHORIZING THE ACCEPTANCE OF AN URBAN AREA SECURITY INITIATIVE GRANT FROM THE ARIZONA DEPARTMENT OF HOMELAND SECURITY RELATING TO TERRORISM LIAISON OFFICER SUSTAINMENT AND ENHANCEMENT.

WHEREAS, the Arizona Department of Homeland Security (“AZDOHS”), has awarded the City of Avondale an Urban Area Security Initiative grant for the Terrorism Liaison Officer Sustainment and Enhancement program (the “Grant”); and

WHEREAS, the Council of the City of Avondale (the “City Council”) desires to accept the Grant.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The City Council hereby authorizes (i) the acceptance of the Grant in the amount of \$85,000.00 and (ii) the execution of a subrecipient agreement between the AZDOHS and the City of Avondale relating to acceptance and administration of the Grant funds (the “Agreement”) in the form attached hereto as Exhibit A and incorporated herein by reference.

SECTION 3. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute and submit the Agreement and any other necessary or desirable instruments in connection with the Grant and to take all steps necessary to carry out the purpose and intent of this Resolution.

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona,
November 16, 2020.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1074-1120

[Agreement]

See following pages.

SUBRECIPIENT AGREEMENT

20-AZDOHS-HSGP-200800-01

Between

The Arizona Department of Homeland Security

And

Avondale, City of (DUNS# 002486884)

WHEREAS, A.R.S. § 41-4254 charges the Arizona Department of Homeland Security (AZDOHS) with the responsibility of administering funds.

THEREFORE, it is agreed that the AZDOHS shall provide funding to the **Avondale, City of** (Subrecipient) for services under the terms of this Agreement (the "Agreement").

I. PURPOSE OF AGREEMENT

The purpose of this Agreement is to specify the rights and responsibilities of AZDOHS in administering the distribution of homeland security grant funds to the Subrecipient, and to specify the rights and responsibilities of the Subrecipient as the recipient of these funds.

II. PERIOD OF PERFORMANCE, TERMINATION AND AMENDMENTS

This Agreement shall become effective on **October 1, 2020** and shall terminate on **September 30, 2021**. The obligations of the Subrecipient as described herein will survive termination of this agreement.

III. DESCRIPTION OF SERVICES

The Subrecipient shall provide the services for AZDOHS as set forth in writing in Subrecipient's grant application titled: "**Avondale Police Department TLO Grant project.**" and funded at **\$85,000** (as may have been modified by the award letter).

IV. MANNER OF FINANCING

The AZDOHS shall under the U.S. Department of Homeland Security grant # EMW-2020-SS-00017-S01 and CFDA #97.067:

- a. Provide up to **\$85,000** to the Subrecipient for services provided under Paragraph III.
- b. Payment made by the AZDOHS to the Subrecipient shall be on a reimbursement basis only and is conditioned upon receipt of proof of payment and applicable, accurate and complete reimbursement documents, as deemed necessary by the AZDOHS, to be submitted by the Subrecipient. A listing of acceptable documentation can be found at www.azdohs.gov. Payments will be contingent upon receipt of all reporting requirements of the Subrecipient under this Agreement.

V. FISCAL RESPONSIBILITY

It is understood and agreed that the total amount of the funds used under this Agreement shall be used only for the project as described in the application and award documentation. Therefore, should the project not be completed, the Subrecipient shall reimburse said funds directly to the AZDOHS immediately. If the project is completed at a lower cost than the original budget called for, the amount reimbursed to the Subrecipient shall be for only the amount of dollars actually spent by the Subrecipient in accordance with the approved application. For any funds received under this Agreement for which expenditure is disallowed by an audit exemption or otherwise by the AZDOHS, the State, or Federal government, the Subrecipient shall reimburse said funds directly to the AZDOHS immediately.

VI. FINANCIAL AUDIT/PROGRAMMATIC MONITORING

The Subrecipient agrees to comply with the record-keeping requirements and other requirements of A.R.S. 35-214 and 35-215.

- a) In addition, in compliance with the Federal Single Audit Act (31 USC 7501-7507) as amended by the Single Audit Act Amendments of 1996 (P.L. 104-156) and 2 C.F.R. 200.501, the Subrecipient must have a Single Audit or program specific audit conducted in accordance with 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards) if the Subrecipient expends more than \$750,000 from Federal awards in its previous fiscal year. If the Subrecipient has expended more than \$750,000 in Federal dollars, a copy of the Subrecipient's single audit or program specific audit report for the previous fiscal year and subsequent fiscal years that fall within the period of performance is due annually to AZDOHS within nine (9) months of the Subrecipient's fiscal year end.
- b) Failure to comply with any requirements imposed as a result of an audit will suspend reimbursement by AZDOHS to the Subrecipient until the Subrecipient is in compliance with all such requirements. Additionally, the Subrecipient will not be eligible for any new awards until the Subrecipient is in compliance with all such requirements.
- c) Subrecipients who do not expend more than \$750,000 in Federal dollars in the previous fiscal year and subsequent fiscal years that fall within the period of performance must submit to AZDOHS via audits@azdohs.gov, a statement stating they do not meet the threshold and therefore do not have to complete a single audit or program specific audit.
- d) Subrecipient will be monitored periodically by AZDOHS, both programmatically and financially, to ensure that the project goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria are being met. Monitoring will be accomplished through a combination of office-based reviews and on-site monitoring visits. Monitoring can involve aspects of the work involved under this Agreement including but not limited to the review and analysis of financial, programmatic, equipment, performance, and administrative issues relative to each program and will identify areas where technical assistance and other support may be needed. Subrecipient shall participate in and cooperate with all such monitoring by AZDOHS, and shall provide access to all personnel, documents, and other records as may be requested from time to time by AZDOHS. Subrecipient also shall comply with all requests of AZDOHS that AZDOHS deems necessary to assure the parties' compliance with their obligations under this Agreement.
- e) The Subrecipient agrees to cooperate with any assessments, state/national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this Agreement.

VII. APPLICABLE STANDARDS AND REGULATIONS

The Subrecipient must comply with the applicable Notice of Funding Opportunity (NOFO) and Code of Federal Regulations (C.F.R.) 2 C.F.R. 200. The NOFO for this program is hereby incorporated into this Agreement by reference. By accepting this award, the Subrecipient agrees that all allocation and use of funds under this grant will be in accordance with the requirements contained in the NOFO and all other applicable law.

Davis Bacon Act

HSGP Program subrecipients using funds for construction projects must comply with the *Davis-Bacon Act* (40 U.S.C. 3141 *et seq.*). Subrecipients must obtain written approval from AZDOHS prior to use of any HSGP funds for construction or renovation. Subrecipients must ensure that their contractors or subcontractors for construction projects pay workers no less than the prevailing wages for laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the state in which the work is to be performed. Additional information regarding compliance with the *Davis-Bacon Act*, including Department of Labor (DOL) wage determinations, is available from the following website <https://www.dol.gov/whd/govcontracts/dbra.htm>.

Insurance Coverage

The Subrecipient affirms the organization maintain insurance coverage as described in 2 C.F.R. 200.310. The non-Federal (Subrecipient) entity must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by the non-Federal (Subrecipient) entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal award.

National Incident Management System (NIMS)

The Subrecipient agrees to remain in compliance with National Incident Management System (NIMS) implementation initiatives as outlined in the applicable NOFO.

Environmental Planning and Historic Preservation

The Subrecipient shall comply with Federal, State and Local environmental and historical preservation (EHP) regulations, laws and Executive Orders as applicable. See FEMA publication FP 108-023-1, titled "Environmental Planning and Historic Preservation (EHP) Policy Guidance," available at https://www.fema.gov/media-library-data/1533321728657-592e122ade85743d1760fd4747241776/GPD_EHP_Policy_Final_Amendment_GPD_final_508.pdf. Subrecipients proposing projects that have the potential to impact the environment, including but not limited to construction of communication towers, modification or renovation of existing buildings, structures and facilities, or new construction including replacement of facilities, must participate in the Federal Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA) EHP review process. The EHP review process involves the submission of a detailed project description that explains the goals and objectives of the proposed project along with supporting documentation so that DHS/FEMA may determine whether the proposed project has the potential to impact environmental resources and/or historic properties. In some cases, DHS/FEMA is also required to consult with other regulatory agencies and the public in order to complete the review process. The EHP review process must be completed before funds are released to carry out the proposed project. If ground disturbing activities occur during project implementation, the Subrecipient must ensure monitoring of ground disturbance and if any archeological resources are discovered, the Subrecipient shall immediately cease construction in that area and notify FEMA, AZDOHS and the appropriate State Historic Preservation Office. DHS/FEMA will not fund projects that are initiated without the required EHP review. In addition, the following provisions must be adhered to:

Consultants/Trainers/Training Providers

Invoices for consultants/trainers/training providers must include at a minimum: a description of services; dates of services; number of hours for services performed; rate charged for services; and, the total cost of services performed. Consultant/trainer/training provider costs must be within the prevailing rates; must be obtained under consistent treatment with the procurement policies of the Subrecipient and 2 C.F.R. 200; and shall not exceed the maximum of \$450 per day per consultant/trainer/training provider unless prior written approval is granted by the AZDOHS. This includes internal personnel hired on backfill/overtime to deliver training. In addition to the per day \$450 maximum amount, the consultant/trainer/training provider may be reimbursed reasonable travel, lodging, meal and incidental expenses not to exceed the State rate. Itemized receipts are required for lodging and travel reimbursements. The Subrecipient will not be reimbursed costs other than travel, lodging, meals and incidentals on travel days for consultants/trainers/training providers. See Travel Costs below.

Contractors/Subcontractors

The Subrecipient may enter into written subcontract(s) for performance of certain of its functions under the Agreement in accordance with terms established in 2 C.F.R. 200 and the applicable NOFO. The Subrecipient agrees and understands that no subcontract that the Subrecipient enters into with respect to performance under this Agreement shall in any way relieve the Subrecipient of any responsibilities for performance of its duties. The Subrecipient shall give the AZDOHS immediate notice in writing by certified mail of any action or suit filed and prompt notice of any claim made against the Subrecipient by any subcontractor or vendor which may result in litigation related in any way to this Agreement.

Travel Costs

All grant funds expended for travel, lodging, meals and incidentals are subject to the standards of the Subrecipient's policies and procedures, as well as the State of Arizona Accounting Manual (SAAM). These policies must be applied uniformly to both federally financed and other activities of the Subrecipient. AZDOHS will reimburse at the most restrictive allowability and rate. At no time will the Subrecipient's reimbursement(s) exceed the State rate established by the Arizona Department of Administration, General Accounting Office Travel Policies: <https://gao.az.gov/travel>.

Procurement

The Subrecipient shall comply with its own procurement rules/policies and must also comply with Federal procurement rules/policies and all Arizona state procurement code provisions and rules. The Federal intent is that all Homeland Security Funds are awarded competitively. The Subrecipient shall not enter into a Noncompetitive (Sole or Single Source) Procurement Agreement, unless prior written approval is granted by the AZDOHS via the Noncompetitive Procurement Request Form. The Noncompetitive Procurement Request Form and instructions are located on the AZDOHS website: <https://azdohs.gov/grant-program-forms>.

Training and Exercise

The Subrecipient agrees that any grant funds used for training and exercise must be in compliance with the applicable NOFO. All training must be included and approved in your application and/or approved through the DEMA/AZDOHS training request process prior to execution of training contract(s). All exercises must utilize and comply with the FEMA Homeland Security Exercise and Evaluation Program (HSEEP) guidance for exercise design, development, conduct, evaluation and reporting. The Subrecipient agrees to:

- a) Submit an exercise summary and attendance/sign-in roster to AZDOHS with all related reimbursement requests.

- b) Email the After Action Report/Improvement Plan (AAR/IP) to the local County Emergency Manager, the AZDOHS Strategic Planner, and the Arizona Department of Military Affairs (DEMA) Exercise Branch within 90 days of completion of an exercise or as prescribed by the most current HSEEP guidance.

Communications Equipment

All Land Mobile Radio equipment purchased with Homeland Security funds is required to comply with the following:

- a) P25 (Project 25) standards;
- b) SAFECOM Guidance (see <https://www.dhs.gov/safecom>);
- c) Land Mobile Radio Minimum Equipment Standards as approved by the Statewide Interoperability Executive Committee (SIEC); and
- d) Arizona's State Interoperable Priority Programming Guide also as approved by the SIEC

Nonsupplanting Agreement

The Subrecipient shall not use funds received under this Agreement to supplant Federal, State, Tribal or Local funds or other resources that would otherwise have been made available for this program/project. The Subrecipient may be required to demonstrate and document that a reduction in non-Federal resources occurred for reasons other than the receipt of expected receipt of Federal funds. Further, if a position created by a grant is filled from within, the vacancy created by this action must be filled within thirty (30) days. If the vacancy is not filled within thirty (30) days, the Subrecipient must stop charging the grant for the new position. Upon filling the vacancy, the Subrecipient may resume charging for the grant position.

E-Verify

Compliance requirements for A.R.S. 41-4401—immigration laws and E-Verify requirement.

- a) The Subrecipient warrants its compliance with all State and Federal immigration laws and regulations relating to its employees and to employees of any contractor or subcontractor retained through Subrecipient to provide goods or services related to this Agreement, including but not limited to A.R.S. 23-214, Subsection A (that subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program").
- b) A breach of a warranty by Subrecipient regarding compliance with immigration laws and regulations shall be deemed a material breach of this Agreement and the Subrecipient may be subject to penalties to be determined at AZDOHS's discretion, up to and including termination of this Agreement.
- c) The AZDOHS retains the legal right to inspect the papers of any Subrecipient employee who works on the Agreement, and to those of any employee of any contractor or subcontractor retained through Subrecipient to provide goods or services related to this Agreement, to ensure that the Subrecipient is complying with the warranty under paragraph (a) above.

Property Control

Effective control and accountability must be maintained by Subrecipient for all property/equipment purchased under this Agreement. The Subrecipient must adequately safeguard all such

property/equipment and must assure that it is used for authorized purposes as described in the NOFO, the grant application as approved by AZDOHS, and 2 C.F.R. 200. The Subrecipient shall exercise caution in the use, maintenance, protection and preservation of such property.

- a) Property/equipment shall be used by the Subrecipient in the program or project for which it was acquired as long as needed, whether or not the program or project continues to be supported by federal grant funds. Subrecipient is required to maintain and utilize equipment as outlined in 2 C.F.R. 200.313 - Equipment. Any loss, damage, or theft shall be investigated by Subrecipient and reported by Subrecipient to the AZDOHS. Any equipment lost, damaged or stolen shall be replaced by the Subrecipient at the Subrecipient's expense and an updated Property Control Form shall be submitted to AZDOHS by Subrecipient.
- b) Nonexpendable Property/Equipment and Capital Assets:
 - a. Nonexpendable Property/Equipment is property which has a continuing use, is not consumed in use, is of a durable nature with an expected service life of one or more years, has an acquisition cost of \$5,000 (Five Thousand Dollars) or more, and does not become a fixture or lose its identity as a component of other equipment or systems.
 - b. A Capital Asset is any personal or real property, or fixture that has an acquisition cost of \$5,000 (Five Thousand Dollars) or more per unit and a useful life of more than one year.
- c) A Property Control Form (if applicable) shall be maintained for the entire scope of the program or project for which property was acquired through the end of its useful life and/or disposition. All Nonexpendable Property and Capital Assets must be included on the Property Control Form. The Subrecipient shall provide AZDOHS a copy of the Property Control Form with the final quarterly programmatic report. The Property Control Form can be located at <https://azdohs.gov/grant-program-forms>. The Subrecipient agrees to be subject to equipment monitoring and auditing by state or federal authorized representatives to verify information.
- d) A physical inventory of Nonexpendable Property/Equipment and Capital Assets must be taken and the results reconciled with the Property Control Form at least once every two years.
 - a. A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated and reported by Subrecipient to AZDOHS immediately.
 - b. Adequate maintenance procedures must be developed to keep the property in good condition.
- e) When Nonexpendable Property/Equipment and/or Capital Assets are no longer in operational use by the Subrecipient, an updated Property Control Form must be submitted by Subrecipient to AZDOHS immediately. The disposition of equipment shall be in compliance with the AZDOHS Disposition Guidance and 2 C.F.R. 200. If the Subrecipient is requesting disposition of Capital Assets for reasons other than theft, destruction, or loss, the Subrecipient must submit an Equipment Disposition Request Form to AZDOHS and receive approval prior to the disposition. The Equipment Disposition Guidance and Request Form can be found at <https://azdohs.gov/grant-program-forms>.
- f) Equipment Record Retention
Pursuant to 2 C.F.R. 200.333(c), records for real property and equipment acquired with Federal funds must be retained for three (3) years after final disposition.

Allowable Costs

The allowability of costs incurred under this Agreement shall be determined in accordance with the general principles of allowability and standards for selected cost items as set forth in the applicable Code of Federal Regulations, authorized equipment lists, and guidance documents referenced above.

- a) The Subrecipient agrees that use of grant funds for any indirect costs that may be incurred must be in accordance with 2 C.F.R. 200 and the applicable NOFO. Indirect costs must be applied for and approved in writing by the AZDOHS prior to expenditure and reimbursement.
- b) The Subrecipient agrees that grant funds are not to be expended for any Management and Administrative (M&A) costs that may be incurred by the Subrecipient for administering these funds unless explicitly applied for and approved in writing by the AZDOHS and shall be in compliance with the applicable NOFO.

VIII. DEBARMENT CERTIFICATION

The Subrecipient is to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, which are at 2 C.F.R. Part 180 as adopted by DHS at 2 C.F.R. Part 3000. These regulations restrict federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs or activities.

IX. FUNDS MANAGEMENT

The Subrecipient must maintain funds received under this Agreement in separate ledger accounts and cannot mix these funds with funds from other sources. The Subrecipient must manage funds according to applicable Federal regulations for administrative requirements, costs principles, and audits.

The Subrecipient must maintain adequate business systems to comply with Federal requirements. The business systems that must be maintained are:

- Financial Management
- Procurement
- Personnel
- Property
- Travel

A system is adequate if it is 1) written; 2) consistently followed – it applies in all similar circumstances; and 3) consistently applied – it applies to all sources of funds.

X. REPORTING REQUIREMENTS

Regular reports by the Subrecipient shall include:

- a) Programmatic Reports
The Subrecipient shall provide quarterly programmatic reports to the AZDOHS within fifteen (15) calendar days of the last day of the quarter in which services are provided. The Subrecipient shall use the form provided by the AZDOHS to submit quarterly programmatic reports. The report shall contain such information as deemed necessary by the AZDOHS. The Subrecipient shall use the Quarterly Programmatic Report form, which is posted at <https://azdohs.gov/grant-program-forms>. Quarterly programmatic reports shall be submitted to the AZDOHS until the entire project is completed. If the project has been fully completed and implemented, and there will be no further updates, then the quarterly programmatic report for the quarter in which the project was completed will be sufficient as the final report. The report

should be marked as final and should be inclusive of all necessary and pertinent information regarding the project as deemed necessary by the AZDOHS.

- b) Subrecipients must provide substantial/detailed information as to the status of completion of the milestones included in the application as approved by AZDOHS. Failure to adequately provide complete information will result in the Quarterly Report being rejected and resubmission will be required.
- c) Quarterly Programmatic Reports are due:
 - January 15** (for the period from October 1– December 31)
 - April 15** (for the period from January 1 – March 31)
 - July 15** (for the period from April 1 – June 30)
 - October 15** (for the period from July 1 – September 30)
- d) Final Quarterly Report:

The final quarterly report is due no more than fifteen (15) calendar days after the end of the performance period. Subrecipient may submit a final quarterly report prior to the end of the performance period if the scope of the project has been fully completed and implemented. The Property Control Form is due with the final quarterly report (if applicable).
- e) Property Control Form – if applicable:

The Subrecipient shall provide the AZDOHS a copy of the Property Control Form with the final quarterly report.

 - a. In case of equipment disposition:

The Property Control Form shall be updated and a copy provided to AZDOHS no more than forty-five (45) calendar days after equipment disposition, if applicable. The Subrecipient's use and disposition of equipment must be in compliance with the AZDOHS Disposition Guidance and 2 C.F.R. 200.313.
- f) Financial Reimbursements

The Subrecipient shall provide AZDOHS with requests for reimbursement as frequently as monthly but not less than quarterly. Reimbursement requests are only required when expenses have been incurred. Reimbursement requests shall be submitted with the Reimbursement Form provided by the AZDOHS staff. The Subrecipient shall submit a final reimbursement request for expenses received and invoiced prior to the end of the period of performance. The final reimbursement must be received by AZDOHS no more than **forty-five (45) calendar days** after the end of the period of performance. Requests for reimbursement received by AZDOHS later than **forty-five (45) calendar days** after the end of the period of performance will not be paid. The final reimbursement request as submitted shall be marked as final.

Subrecipients will only be reimbursed for expenses that have been obligated, expended and received within the authorized Period of Performance as identified in Section II of this Agreement. Subrecipients are not authorized to obligate or expend funds prior to the start date of the Period of Performance. Any expenses obligated or expended prior to the Period of Performance start date will be deemed unallowable and will not be reimbursed. Any expenses/services that occur beyond the Period of Performance (i.e. cell phone service) will be deemed unallowable and will not be reimbursed.

The AZDOHS requires that all requests for reimbursement are submitted via United States Postal Service, FedEx, UPS, etc. or in person. Reimbursement requests submitted via fax or by any electronic means will not be accepted.

The AZDOHS reserves the right to request and/or require any supporting documentation and/or information it feels necessary in order to process reimbursements. Subrecipient shall promptly provide AZDOHS with all such documents and/or information.

All reports shall be submitted to the contact person as described in Paragraph XXXVII, NOTICES, of this Agreement.

XI. ASSIGNMENT AND DELEGATION

The Subrecipient may not assign any rights hereunder without the express, prior written agreement of both parties.

XII. AMENDMENTS

Any change in this Agreement including but not limited to the Description of Services and budget described herein, whether by modification or supplementation, must be accomplished by a formal Agreement amendment signed and approved by and between the duly authorized representatives of the Subrecipient and the AZDOHS. In the event of any new legislation, laws, ordinances, or rules affecting this Agreement, the parties agree that the terms of this Agreement shall automatically incorporate the terms of such new legislation, laws, ordinances, or rules.

Any such amendment shall specify: 1) an effective date; 2) any increases or decreases in the amount of the Subrecipient's compensation, if applicable; 3) be titled as an "Amendment," and 4) be signed by the parties identified in the preceding paragraph. The Subrecipient expressly and explicitly understands and agrees that no other method of communication, including any other document, correspondence, act, or oral communication by or from any person, shall be used or construed as an amendment or modification or supplementation to this Agreement.

XIII. US DEPARTMENT OF HOMELAND SECURITY AGREEMENT ARTICLES

Article A - Disposition of Equipment Acquired Under the Federal Award

When original or replacement equipment acquired in conjunction with this Agreement by the Subrecipient is no longer needed for the original project or program or for other activities currently or previously supported by DHS/FEMA, the Subrecipient must request instructions from DHS/FEMA via AZDOHS by submitting an Equipment Disposition Request Form in order to make proper disposition of the equipment pursuant to 2 C.F.R. 200.313.

Article B – Acceptance of Post Award Changes

In the event FEMA determines that changes are necessary to this Agreement after it has been entered into, including changes to period of performance or terms and conditions, the Subrecipient will be notified of the changes in writing. Once notification has been made, any subsequent request for funds by Subrecipient will constitute Subrecipient's acceptance of the changes to this Agreement and the incorporation of such changes into this Agreement.

Article C - Procurement of Recovered Materials

The Subrecipient hereby acknowledges and agrees that it must comply with section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6962) and that the requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

Article D - Whistleblower Protection Act

The Subrecipient hereby acknowledges and agrees that it must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C. 2409, 41 U.S.C. 4712, and 10 U.S.C. 2324, 41 U.S.C. section 4304 and 4310.

Article E - Use of DHS Seal, Logo and Flags

Subrecipient hereby acknowledges that it must obtain DHS's approval prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

Article F - USA Patriot Act of 2001

Subrecipient hereby acknowledges and agrees that it must comply with the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act, P.L. 107-56), which amends 18 U.S.C. section 175-175c.

Article G – Universal Identifier and System of Award Management (SAM)

Subrecipient hereby acknowledges and agrees that it must comply with the requirements set forth in the government-wide financial assistance award term regarding the System for Award Management and Universal Identifier Requirements located at 2 C.F.R. Part 25, Appendix A.

Article H - Reporting of Matters Related to Recipient Integrity and Performance

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal assistance offices exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, you must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and, Performance Matters located at 2 C.F.R. Part 200 Appendix XII, the full text of which is incorporated here by reference in the terms and conditions of your award.

Article I - Rehabilitation Act of 1973

The Subrecipient hereby acknowledges and agrees that it must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, P. L. No. 93-112 (1973) (codified as amended at 29 U.S.C. 794), which provides that no otherwise qualified handicapped individual in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. These requirements pertain to the provision of benefits or services as well as to employment.

Article J - Trafficking Victims Protection Act of 2000

Subrecipient hereby acknowledges and agrees that it must comply with the requirements of the government-wide award term which implements Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104). The award term is located at 2 C.F.R. Part 175.15, the full text of which is incorporated here by reference.

Article K - Terrorist Financing

The Subrecipient hereby acknowledges and agrees that it must comply with U.S. Executive Order 13224 and all U.S. laws that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of the Subrecipient to ensure compliance with all such laws and U.S. Executive Order 13224.

Article L - SAFECOM

The Subrecipient hereby acknowledges and agrees that recipients who receive awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

Article M - Reporting Subawards and Executive Compensation

All subrecipients are required to comply with the requirements set forth in the government-wide Award Term on Reporting Subawards and Executive Compensation located at 2 C.F.R. Part 170, Appendix A, the full text of which is incorporated here by reference in the terms and conditions of your award.

Article N – Department and Suspension

The Subrecipient hereby acknowledges and agrees that it is subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, and 2 C.F.R. Part 180. These regulations restrict Federal financial assistance awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

Article O - Copyright

The Subrecipient hereby acknowledges and agrees that it must affix the applicable copyright notices of 17 U.S.C. 401 or 402 and an acknowledgement of Government sponsorship (including award number) to any work first produced under Federal financial assistance awards.

Article P - Civil Rights Act of 1964 - Title VI

The Subrecipient hereby acknowledges and agrees that it must comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), codified at 6 C.F.R. Part 21 and 44 C.F.R. Part 7, which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Article Q - Best Practices for Collection and Use of Personally Identifiable Information (PII)

The Subrecipient hereby acknowledges and agrees that if it collects PII, it is required to have a publically-available privacy policy that describes standards on the usage and maintenance of PII it collects. DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Subrecipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy template as useful resources respectively.

Article R - Americans with Disabilities Act of 1990

The Subrecipient hereby acknowledges and agrees that it shall comply with all State and Federal equal opportunity and non-discrimination requirements and conditions of employment, including but not limited to Arizona Executive Order 2009-9 and the requirements of Titles I, II, and III of the Americans with Disabilities Act, P.L. No. 101-336 (1990) (codified as amended at 42 U.S.C. 12101-12213), which prohibit subrecipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

Article S - Age Discrimination Act of 1975

The Subrecipient hereby acknowledges and agrees that it must comply with the requirements of the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance.

Article T - Activities Conducted Abroad

The Subrecipient hereby acknowledges and agrees that it must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

Article U - Acknowledgement of Federal Funding from DHS

The Subrecipient hereby acknowledges and agrees that it must acknowledge its use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with Federal funds.

Article V - DHS Specific Acknowledgements and Assurances

Subrecipient hereby acknowledges and agrees—and agrees to require any contractors, successors, transferees, and assignees acknowledge and agree—to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.

1. Subrecipient hereby agrees to cooperate with any compliance review or complaint investigation conducted by DHS and/or AZDOHS.
2. Subrecipient hereby agrees to give DHS access and AZDOHS to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance.
3. Subrecipient hereby agrees to submit timely, complete, and accurate reports to the appropriate DHS and AZDOHS officials and maintain appropriate backup documentation to support the reports.
4. Subrecipient hereby agrees to comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

Article W - Assurances, Administrative Requirements and Cost Principles, and Audit Requirements

The Subrecipient hereby acknowledges and agrees that it must complete OMB Standard Form 424B Assurances – Non-Construction Programs, or OMB Standard Form 424D Assurances – Construction Programs as applicable.

DHS financial assistance recipients are required to follow the applicable provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards located at 2 C.F.R. Part 200, and adopted by DHS at 2 C.F.R. Part 3002.

Article X - Patents and Intellectual Property Rights

Unless otherwise provided by law, the Subrecipient hereby acknowledges and agrees that it is subject to the Bayh-Dole Act, P.L. 96-517, codified in 35 U.S.C. 200 et seq., and that it is subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards that are in 37 C.F.R. Part 401 and the standard patent rights clause in 37 C.F.R. 401.14.

Article Y – Nondiscrimination in Matters Pertaining to Faith-Based Organizations

It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. All subrecipients must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

Article Z – National Environmental Policy Act

All subrecipients must comply with the requirements of the National Environmental Policy Act (NEPA) 42 U.S.C. 4321 et seq., and the Council on Environmental Quality (CEQ) Regulations (40 C.F.R. Parts 1500-1508) for Implementing the Procedural Provisions of NEPA, which requires Subrecipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

Article AA - Lobbying Prohibitions

The Subrecipient hereby acknowledges and agrees that it must comply with 31 U.S.C. 1352, and acknowledges and agrees that none of the funds provided under this Agreement may be used to pay any person to influence, or attempt to influence an officer or employee of any agency (whether State or Federal), a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action related to a Federal award or contract, including any extension, continuation, renewal, amendment, or modification.

Article AB - Limited English Proficiency (Civil Rights Act of 1964, Title VI)

The Subrecipient hereby acknowledges and agrees that it must comply with the Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with Limited English Proficiency (LEP) to their programs and services. For additional assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

Article AC - Hotel and Motel Fire Safety Act of 1990

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990 and the Federal Fire Prevention and Control Act of 1974, 15 U.S.C. section 2225(a), the Subrecipient hereby acknowledges and agrees that it must ensure that all conference, meeting, convention, or training space funded in whole or in part with Federal funds complies with all applicable fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, 15 U.S.C. section 2225.

Article AD - Fly America Act of 1974

The Subrecipient hereby acknowledges and agrees that it must comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. 40118, and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

Article AE - Federal Leadership on Reducing Text Messaging while Driving

All subrecipients are encouraged to adopt and enforce policies that ban text messaging while driving as described in U.S. Executive Order 13513, including conducting initiatives described in Section 3(a) of the Order when on official Government business or when performing any work for or on behalf of the federal government.

Article AF - Federal Debt Status

The Subrecipient hereby acknowledges and agrees that it is required to be non-delinquent in its repayment of any Federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129.

Article AG - False Claims Act and Program Fraud Civil Remedies

The Subrecipient hereby acknowledges and agrees that it must comply with the requirements of The False Claims Act (31 U.S.C. 3729-3733) which prohibits the submission of false or fraudulent claims for payment to the Federal government. See also 31 U.S.C. 3801-3812 which details the administrative remedies for false claims and statements made.

Article AH - Energy Policy and Conservation Act

The Subrecipient hereby acknowledges and agrees that it must comply with the requirements of The Energy Policy and Conservation Act, Pub. L. No. 94-163 (1975) (codified as amended at 42 U.S.C. 6201 et. seq.) which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

Article AI - Education Amendments of 1972 (Equal Opportunity in Education Act) – Title IX

The Subrecipient hereby acknowledges and agrees that it must comply with the requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance. These regulations are codified at 6 CFR Part 17 and 44 CFR Part 19.

Article AJ - Duplication of Benefits

Any cost allocable to a particular Federal award, provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude a subrecipient from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal award.

Article AK - Drug-Free Workplace Regulations

The Subrecipient hereby acknowledges and agrees that it must comply with the drug-free workplace requirements in Subpart B (or Subpart C, if the Subrecipient is an individual) of 2 C.F.R. part 3001, which adopts the Government-wide implementation (2 C.F.R. part 182) of sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 8101-8106).

Article AL - Civil Rights Act of 1968

The Subrecipient hereby acknowledges and agrees that it must comply with Title VIII of the Civil Rights Act of 1968, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (42 U.S.C. 3601 et seq.), as implemented by the Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features (see 24 C.F.R. 100.201).

Article AM - Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services

Per 889(b)(1) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115-232 (2018):

1. AZDOHS Subrecipients may not use any FEMA funds under open or new awards to:

- a. Procure or obtain any equipment, system, or service that uses “covered telecommunications equipment or services” (as defined in ¶2 of this Article AM) as a substantial or essential component of any system, or as critical technology of any system;
 - b. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system; or
 - c. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.
2. For purposes of this Article AM “covered telecommunications equipment or services” means:
 - a. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);
 - b. Video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);
 - c. Telecommunications or video surveillance services provided by such entities or using such equipment; or
 - d. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the People's Republic of China.
3. FEMA grant funding may be permitted to procure replacement equipment and services impacted by this Article AM. Subrecipients should refer to applicable program guidance or contact the AZDOHS to determine if replacement equipment or services are eligible under the awarded grant program.

XIV. OFFSHORE PERFORMANCE OF WORK PROHIBITED

Due to security and identity protection concerns, all services under this Agreement shall be performed within the borders of the United States. All storage and processing of information shall be performed within the borders of the United States. This provision applies to work performed by the Subrecipient's contractors and subcontractors at all tiers.

XV. AGREEMENT RENEWAL

This Agreement shall not bind nor purport to bind the AZDOHS for any contractual commitment in excess of the original Agreement period, which may not be changed except by a writing signed by all parties hereto in conformity with Paragraph XII, AMENDMENTS.

XVI. RIGHT TO ASSURANCE

If the AZDOHS in good faith has reason to believe that the Subrecipient does not intend to, or is unable to perform or continue performing under this Agreement, the AZDOHS may demand in writing that the Subrecipient give a written assurance of intent and ability to perform. If the Subrecipient fails to provide written assurance within the number of days specified in the demand, the AZDOHS at its option may terminate this Agreement.

XVII. CANCELLATION FOR CONFLICT OF INTEREST

The AZDOHS may, by written notice to the Subrecipient, immediately cancel this Agreement without penalty or further obligation pursuant to A.R.S. 38-511 if any person significantly involved

in initiating, negotiating, securing, drafting, or creating the Agreement on behalf of the State or its subdivisions (unit of Local Government) is an employee or agent of any other party in any capacity or a consultant to any other party to the Agreement with respect to the subject matter of the Agreement. Such cancellation shall be effective when the parties to the Agreement receive written notice from the AZDOHS, unless the notice specifies a later time.

XVIII. THIRD PARTY ANTITRUST VIOLATIONS

The Subrecipient hereby assigns to the State of Arizona any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to Subrecipient toward fulfillment of this Agreement.

XIX. AVAILABILITY OF FUNDS

Every payment obligation of the AZDOHS under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations under A.R.S. 35-154. If the funds are not allocated and available for the continuance of this Agreement, the AZDOHS may terminate this Agreement at the end of the period for which funds are available. No liability shall accrue to the AZDOHS in the event this provision is exercised, and the AZDOHS shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph, including purchases and/or contracts entered into by the Subrecipient in the execution of this Agreement.

XX. FORCE MAJEURE

If either party hereto is delayed or prevented from the performance of any act required in this Agreement by reason of acts of God, strikes, lockouts, labor disputes, civil disorder, or other causes without fault and beyond the control of the party obligated, performance of such act will be excused for the period of the delay.

XXI. PARTIAL INVALIDITY

Any term or provision of this Agreement that is hereafter declared contrary to any current or future law, order, regulation, or rule, or which is otherwise invalid, shall be deemed stricken from this Agreement without impairing the validity of the remainder of this Agreement.

XXII. ARBITRATION

In the event of any dispute arising under this Agreement, written notice of the dispute must be provided to the other party within thirty (30) calendar days of the events giving the rise to the dispute. Any claim made by or against the State or any of its political subdivisions (including but not limited to AZDOHS) relating to this Agreement shall be resolved through the administrative claims process. In the event that the parties would otherwise be in court and/or if A.R.S. 12-1518 applies, the parties shall proceed in arbitration through the American Arbitration Association ("AAA"), with the arbitrator to be selected pursuant to AAA rules and the arbitration to be conducted according to the applicable AAA rules, and with the costs of arbitration (including but not limited to the arbitrator's fees and costs) to be divided 50/50 between the parties, subject to reallocation between the parties by the arbitrator. In the event that the parties become involved in litigation with each other relating to this Agreement for any reason in any other forum, both parties agree to have any claim(s) resolved in arbitration on the terms set forth in this part XXII. Any arbitration award may be enforced through the Maricopa County Superior Court or the U.S. District Court located in Phoenix, Arizona.

XXIII. GOVERNING LAW AND CONTRACT INTERPRETATION

- a) This Agreement shall be governed and interpreted in accordance with the laws of the State of Arizona.
- b) This Agreement 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 in this document.
- c) Either party's failure to insist on strict performance of any term or condition of the Agreement 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.

XXIV. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties hereto pertaining to the subject matter hereof and may not be changed or added to except by a writing signed by all parties hereto in conformity with Paragraph XII, AMENDMENTS. All prior and contemporaneous agreements, representations, and understandings of the parties, oral, written, pertaining to the subject matter hereof, are hereby superseded or merged herein.

XXV. LICENSING

The Subrecipient, unless otherwise exempted by law, shall obtain and maintain all licenses, permits, and authority necessary to perform those acts it is obligated to perform under this Agreement.

XXVI. SECTARIAN REQUESTS

Funds disbursed pursuant to this Agreement may not be expended for any sectarian purpose or activity, including sectarian worship or instruction in violation of the United States or Arizona Constitutions.

XXVII. ADVERTISING AND PROMOTION OF AGREEMENT

The Subrecipient shall not advertise or publish information for commercial benefit concerning this Agreement without the prior written approval of the AZDOHS.

XXVIII. OWNERSHIP OF INFORMATION, PRINTED AND PUBLISHED MATERIAL

The Subrecipient acknowledges that the DHS and the AZDOHS reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use, for Federal government purposes: (a) the copyright in any work developed under an award or sub-award; and (2) any rights of copyright to which a subrecipient purchases ownership with Federal support. The Subrecipient shall consult with the AZDOHS regarding the allocation of any patent rights that arise from, or are purchased with, this funding

XXIX. CLOSED-CAPTIONING OF PUBLIC SERVICE ANNOUNCEMENTS

Any television public service announcement that is produced or funded in whole or in part by the Subrecipient shall include closed captioning of the verbal content of such announcement.

XXX. INDEMNIFICATION

Each party (as "Indemnitor") agrees to defend, indemnify, 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. The State of Arizona (AZDOHS) is self-insured per A.R.S. 41-621.

In addition, should Subrecipient utilize a contractor(s) and subcontractor(s), the indemnification clause between Subrecipient and contractor(s) and subcontractor(s) shall include the following:

Contractor shall defend, indemnify, and hold harmless the (insert name of other governmental entity) and the State of Arizona, and any jurisdiction or agency issuing any permits for any work arising out of this Agreement, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") 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 the contractor or any of the directors, officers, agents, or employees or subcontractors of such contractor. 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 Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by such contractor from and against any and all claims. It is agreed that such contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Additionally on all applicable insurance policies, contractor and its subcontractors shall name the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as an additional insured and also include a waiver of subrogation in favor of the State.

XXXI. TERMINATION

- a) All parties reserve the right to terminate the Agreement in whole or in part due to the failure of the Subrecipient or AZDOHS to comply with any term or condition of the Agreement, to acquire and maintain all required insurance policies, bonds, licenses, and permits or to make satisfactory progress in performing the Agreement. A party invoking the right to terminate shall provide written thirty (30) day advance notice of the termination and the reasons for it to the other party.
- b) If the Subrecipient chooses to terminate the Agreement before the grant deliverables have been met, then the AZDOHS reserves the right to collect all reimbursements distributed to the Subrecipient.
- c) The AZDOHS may, upon termination of this Agreement, procure, on terms and in the manner that it deems appropriate, materials or services to replace those that otherwise would have been provided by Subrecipient under this Agreement. The Subrecipient shall be liable to the AZDOHS for any excess costs incurred by the AZDOHS in procuring materials or services in substitution for those due from the Subrecipient.

XXXII. CONTINUATION OF PERFORMANCE THROUGH TERMINATION

The Subrecipient shall continue to perform, in accordance with the requirements of the Agreement, up to the date of termination, as directed in the termination notice.

XXXIII. PARAGRAPH HEADINGS

The paragraph headings in this Agreement are for convenience of reference only and do not define, limit, enlarge, or otherwise affect the scope, construction, or interpretation of this Agreement or any of its provisions.

XXXIV. COUNTERPARTS

This Agreement may be executed in any number of counterparts, copies, or duplicate originals. Each such counterpart, copy, or duplicate original shall be deemed an original, and collectively they shall constitute one Agreement.

XXXV. AUTHORITY TO EXECUTE THIS AGREEMENT

Each individual executing this Agreement on behalf of the Subrecipient represents and warrants that he or she is duly authorized to execute this Agreement on behalf of the Subrecipient.

XXXVI. SPECIAL CONDITIONS

- a) The Subrecipient must comply with the most recent version of the Administrative Requirements, Cost Principles, and Audit requirements.
- b) The Subrecipient is prohibited from transferring funds between programs (e.g., State Homeland Security Program, Urban Area Security Initiative, Operation Stonegarden).
- c) The Subrecipient agrees to comply with the U.S. Department of Homeland Security regulation 6 C.F.R Part 19, which prohibits discrimination based on religion in social service programs

XXXVII. NOTICES

Any and all notices, requests, demands, or communications by either party to this Agreement, pursuant to or in connection with this Agreement shall be in writing, be delivered in person, or shall be sent to the respective parties at the following addresses:

Arizona Department of Homeland Security
1700 West Washington Street, Suite 210
Phoenix, AZ 85007

The Subrecipient shall address all programmatic and reimbursement notices relative to this Agreement to the appropriate AZDOHS staff; contact information at www.azdohs.gov.

The AZDOHS shall address all notices relative to this Agreement to:

Enter Title, First & Last Name Above

Enter Agency Name Above

Enter Street Address Above

Enter City, State, ZIP Above

XXXVIII. IN WITNESS WHEREOF

The parties hereto agree to execute this Agreement.

FOR AND BEHALF OF THE

Enter Agency Name Above

Authorized Signature Above

Print Name & Title Above

Enter Date Above

FOR AND BEHALF OF THE

Arizona Department of Homeland Security

Gilbert M. Orrantia
Director

Date

(Complete and mail two original documents to the Arizona Department of Homeland Security.)

CITY COUNCIL REPORT

SUBJECT: Resolution 1075-1120 – Intergovernmental Agreement with the City of Phoenix for Participation in the Arizona Internet Crimes Against Children Task Force

MEETING DATE: 11/16/2020

TO: Mayor and Council

FROM: Dale Nannenga, Chief Of Police, (623) 333-7203

THROUGH: Gina Montes, Assistant City Manager, (623) 333-1012

STRATEGIC PLAN:

PURPOSE:

City Council will consider a request to adopt Resolution 1075-1120, authorizing an Intergovernmental Agreement with the City of Phoenix relating to participation in the Arizona Internet Crimes Against Children Task Force (ICAC Task Force) and authorize the Mayor or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

The ICAC Task Force Program is a national network of state and local law enforcement investigative units. The ICAC program assists state and local law enforcement agencies in developing an effective response to cases involving images depicting the sexual exploitation of minors and the sexual assault and abuse of children facilitated by technology.

DISCUSSION:

The purpose of this Agreement is to provide resources and assistance to agencies on a reimbursable basis, to support their efforts to investigate, prosecute, and deter the possession, production, and distribution of unlawful images depicting the sexual exploitation of minors and the utilization of the Internet to seek children as sexual victims. Due to the technological aspects of these cases, the ICAC Task Force Program promotes a multi-jurisdictional, multi-agency approach to investigating and prosecuting ICAC cases. ICAC's goals are to increase the investigations and prosecutions of Internet crimes against children, and to increase public awareness and prevention of ICAC offenses.

This Agreement will remain in effect for three (3) years after the Agreement becomes effective, unless the Agreement is terminated in writing by either party upon a thirty (30) day notice.

BUDGET IMPACT:

All costs associated with participation in this program will be recorded in a separate account within the grant special revenue fund.

RECOMMENDATION:

Staff recommends that the City Council approve a resolution authorizing the Avondale Police Department's

participation in the Intergovernmental Agreement with the Phoenix Police Department/Arizona Internet Crimes Against Children (ICAC Task Force).

Contact person for document distribution:

RESOLUTION NO. 1075-1120

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PHOENIX RELATING TO PARTICIPATION IN THE ARIZONA INTERENT CRIMES AGAINST CHILDREN TASK FORCE.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The Intergovernmental Agreement with the City of Phoenix relating to participation in the Arizona Internet Crimes Against Children Task Force (the “Agreement”) is hereby approved substantially in the form attached hereto as Exhibit A and incorporated herein by reference.

SECTION 2. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to cause the execution of the Agreement and to take all steps necessary to carry out the purpose and intent of this Resolution.

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona, November 16, 2020.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1075-1120

[Agreement]

See following pages.

ARIZONA INTERNET CRIMES AGAINST CHILDREN TASK FORCE

Intergovernmental Agreement

Between

**Phoenix Police Department (Primary Grantee) /
Arizona ICAC Task Force Lead Agency**

and

Avondale Police Department

THIS Intergovernmental Agreement ("IGA") is entered into between the City of Phoenix, Arizona, through the Phoenix Police Department ("PPD" or "Primary Grantee"), and the City of Avondale, Arizona, through the City of Avondale Police Department ("Affiliate Agency").

I. RECITALS

1.1 Whereas public agencies are authorized and empowered to enter into intergovernmental agreements for the provision of services or for joint or cooperative action pursuant to Arizona Revised Statutes (A.R.S.) §11-952. The City of Phoenix is also authorized and empowered pursuant to Chapter 2, Section 2 (i), of the Charter of the City of Phoenix.

1.2 Whereas the Phoenix Police Department / Arizona Internet Crimes Against Children Task Force ("ICAC Task Force") Lead Agency, is the recipient of the United States Department of Justice ("DOJ"), Office of Juvenile Justice and Delinquency Prevention ("OJJDP") grant regarding Internet Crimes Against Children ("ICAC"). The Task Force utilizes the grant, and funding from the Arizona Attorney General's Office, for the purpose of administering and operating an ICAC Task Force in Arizona. PPD is the primary grantee for the ICAC Task Force. Agencies affiliated through this IGA are known as "Affiliate Agencies".

1.3 Whereas the PPD / ICAC Task Force agrees to work with the affiliates to support and advance the goals of the Internet Crimes Against Children Task Force, a DOJ initiative. Phoenix PD / ICAC Task Force may be able to provide financial assistance to the Affiliate Agency, on a reimbursable basis, through various funding sources.

1.4 Whereas the OJJDP administers the ICAC Task Force Program, which is a national network of state and local law enforcement investigative units. The national ICAC program assists state and local law enforcement agencies in the

development of an effective response to cases involving images depicting the sexual exploitation of minors and the sexual assault and abuse of children facilitated by technology. Due in large part to the technological aspects of these cases, the ICAC Task Force Program promotes a multi-jurisdictional, multi-agency approach to investigating and prosecuting ICAC cases. ICAC's goals are to increase the investigations and prosecutions of Internet crimes against children offenses, and to increase public awareness and prevention of ICAC offenses.

1.5 Whereas the national policy objectives for ICACs are to:

- (1) Increase the investigative capabilities, including effectiveness and efficiency, of law enforcement officers in the detection, investigation of qualifying offenses and the apprehension of offenders;
- (2) Increase the number of ICAC-qualifying (state and federal) offenses being prosecuted;
- (3) Create a multi-agency task force response to ICAC offenses;
- (4) Enhance the nationwide response to ICAC offenses; and
- (5) Develop and deliver ICAC public awareness and prevention programs.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties hereby agree to the following terms and conditions:

II. PURPOSE

2.1 The purpose of this IGA is to provide funding for the Affiliate Agency, on a reimbursable basis, to support their efforts to investigate, prosecute, and deter the possession, production, and distribution of unlawful images depicting the sexual exploitation of minors and the utilization of the Internet to seek children as sexual victims.

2.2 The purpose of this IGA is to memorialize parties' agreement to work together to assist the ICAC Task Force in its efforts to investigate, prosecute, and deter the possession, production, and distribution of unlawful images depicting the sexual exploitation of minors and the utilization of the Internet to seek children as sexual victims.

2.3 Additionally, this IGA defines the responsibilities of the Affiliate Agency with the ICAC Task Force.

III. RESPONSIBILITIES

3.1 Affiliated ICAC Task Forces may include investigators, supervisors, or prosecutors from various local, state, and federal law enforcement agencies who provide assistance, subject to availability.

3.2 Affiliated ICAC Task Forces should identify and investigate individuals who exploit children for sexual purposes through the use of technology and/or who obtain, distribute, and/or produce child pornography.

3.3 Affiliated ICAC Task Forces should be focused on presenting evidence of criminal activity to prosecutors, which then leads to the successful prosecution of individuals who have committed coercion/enticement or unlawful image offenses.

3.4 Affiliated ICAC Task Forces may, subject to availability, sponsor community education efforts regarding the prevention of Internet crimes against children and provide ICAC training to other state and local law enforcement officials.

3.5 Affiliated ICAC Task Forces may, subject to availability:

- (1) Conduct undercover ICAC investigations; and
- (2) Conduct reactive investigations for which venue lies within the agency's jurisdiction(s), including investigations of unlawful images depicting the sexual exploitation of minors, CyberTip referrals from the National Center of Missing and Exploited Children (NCMEC), Internet Service Provider and law enforcement referrals, other ICAC-related investigations, and other sources.

3.6 The Affiliated ICAC Task Force will ensure that:

- (1) Only sworn law enforcement personnel will conduct undercover ICAC investigations;
- (2) Each investigator involved with undercover operations has received ICAC training prior to initiating investigations; and
- (3) ICAC investigations shall also be governed by the national ICAC program's Standard Operating Procedures (Attachment A).

3.7 Where investigations reveal that the safety of a child is at risk, it is of paramount importance that the safety and well-being of the child clearly outweigh any consideration being given to the continued investigation.

3.8 ICAC Task Forces have a substantial number of matters to investigate which requires prioritization of these matters. The Affiliate Agency agrees to use the guidelines in the ICAC Standard Operating Procedures (Attachment A) to prioritize cases.

3.9 An additional secondary role of the Affiliate Agency is to educate, as time and resources permit, both children and parents regarding online dangers, and empower them with information so they may visit the Internet in safety. Task force personnel may conduct education and prevention programs to foster awareness and provide practical, relevant guidance to the community about Internet child safety issues.

IV. DURATION AND TERMINATION

4.1 This IGA shall become effective upon the date of the last signature of the executing parties. This IGA will remain in effect for three (3) years after the IGA

becomes effective, unless the agreement is terminated in writing by either party upon thirty (30) day notice.

4.2 Violation of the ICAC Standard Operating Procedures (Attachment A) is considered a material breach of this agreement and cause for cancellation of Affiliate Agency's affiliation with the Arizona ICAC Task Force. Upon discovering a violation and notifying the Affiliate Agency, the Primary Party may cancel the contract and rescind any funding under this agreement.

V. GENERAL PROVISIONS

5.1 Conflict of Interest. This Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511.

5.2 Immigration law compliance and warranty. As required by A.R.S. § 41-4401, each party hereby warrants its compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A). Each party further warrants that after hiring an employee, it verifies the employment eligibility of the employee through the E-Verify program. If either party uses any subcontractors in performance of the IGA, subcontractors shall warrant their compliance with all federal immigration laws and regulations that relate to its employees and A.R.S. § 23-214(A), and subcontractors shall further warrant that after hiring an employee, such subcontractor verifies the employment eligibility of the employee through the E-Verify program. A breach of this warranty shall be deemed a material breach of the IGA, subject to penalties up to, and including, termination. A party shall not be deemed in material breach if it and/or its subcontractors establish compliance with the employment verification provisions of Sections 274A and 274B of the federal Immigration and Nationality Act and the E-Verify requirements contained in A.R.S. § 23-214(A). Each party retains the legal right to inspect the papers of the other party and/or its subcontractor engaged in performance of this IGA to ensure that the other party and/or its subcontractor is complying with the warranty. Any inspection will be conducted after reasonable notice and at reasonable times. If state law is amended, the parties may modify this paragraph consistent with state law.

5.3 Communication between state and local government agencies and federal immigration authorities; compliance. As required by 8 U.S.C. § 1373, each party hereby agrees that, notwithstanding any other provision of federal, state, or local law, it will not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, federal immigration authorities, including US Immigration and Customs Enforcement (ICE), US Customs and Border Protection (CBP), or US Citizenship and Immigration Services (USCIS), information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

5.4 Indemnification. To the extent permitted by law, each party will indemnify and save the other party harmless, including any of the parties' departments, agencies, officers, employees, elected officials or agents, from and against all loss,

expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance or non-performance by the indemnifying party of any of the provisions of this IGA.

Each party, in all instances, shall be indemnified against all liability, losses, and damages of any nature for, or on account of, any injuries or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or non-performance of this IGA by the other party, except such injury or damage as shall have been occasioned by the negligence of that other party. The damages incurred by the other party, their department, agencies, officers, employees, elected officers or agents shall include in the event of any action, court costs, expenses for litigation and reasonable attorneys' fees.

The parties are responsible and liable for the acts and omissions of their own officers, agents or employees in connection with the performance of their official duties under this IGA.

This agreement does not relieve either agency of its official duties and shall not be construed as limiting or expanding the statutory responsibilities of the parties.

5.5 Binding effect. All terms, provisions, and conditions hereof shall be binding upon and inure to the benefit of all parties hereto and their respective heirs, personal representatives, successors and assigns.

5.6 Severability. In the event any term or provision of this IGA is held to be invalid or unenforceable, the validity of the other provisions shall not be affected, and the IGA shall be construed and enforced as if it did not contain the particular term or provision that is deemed to be invalid or unenforceable.

5.7 Governing law. This IGA will be governed by the laws of the State of Arizona, both as to interpretation and performance.

5.8 Modification. This IGA may be modified only by mutual written agreement of the parties.

VI. SPECIAL PROVISIONS

6.1 Goals for cases prosecuted. Various County Attorneys' Offices throughout the State of Arizona have successfully prosecuted many cases investigated by the ICAC Task Force and its affiliated agencies. Cases investigated by the ICAC Task Force may be prosecuted in Federal or State Court.

The affiliated agency agrees that the criteria for determining whether to prosecute a particular violation in state or federal court will be determined based upon the forum in which the greatest overall benefit to the public will be achieved. The parties agree that the greatest overall benefit to the public and victims will be achieved in the forum in which the purposes of punishment will be accomplished

to the greatest possible extent. The parties agree that the sentences in ICAC cases should, to the greatest possible extent:

- (1) Reflect the seriousness of the offense;
- (2) Promote respect for the law;
- (3) Provide just punishment for the offense;
- (4) Afford adequate deterrence to criminal conduct;
- (5) Protect the public from further crimes of the defendant; and
- (6) To provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

Given these goals and the research regarding the typical hands-on offense histories of those convicted as on-line predators and child pornography offenders, incarceration is a desired outcome in ICAC cases.

6.2 Reporting statistics. The Affiliate Agency will provide monthly reports to the Phoenix PD / ICAC Task Force in the prescribed format, no later than ten (10) days after the end of the preceding month. If statistics are not provided by the deadline, any funding will be suspended until the reporting requirement is met.

6.3 Training. The affiliated agency may make investigators available for applicable specialized training provided through the national ICAC program and other appropriate training programs.

6.4 Media. Media outreach on cases should be coordinated with the prosecutor to whom the case has been, or will be, referred in order to ensure compliance with applicable bar rules. All lawful efforts will be made to protect ongoing undercover operations from media publication. Member agencies will refrain from unnecessarily releasing ongoing investigative techniques and ongoing undercover identities, including screen names, age or sex of undercover personas, unless authorized and mandated by public record law, or when the information is revealed pursuant to lawful discovery or at trial.

6.5 Confidentiality. It is understood that any confidential information pertaining to investigations of ICAC will be held in the strictest confidence, and will only be shared with participating ICAC Task Force members or other law enforcement agencies where necessary, or as otherwise permitted by federal and/or state law.

6.6 Text messaging while driving. Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), the Department encourages recipients and sub recipients to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this IGA, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

6.7 Data protection. All data, regardless of form, including originals, images and reproductions, prepared by, obtained by, or transmitted to affiliate agencies in connection with this agreement is to be kept confidential. Except as specifically provided in this IGA, the affiliate agencies shall not disclose data generated in the performance of the service to any third person without the prior written consent of all affiliate agencies, unless required by law.

Personal identifying information, financial account information, or restricted information, whether electronic format or hard copy, must be secured and protected at all times to avoid unauthorized access. At a minimum, affiliate agencies must encrypt and/or password protect electronic files. This includes data saved to laptop computers, computerized devices or removable storage devices.

Unless contrary to law, which includes Arizona State Records Retention statutes, when personal identifying information, financial account information or restricted information, regardless of its format, is no longer necessary, the information must be redacted, destroyed or secured through appropriate and secure methods that ensure the information cannot be viewed, accessed or reconstructed.

In the event that data collected or obtained by the affiliate agencies in connection with this IGA is believed to have been compromised, affiliate agencies shall notify all other agencies in writing within ten (10) business days.

Affiliate agencies agree that the requirements of this section shall be incorporated into all relevant subcontractor/subconsultant agreements entered into by the affiliate agencies. A violation of this section may result in immediate termination of the IGA.

The obligations of affiliate agencies under this section shall survive the termination of this agreement.

6.8 Consistency. No local agreement can be inconsistent with any provision herein or impair achievement of any provision herein.

6.9 Return of Proceeds of Sale or Auction. Affiliate agencies are prohibited from retaining the proceeds from the sale or auction of any equipment purchased with funding provided pursuant to this IGA. In the event that an affiliate agency sells or auctions any equipment purchased with funding provided pursuant to this IGA, the affiliate agency shall return the proceeds from the sale or auction of equipment to the City of Phoenix. The City of Phoenix shall remit the proceeds returned to the original funding source. The City of Phoenix shall have the authority to audit the records of an affiliate agency as shall be deemed proper to ensure that the proceeds from the sale or auction of any equipment purchased with funding provided pursuant to this IGA have been accounted for and returned pursuant to this section.

6.10 Affiliate Agency must abide by all federal, state, and local grant regulations.

IN WITNESS WHEREOF, the parties enter into this Agreement:

City of Phoenix, Arizona
An Arizona Municipal Corporation
(Primary Grantee)

City of Avondale, Arizona
An Arizona Municipal Corporation
(Affiliate)

Jeri L. Williams
Police Chief
Phoenix Police Department

(Authorized Signature)

Printed Name, Title

Date

Date

ATTEST:

ATTEST:

City Clerk

City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Acting City Attorney

City Attorney

INTERGOVERNMENTAL AGREEMENT DETERMINATION

In accordance with the requirements of A.R.S. § 11-952 (D), each of the undersigned attorneys Acknowledge: (1) that they have reviewed the above IGA on behalf of their respective clients; and, (2) that, as to their respective clients only, each attorney has determined that this IGA is in proper form and is within the powers and authority granted under the laws of the State of Arizona.

City of Phoenix (Primary Grantee)

City of Avondale (Affiliate)

Sandra Hunter, Asst. Chief Counsel

Signature

Printed Name, Title

Date

Date

CITY COUNCIL REPORT

SUBJECT: Resolution 1076-1120 - Amendments to the Personnel Policies and Procedures, Chapter 6 Employee Benefits

MEETING DATE: 11/16/2020

TO: Mayor and Council

FROM: Callie McGraw, Interim Department Director, (623) 333-2217

THROUGH: Cherlene Penilla, Deputy City Manager, (623) 333-2214

STRATEGIC PLAN:

PURPOSE:

City Council will consider a request to adopt Resolution 1076-1120, approving the proposed amendments to the Personnel Policies and Procedures, Chapter 6 Employee Benefits and authorize the City Manager, City Attorney, and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

On April 1, 2020 in accordance with Federal law, the City implemented the **Families First Coronavirus Response Act (FFCRA or Act)**. The FFCRA requires the City to provide employees with paid sick leave and expanded family and medical leave for specified reasons related to COVID-19. These provisions went into effect April 1, 2020 and are currently scheduled to be effective through December 31, 2020. Since April 1, 2020 the City has required many employees to work from home to prevent the spread of the COVID virus. During this time period the ability of employees to travel and enjoy vacation has been severely restricted due to the worldwide pandemic. Many of our employees working in jobs that provide for the health, safety and well being of the public have had leave restrictions due to the need to provide essential services to the citizens of Avondale. The City's policies have been updated to reflect the impact of the pandemic on the work environment and our leave programs.

In addition, Chapters 6 of the City's Policy and Procedures Manual are being updated to reflect current practices and changes to state and federal law.

DISCUSSION:

The following are major highlights of the changes to Chapter 6 Employee Benefits:

- Increased the maximum carryover of vacation leave temporarily through December of 2021:
 - Eligible fulltime 40-hour employees: 280 hours increased to 320 hours
 - Fire Battalion Chiefs (56 hour): 392 hours increased to 504 hours
- Increased maximum carryover of vacation leave temporarily for Fire Battalion Chiefs:
 - Fire Battalion Chiefs full-time 40-hour employees: 280 hours increased to 320 hours
 - Fire Battalion Chiefs (56 hours): 392 hours increased to 504 hours

- Added language to clarify employees that are terminated involuntarily are not eligible for compensation of accrued sick leave
- Added language to clarify that sick leave use is not allowed after the date of resignation
- Added language to include service member statutory requirements under the FMLA
- Added Deputy City Managers to Vacation Leave Accrual tables October 19, 2020
- Removed the Short-Term Disability section and created an Administrative Policy for Short-Term Disability
- Added General Leave to provide up to 60 calendar days of leave for personal reasons after all other leave has been exhausted for leave that does not fall under the provisions of the Family and Medical Leave Act (FMLA) or the Americans with Disabilities Act (ADA) related reasons
 - o General Leave is unpaid and not job protected
 - o If the employee's position remains open, they can return to their positions
 - o The city can fill the position at any time during a general leave

BUDGET IMPACT:

There are no direct costs associated with the amendments to the City of Avondale Policies and Procedures.

RECOMMENDATION:

Staff recommends that Council adopt this amendment to the City of Avondale Policies and Procedures.

Contact person for document distribution:

RESOLUTION NO. 1076-1120

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING CHAPTER 6 OF THE PERSONNEL POLICIES AND PROCEDURES RELATING TO EMPLOYEE BENEFITS.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. Chapter 6 – Employee Benefits of the City of Avondale Personnel Policies and Procedures (“Chapter 6”), is hereby adopted in substantially the form and substance attached hereto as Exhibit A and incorporated herein by this reference.

SECTION 2. If any section, subsection, sentence, clause, phrase or portion of this Resolution or any part of Chapter 6 adopted herein is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 3. 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 Council of the City of Avondale, Arizona, November 16, 2020.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1076-1120
[Chapter 6]
See following pages.



CHAPTER 6

Employee Benefits

A. Definitions

Throughout this policy, definitions set out in A.R.S. §23-371 are incorporated by reference. In addition, the following definitions apply:

1. City -the City of Avondale.
2. Department Director - the director of the City department to whom the employee is assigned or the department director's designee.
3. Employee - an employee of the City.
4. Exempt employee - an employee who is deemed to be exempt from the overtime and maximum hour requirements of the Fair Labor Standards Act, 29 U.S.C.A. § 213, and regulations of the United States Department of Labor.
5. Family Medical Leave (FMLA) - Leave allowed pursuant to the Family Medical Leave Act of 1993 and relevant statutes and regulations.
6. Full time employee - an employee who works thirty (30) hours or more per week.
7. Non-Exempt employee - an employee who is not an exempt employee.
8. Part-time employee - an employee who works less than thirty (30) hours per week.
9. Sick Leave - an approved period of absence granted to an employee according to this policy. "Sick leave" has the same meaning as "earned paid sick time" as that term is used in A.R.S. §23-371.
10. Fiscal year - the 365-day period (or 366 days in the case of a leap year) that commences on July 1 and ends on the next June 30.

B. Accumulation of Sick Leave

1. Regular full-time employees will accrue sick leave at the rate of 3.70 hours per biweekly pay period and these hours are accumulated without limit.
2. Regular part-time temporary, and seasonal part-time employees (working less than thirty (30) hours per week) shall receive a bank of forty (40) hours of paid sick leave per year at the commencement of the fiscal year. They shall accrue no other sick leave during the fiscal year.

3. Newly hired regular part-time, temporary, and seasonal part-time employees (working less than thirty (30) hours per week) are eligible to use sick leave from their bank on the ninetieth calendar day after commencing employment.
4. When an employee is promoted, demoted or transferred, the employee shall retain all accrued sick leave.
5. Upon hiring any employee, a department director may request that an employee be hired with sick leave already established up to a maximum of 80 hours for employees below the rank of department directors and 120 hours for department directors and above. The Human Resources Director must review and approve this request prior to any official written offer of employment.

C. Sick Leave Usage

1. Employees may use accrued paid sick leave time for any of the following reasons:
 - a. An employee's mental or physical illness, injury or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; an employee's need for preventive medical care.
 - b. Care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; care of a family member who needs preventive medical care. For purposes of sick leave usage under this section C, the term "family member" is as defined in A.R.S. §23-371, which is the following:
 - 1) Regardless of age, a biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child to whom the employee stands *in loco parentis*, or an individual to whom the employee stood *in loco parentis* when the individual was a minor;
 - 2) A biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee's spouse or domestic partner or a person who stood *in loco parentis* when the employee or employee's spouse or domestic partner was a minor child;
 - 3) A person to whom the employee is legally married under the laws of any state, or a domestic partner of an employee as registered under the laws of any state or political subdivision;
 - 4) A grandparent, grandchild or sibling (whether of a biological, foster, adoptive or step relationship) of the employee or the employee's spouse or domestic partner; or
 - 5) Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship

- c. Reasons related to child care, domestic violence, sexual violence, abuse or stalking, and legal services as described in A.R.S. §§23-371 and 23-373.
 - d. Closure of the employee's place of business by order of a public official due to a public health emergency or an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency, or care for oneself or a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or family member's presence in the community may jeopardize the health of others because of his or her exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease
 - e. In the case of adoption of a minor child, an employee who is a potential or actual adoptive parent may request sick leave to include appointments with adoption agencies, social workers, attorneys, court proceedings, required travel and any other activities necessary and related to adoption of a minor child.
- 2. An employee will not be subject to retaliation or discrimination for using sick leave, so long as the employee complies with City policy.
 - 3. An employee will not be required to search for or find a replacement worker to cover the hours during which the employee is using sick leave.
 - 4. Employees are subject to discipline for misuse or abuse of sick leave or for violation of City policy.
 - 5. Sick leave may be taken when approved by the employee's department director according to the notification and documentation procedures of City policy.
 - 6. An absence of three or more days shall be reported to the Human Resources Department to determine if FMLA leave is warranted.
 - 7. Sick leave hours taken will not count toward hours worked for purposes of computing overtime.
 - 8. Sick leave must be used in increments of not less than fifteen (15) minutes per occurrence for non-exempt employees.

D. Notification

- 1. An employee shall notify his/her department director as soon as he/she knows that he/she will be unable to work, but no later than the starting time of the employee's work day. The employee shall make a good faith effort to provide notice to the department to which the employee is assigned in advance and make a reasonable effort to schedule the time off in a manner that does not unduly disrupt the operations of the department.

2. An oral or written request by the employee is acceptable. The following methods may be used:

- a. Telephone call
- b. Email
- c. Text message

Employees are responsible to ensure text message or email was successfully delivered. Supervisors shall confirm receipt of notification.

3. When possible, the employee shall include the expected duration of the absence in the request.
4. An employee must notify his/her supervisor on each day of absence unless a notification includes a specific number of days required for the leave or other arrangements have been made for FMLA. All FMLA must be approved through Human Resources.
5. While on short term disability employees are required to report periodically to the Human Resources Department, at least every thirty (30) days, regarding the status of their medical condition and their intent to return to work. Employees will be required to provide medical evidence substantiating their need for continued leave to the Human Resources Department who will then submit it to the Third Party Administrator (TPA) for review. See City Short Term Disability Policy.
6. If an employee fails to return to work following any authorized leave and fails to notify Human Resources of the need for an extension, the employee will be considered to have abandoned the job.
 - a. Human Resources shall send written notice to the employee's last known address requiring the employee to return to duty within forty-eight (48) hours.
 - b. Failure to return to work within forty-eight (48) hours of receipt of the notification will be cause for immediate discharge and the employee automatically waives all appeal rights under this policy.

E. Documentation

1. For earned paid sick time of three or more consecutive work days, a department director may require reasonable documentation that the earned paid sick time has been used for a reason or purpose set out in the definition of sick leave in this policy. Documentation signed by a health care professional indicating that earned paid sick time is necessary shall be considered reasonable documentation for purposes of this section. In cases of domestic violence, sexual violence, abuse or stalking, one of the following types of documentation selected by the employee shall be considered reasonable documentation:
 - a. A police report indicating that the employee or the employee's family member was a victim of domestic violence, sexual violence, abuse or stalking;

- b. A protective order; injunction against harassment; a general court order; or other evidence from a court or prosecuting attorney that the employee or employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual violence, abuse, or stalking;
- c. A signed statement from a domestic violence or sexual violence program or victim services organization affirming that the employee or employee's family member is receiving services related to domestic violence, sexual violence, abuse, or stalking;
- d. A signed statement from a witness advocate affirming that the employee or employee's family member is receiving services from a victim services organization;
- e. A signed statement from an attorney, member of the clergy, or a medical or other professional affirming that the employee or employee's family member is a victim of domestic violence, sexual violence, abuse or stalking; or
- f. An employee's written statement affirming that the employee or the employee's family member is a victim of domestic violence, sexual violence, abuse, or stalking, and that the leave was taken for one of the purposes of the Victim's Leave section in this policy. The employee's written statement, by itself, is reasonable documentation for absences under this paragraph. The written statement does not need to be in an affidavit format or notarized, but shall be legible if handwritten and shall reasonably make clear the employee's identity, and if applicable, the employee's relationship to the family member.

F. Compensation for Unused Sick Leave upon Resignation or Retirement.

- 1. Compensation upon resignation will be 33.3% of accrued sick leave at the employee's current hourly rate.
- 2. Compensation upon retirement will be as follows:
 - a. Employees with 10 years of continuous service with the City will receive 100% of accrued sick leave up to 250 hours at the employee's current hourly rate, or 33.3% of the total balance of accrued sick leave, whichever is greater.
 - b. Employees with 15 years of continuous service with the City will receive 100% of accrued sick leave up to 375 hours at the employee's current hourly rate, or 33.3% of the total balance of accrued sick leave, whichever is greater.
 - c. Employees with 20 years of continuous service with the City will receive 100% of accrued sick leave up to 500 hours at the employee's current hourly rate, or 33.3% of the total balance of accrued sick leave, whichever is greater.
- 3. Employees who resign from their employment with the City but return to employment with the City within a nine (9) month period shall have any unused or unreimbursed sick leave reinstated upon rehire.

4. Employees who are involuntarily terminated from their employment are not eligible for compensation of accrued sick leave.
5. An employee may not use sick leave after their last day worked.

G. Family and Medical Leave Act (FMLA)

1. General Provisions

It is the policy of the City to grant up to 12 weeks of FMLA leave during any 12-month period to eligible employees. The City may grant up to a maximum of 26 weeks in a 12-month period for employees taking FMLA Injured Servicemember leave. FMLA may be paid, unpaid or a combination of paid and unpaid leave depending on the circumstances of the leave and as specified in this policy. The City has the right to designate leave, paid or unpaid, as FMLA leave, even if the employee does not request leave as FMLA. Sick leave may be granted under Servicemember Leave of the FMLA and only during this time can sick leave be used.

2. Eligibility

To qualify to take FMLA leave under this policy, the employee must meet all of the following conditions:

- a. The employee must have worked for the City for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week.
- b. The employee must have worked at least 1250 hours during the 12-month period immediately before the date when the FMLA leave is requested to commence. The principles established under the Fair Labor Standards Act (FLSA) determine the number of hours worked by an employee. The FLSA does not include time spent on paid or unpaid leave as hours worked. Consequently, these hours of leave will not be counted in determining the 1250 hours eligibility test for an employee under FMLA.

3. Types of Leave Covered

- a. To qualify as FMLA leave under this policy, the employee must be taking leave for one of the reasons listed below:
 - 1) The birth of a child and in order to care for that child;
 - 2) The placement of a child for adoption or foster care and to care for the newly placed child;
 - 3) To care for a close family member (usually a spouse, child, or parent) with serious health condition; or
 - 4) The serious health condition (described below) of the employee.

- a) An employee may take FMLA leave due to a serious health condition that makes the employee unable to perform the functions of the employee's position. A serious health condition can include inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition which requires continuing care by a licensed health care provider. However, a serious illness may also include other ailments short of hospitalization.
 - b) This FMLA leave policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long term health condition which, if left untreated, would result in a period of incapacity of more than three days, would be considered a serious health condition.
- 5) Qualifying Exigency Leave (necessity) arising out of the fact that the spouse, son, daughter or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.
- 6) Service member Family Leave - An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member shall be entitled to a total of 26 work weeks of FMLA leave during a 12-month period to care for the service member. The leave described in this paragraph shall only be available during a single 12-month period. During the single 12-month period, an eligible employee shall be entitled to a combined total of 26 work weeks of leave. If both spouses work for the City, each spouse may only take a combined total of 26 workweeks of leave.
- b. If an employee takes paid sick leave for a condition that progresses into a serious health condition and the employee requests unpaid FMLA leave as provided under this policy, the City may designate all or some portion of related leave taken as FMLA leave under this policy, to the extent that the earlier leave meets the necessary qualifications.
 - c. Employees with questions about who and what situations are covered under this FMLA leave policy or under the City's sick leave policies are encouraged to consult with the Human Resource Department.
 - d. The City requires an employee to provide a doctor's certification of the serious health condition. The certification process is outlined in this policy. The City relies heavily on the physician's assessment.
 - e. An eligible employee can take up to 12 weeks of leave under this policy during any rolling 12-month period. The City will measure the 12-month period forward from the date any employee's first FMLA leave begins. Each time an employee takes leave, the City will compute the amount of leave the employee has taken under this policy and

subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.

- f. If spouses both work for the City, and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a child, or parent with a serious health condition, each spouse may each take 12 weeks each of leave.

4. Employee Status and Benefits During Leave

- a. While an employee is on leave, the City will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.
- b. If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, the City will require the employee to reimburse the City the amount it paid for the employee's health insurance premium during the leave period.
- c. The employee pays a portion of the dependent health care premium. While on paid leave, the City will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received in the Finance and Budget Department by the 10th day of each month. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave. The City will provide 15 days' notification prior to the employee's loss of coverage.
- d. If the employee contributes to a dental plan, life insurance, disability plan or any other type of insurance plan the City will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee may request continuation of such benefits; provided, however, that the employee shall pay their portion of the premiums. If the employee does not continue these payments, the City will discontinue coverage during the leave and Consolidated Omnibus Budget Reconciliation Act (COBRA) would be offered. If the City maintains coverage, the City will recover the costs incurred for paying the employee's share of any premiums whether or not the employee returns to work.

5. Employee Status After Leave

Upon return from FMLA leave, an employee is entitled to be returned to the same position held when leave commenced, or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment.

6. Use of Paid and Unpaid Leave

- a. An employee who is taking FMLA leave because of the employee's own serious health condition or the serious health condition of a family member must use all sick leave prior to being eligible for short term disability or unpaid leave.
- b. Disability leave for the birth of a child and for an employee's serious health condition, including Workers' Compensation leave (to the extent that it qualifies), will be designated as FMLA leave and will run concurrently with FMLA leave. For example, if the City provides six weeks of pregnancy disability leave, the six weeks can be designated as FMLA leave and counted toward the employee's 12-week entitlement. The employee may then be required to substitute accrued (or earned) paid leave as appropriate before being eligible for unpaid leave for what remains of the 12-week entitlement.

7. Intermittent Leave or a Reduced Work Schedule

- a. An employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the work week or work day, resulting in a reduced hour schedule. In all circumstances, the leave may not exceed a total of 12 work weeks over a rolling 12-month period. For the birth of a child, the employee may take up to 12 consecutive work weeks.
- b. The City may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, for FMLA leave for the employee or employee's family member that is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth, or placement for adoption or foster care.
- c. Eligible employees may take FMLA leave on an intermittent or reduced schedule basis when medically necessary due to the serious health condition of a covered family member or the employee or the serious injury or illness of a covered servicemember. (See §825.202). Eligible employees may also take FMLA leave on an intermittent or reduced schedule basis when necessary because of a qualifying exigency as defined in this policy.
- d. Employees using intermittent leave or leave on a reduced schedule must make a reasonable effort to avoid disrupting operations, including scheduling doctor's appointments outside of work hours, if possible.
 - 1) An employee using intermittent leave due to medical necessity should notify his/her supervisor as soon as he/she knows that he/she will be unable to work, but no later than the starting time of the employee's work day.

- 2) An employee must notify his/her supervisor on each day of absence unless other arrangements have been made. Human Resources should be contacted if there are additional questions on intermittent leave.

8. Certification of the Serious Health Condition

- a. A serious health condition means an illness, injury, impairment or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider.
- b. The City requires certification of a serious health condition.
 - 1) The employee shall make every effort to respond to such a request within 15 calendar days of the request, or provide a reasonable explanation for the delay.
 - 2) Failure to provide certification may result in a denial of continuation of FMLA leave.
 - 3) Medical certification may be provided by using the medical certification form.
 - 4) Request for a medical certificate must be made in writing as part of the City's response to employee request for FMLA leave.
- c. If the employee plans to take intermittent FMLA leave or work a reduced schedule, the certification must also include dates and the duration of treatment as well as a statement of medical necessity for taking intermittent FMLA leave or working a reduced schedule.
- d. The City has the right to ask for a second opinion if it has reason to doubt the certification. The City will pay for the employee to get a certification from a second doctor, which the City will select. The employee will be temporarily entitled to leave and benefits under the FMLA pending the second opinion.

9. Certification related to active duty orders or call to active duty.

The City may require that a request under active duty or call to active duty be supported by either a leave certification or military orders at such time and in such manner as prescribed by Federal law. Please consult with the Human Resources Department for current Federal guidelines regarding notification and documentation.

10. Procedure for Requesting Leave

- a. All employees requesting leave under this policy must provide notice with an explanation of the reason(s) for the needed leave to the Human Resources Department as soon as practicable. . If the leave is foreseeable, the employee is required to provide a written request for leave and reasons(s) to the Human Resources Department. The City will provide individual notice of rights and obligations to each employee requesting leave as soon as practicable.

- b. When an employee plans to take leave under this policy, the employee must give the City 30 days' notice. If it is not possible to give 30 days' notice, the employee must give as much notice as is practicable. An employee who is to undergo planned medical treatment is required to make a reasonable effort to schedule the treatment in order to minimize disruptions to the City's operations.
- c. While on leave, employees must report periodically to the Human Resources Department regarding the status of the medical condition and their intent to return to work.
- d. Employees who are unable to return to work at the end of the expected FMLA leave should notify their supervisors and Human Resources in writing at least two (2) weeks in advance or as soon as possible and must have the physician re-certify that the extended leave is medically necessary.
- e. If an employee does not provide proper notification to Human Resources, the employee will be considered to have abandoned the job and may be subject to disciplinary action up to and including termination.

11. Job Benefits and Protection

- a. For the duration of FMLA leave, the employer must maintain the employee's health coverage under the "group health plan" unless requested in writing from the employee or other legal directives given.
- b. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- c. The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.
- d. FMLA makes it unlawful for any employer to:
 - 1) Interfere with, restrain or deny the exercise of any right provided under FMLA.
 - 2) Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.
- e. Notwithstanding the exhaustion of FMLA leave, an employee may be granted additional leave as required under the Americans with Disabilities Act. As an accommodation, additional leave may be granted based on medical necessity and the City's requirements/ability to accommodate. Accommodations will be evaluated upon request.

12. Enforcement

- a. The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.

- b. An eligible employee may bring a civil action against an employer for violations.
- c. FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law which provides greater family or medical leave rights.

H. Vacation Leave

1. Accumulation of Vacation Leave

- a. All full-time employees, excluding sworn firefighters, will accrue vacation leave as follows:

Non-Exempt	Tenure	Hours per Pay Period	Hours per Year
	0-1.99 Years	3.7	96.2
	2-4.99 Years	4.47	116.2
	5-9.99 Years	5.39	140.12
	10-14.99 Years	6.31	164.04
	15 + Years	6.93	180.16

Exempt	Tenure	Hours per Pay Period	Hours per Year
	0-1.99 Years	4.62	120.12
	2-4.99 Years	5.39	140.12
	5-9.99 Years	6.31	164.04
	10 + Years	6.93	180.16

- b. All assistant department directors will accrue vacation leave as follows:

ASSISTANT DEPARTMENT DIRECTORS		
Tenure	Hours per Pay Period	Hours per Year
First 5 Years	6.31	164.04
5+ Years	6.93	180.18

- c. All department directors, Deputy City Managers, Assistant City Managers and will accrue vacation leave as follows:

Department Directors, Deputy City Managers, and Assistant City Managers	
Hours per Pay Period	Hours per Year
6.93	180.18

- d. Battalion Chiefs working a 56-hour schedule

Battalion Chiefs		
Tenure	Hours per Pay Period	Hours per Year
0-1.99 Years	11.21	291.46
2-4.99 Years	12.28	319.28
5-9.99 Years	13.57	352.30
10 + Years	14.44	375.30

- e. Upon hiring any employee, a department director may request that an employee be hired with vacation leave already established up to a maximum of 80 hours for employees below the rank of department directors and 120 hours for department directors and above. The Human Resources Director must review and approve this request prior to any official written offer of employment.
- f. Part-time regular employees are not eligible to accrue vacation leave.
- g. Vacation leave hours taken will not count toward hours worked for purposes of computing overtime.

2. Maximum Accumulation of Vacation Time

Eligible employees have a maximum accrual of vacation time of 320 hours at the end of the calendar year 2020. Fire Battalion Chiefs assigned to a 24-hour shift schedule will have a maximum accrual of vacation time of 504 hours at the end of the calendar year. **The maximum accrual rates are temporary and will be reviewed by the end of 2021 due to the COVID-19 impact on City operations.**

- a. Employees must use all hours over the maximum accrual by the end of each calendar year. Employees will lose any vacation leave hours over the maximum accrual amount not used by December 31st of each calendar year.
- b. Vacation leave accumulated in excess of 320 hours or 504 hours for Fire Battalion Chiefs as of the last day of the last pay period starting in any calendar year shall be forfeited, unless the City Manager authorizes an exception in an individual case. The application for exception submitted through the Human Resources Department shall contain a plan to use the excess hours during the following calendar year, pay the employee for the excess hours or a combination of both.

3. Use of Vacation Leave

Vacation leave shall be taken with the approval of the department director or designee (i.e., immediate supervisor).

- a. Vacation will only be granted during such time as it is not disruptive to the work schedule of the department concerned.

- b. During the original probationary period, vacation leave may be granted at the discretion of the department director.
 - c. Vacation leave granted shall not exceed an employee's accrued balance.
- 4. Vacation Sell Back

Employees may be paid for a portion of accrued vacation. See Administrative Policy 40 (AP-40) for guidelines.
- 5. Compensation for Vacation Leave

Compensation upon separation from the City will be 100% of accrued vacation leave at the employee's current hourly rate. An employee may not use vacation leave after their last day worked. Vacation will be paid per city policy.

I. Holiday Leave Policy

1. Objectives

The objectives for the development of the holiday leave policy are:

- a. Equalize the holiday leave allocation, so that each full-time regular employee receives 88 hours of holiday leave hours per fiscal year.
- b. Identify the methods to maximize the number of days that City offices are open to serve citizens.
- c. Ensure that the adoption of a Green Friday schedule or other alternate schedule does not increase the cost of doing business for the City.
- d. Implement a system to increase the flexibility for employees to utilize their holiday compensation.

2. Accumulation of Holiday Leave

- a. The annual holiday leave bank for each full-time, regular employee is 88 hours. Part-time,, temporary and seasonal employees are not eligible for holiday compensation or holiday differential pay. For the purposes of this policy, the holiday will be defined as the 24-hour period (12:00 AM -11:59 PM) on the designated holiday.
- b. Employees will be provided with a bank of 88 hours (full-time) per fiscal year (July 1-June 30) to utilize for holiday compensation for designated holidays or floating holidays as set forth below. The leave banks will be populated during the first payroll period in July and January. The first allocation will be in July for 50 hours (full-time)the second in January for 38 hours (full-time). New hires will receive a prorated number of hours based upon their hire date.

3. Designated Holidays; Floating Holidays

A listing of City-designated holidays will be prepared for each fiscal year. This listing will be included in the Administrative Policy and posted no later than June 1 of each year. The listing will specify any and all designated holidays for the City.

- a. If a designated holiday falls on a scheduled work day, employees will be required to use their holiday leave to cover their scheduled work hours. Employees required to work on a designated holiday due to business need, or who are not scheduled to work on a designated holiday, will not be required to utilize their holiday leave. Any holiday leave hours not used for designated City holidays shall be considered floating holiday leave.
- b. In the event an employee is on paid leave when a holiday occurs, the employee shall receive no pay in addition to holiday pay. Therefore, the employee shall not be charged with applicable paid leave time (i.e., vacation or sick leave).
- c. Floating holiday leave shall be approved to be used at such a time that is mutually agreeable to the employee and the employee's supervisor. Holiday leave will not be available for use on an unplanned or call-in basis.

4. Holidays Eligible for Differential Pay

- a. Each June, a listing will be included in the Administrative Policy of any holidays that will be paid a holiday differential. Non-exempt employees who are required to work on one of the listed holidays shall be given, in addition to regular hourly rate, holiday differential pay equal to one-half of their regular straight-time hourly rate for hours worked on designated holidays. This compensation may be in overtime or compensatory time, depending on the needs of the department (compensatory time guidelines have been established in Chapter 5 of the City of Avondale Policies & Procedures Policy Manual) The additional compensation would only be for the actual day of the holiday, not the Friday or Monday before or after (example: July 4th is on a Sunday; employees working on July 4th would be eligible for additional compensation; employees working on July 3rd or 5th would not).
- b. Exempt employees would not be eligible for any additional compensation if required to work on one of the holidays eligible for differential pay.

5. Use of Holiday Leave

- a. It will be the employees' responsibility to monitor their holiday leave usage.
- b. In the event that the employee does not have enough holiday hours in her/his bank to cover a full day's absence, vacation hours or compensatory time will be used to make up the difference.

- c. All holiday hours not taken prior to the last day of employment with the City, shall be forfeited.
 - d. Holiday hours must be used by June 30 of each year or will be forfeited. There will be no “cash out” or carryover of holiday hours.
 - e. In the event that an exempt or non-exempt employee does not have either holiday hours, compensatory hours or vacation hours to cover a designated holiday, they will be placed in a leave without pay (LWOP) status. This will mean that both an exempt and nonexempt employee will have the uncompensated hours deducted to cover their absence.
 - f. Holiday hours and holiday differential pay will not count toward hours worked for purposes of overtime for hourly employees.
6. Certain Police Employees Not Participating

Sworn police officers (except the Criminal Investigations and Professional Standards Bureau) (“Specified Police Employees”) will not be participating in the holiday leave program set forth above. Specified Police Employees will receive 8 hours of compensation for each of the following holidays as they occur in the calendar:

SPECIFIED POLICE EMPLOYEE HOLIDAYS
INDEPENDENCE DAY
LABOR DAY
VETERAN’S DAY
THANKSGIVING
DAY AFTER THANKSGIVING
CHRISTMAS DAY
NEW YEAR’S DAY
MARTIN LUTHER KING JR. DAY
PRESIDENT’S DAY
MEMORIAL DAY
PERSONAL DAY TO BE SCHEDULED BY EMPLOYEE

- a. Specified Police Employees will have one 8-hour personal day to schedule at their discretion with their supervisor each fiscal year. Personal days and holidays will not be carried over into a new fiscal year. A personal day (8 hours) will be given to the employee on July 1 of each fiscal year. New hires will receive a personal day upon

their hire. The personal day must be scheduled in the fiscal year it is earned. Unused personal days will not be paid out at the end of the fiscal year or upon resignation of the employee.

- b. The Specified Police Employee holiday hours set forth above will not count as hours worked for the purpose of overtime compensation. Employees who are required to work on designated holidays shall be given, in addition to regular hourly rate, holiday differential pay equal to one-half of their regular straight-time hourly rate for hours worked on designated holidays.

Example 1: Employee works 14 hours on the holiday (Wednesday*) and works three other days in the week.

Time	Total	M	T	W*	Th	F	S	Su
Hours worked	46	10	11	14	11			

End Result:

Hours worked	46
Holiday compensation at straight rate	8
Regular Hours at straight rate	40
Overtime at 1.5	6
Holiday Differential at .5	14

Example 2: Employee works 14 hours on the holiday (Wednesday*) and calls in sick on Monday for the entire shift of 10 hours.

Time	Total	M	T	W*	Th	F	S	Su
Hours worked	36		11	14	11			
Sick Leave	10	10						

End Result:

Hours worked	36
Holiday compensation at straight rate	8
Sick leave at straight rate	10
Regular Hours at straight rate	54
Overtime at 1.5	0
Holiday Differential at .5	7

J. Industrial Leave

1. Workers' Compensation Coverage

The City provides Workers' Compensation insurance coverage to employees at no cost. If an injury or illness is determined to be job related, the employee will receive medical benefits and, if eligible, temporary compensation.

2. Determination of Compensability

The City's Workers' Compensation carrier will determine compensability for workplace injuries and illnesses.

3. Separation During a Claim

An individual who separates from City employment will only be entitled to the compensation required under Arizona Workers' Compensation Law.

4. Filing a Claim

An injury or illness is covered under Workers' Compensation if it is determined to be job related. It is the employee's responsibility to make sure the injury is reported to his/her supervisor as soon as possible. A claim must be filed within one year of the date of injury. It is the employee's responsibility to ensure the claim has been filed. The supervisor will work with the Risk Management department to provide information to assist in filing the claim. Risk Management will serve as the point person for employees with questions regarding Workers' Compensation.

5. Types of Claims

There are two types of Workers' Compensation claims. One is called a "medical only" claim, which means that only medical expenses are paid. The other is called a "time lost" claim. This means that both medical expenses and temporary compensation benefits for lost wages are paid.

- a. "Medical only" claims are those types of claims for which the insurance company will pay all of the medical expenses associated with the injury, but will not pay compensation benefits for lost wages, as the employee did not lose more than seven days' time from work.
- b. "Time lost" claims are those claims in which the treating doctor states that the employee is unable to work due to their injury and employee is off work more than seven days. The employee would then be eligible for compensation for their lost wages. The days off do not have to be consecutive (in a row) but are cumulative (total). Entitlement to compensation is based on calendar days (not work days) and includes Saturdays, Sundays and holidays.

6. Compensation for Time Lost Claims

- a. The first seven days are not paid for lost wages unless the disability extends to 14 days. For example: If the employee is off ten days, they get paid for days eight, nine and ten only. If the employee is off 14 full days, compensation is retroactive (goes back) to the date of injury and is paid for 14 days. Compensation is not generally paid for the date of injury, as the employee was working that day and was typically compensated already for that day.
- b. Compensation is based on the statutory limit set forth in the Arizona Revised Statutes. The state law establishes a maximum wage figure which can be used to calculate the average monthly wage. This compensation is tax-free to the employee. Payments will be administered through the City's payroll system and will be issued on a bi-weekly basis.
- c. Sick time or vacation time may be utilized to cover the seven-day waiting period or to supplement their Workers' Compensation payments. Employees would need to notify Payroll in writing if they wish to utilize sick time or vacation time to cover their waiting period or supplement their wages.

7. Requirements While Under Workers' Compensation

- a. An employee may not leave the state for more than two weeks while under active medical treatment without approval from the Arizona Industrial Commission. If the employee is planning to be outside the state for more than two weeks, the employee must have written approval from the Arizona Industrial Commission before the employee leaves the state.
- b. Employees are not permitted to engage in outside employment while receiving Workers' Compensation from the City of Avondale unless written permission is granted from Human Resources and Risk Management.
- c. FMLA leave, if eligible, will run consecutively while on Workers' Compensation. While under active medical care, the insurance company has the right to have the employee periodically examined, at a reasonably convenient time and place, by a doctor of its choosing. Failure to attend the examination could result in suspension of Workers' Compensation benefits and the employee could be required to pay for the cost of the missed examination.

8. Return to Work

- a. While under active medical care, a doctor may release an employee to return to modified duty or to the employee's regular job.
- b. If released to regular duty, an employee must be able to perform the essential functions of the employee's job, with or without reasonable accommodations. If an employee

requires accommodations, Human Resources will coordinate an evaluation of the employee's ability to return to the workplace.

- c. If returned to work with restrictions, the physician must provide in writing a detailed outline of what the restrictions are and the duration of those restrictions. Human Resources, Risk Management and the department will work together to determine if there is work available that meets the restrictions outlined. Modified duty is not guaranteed. It will be up to the City to determine if work is available. At no time will an employee be allowed to be on modified duty for a period of time greater than twelve (12) months from the date of injury or date of onset of illness. Modified duty work would no longer be available once an employee is medically able to return to his or her regular job.
- d. If an employee fails to accept a modified duty work assignment that he or she is medically capable of performing, his or her compensation benefits may be reduced or eliminated by the City.
- e. Risk Management may require a fit for duty evaluation before an employee is returned to regular duty.

K. General Leave

- 1. General leave may be requested for personal reasons that are not covered by the FMLA. This leave is not intended for employees needing time away from work for their own medical condition.
 - a. General leave will last for no more than sixty (60) calendar days.
 - b. Accrued time off must be exhausted before an employee is eligible to take general leave
 - c. General Leave is not intended for seeking employment outside of the City.
- 2. Requests for general leave must be approved by the employee's department director and the human resources director
 - a. Request for general leave must be in writing and include the purpose, start and end date of the general leave
- 3. General leave is unpaid and not job protected
 - a. The department may post to fill the employee's position upon commencement of general leave.
 - b. If the employee's position remains open at the end of their approved leave period, they will be reinstated to their position. If the position is no longer available, then they will be allowed a period of 28 calendar days to apply competitively for any open position as an internal candidate.

- c. If the employee fails to return to work or communicate timely with Human Resources at the end of their approved leave period, it will be deemed job abandonment and they will be terminated.
4. While on general leave the employee may select continuation of benefits by paying the full premium for coverage (i.e., employee and employer premiums). Some benefits may not be continued.
5. Vacation and Sick leave will not accrue while the employee is on general leave.

L. Bereavement Leave

1. General

Upon the death of an employee's immediate family member, an employee may be granted paid bereavement leave not to exceed five work days or 40 hours. Additional hours beyond the limit may be charged to an employee's sick leave or vacation leaves at the employee's discretion and with the department director's approval. Upon the death of an employee's aunt, uncle, cousin, niece, or nephew, an employee may be granted paid bereavement leave not to exceed one work day or eight hours. Only full-time regular and/or probationary employees are eligible for bereavement leave. Part-time employees are not eligible for bereavement leave.

2. Immediate Family Defined

For purposes of bereavement leave, "immediate family" shall refer to a spouse, son, son in-law, daughter, daughter in-law, mother, mother in-law, father, father in-law, brother, brother in-law, sister, sister in-law, grandparent, grandparent in-law, grandchild or step-child, step-parent, step-brother or step-sister.

3. Co-workers

At the discretion of the employee's department director, an employee may be granted up to four (4) hours of bereavement leave for attendance at a co-worker's funeral or memorial service.

M. Military Leave

All regular employees who are or may be members of the National Guard or the Military Reserves (U.S. Armed Forces) will be entitled to leave of absence with pay (upon written request to the employees department director and submittal of appropriate documentation of military active duty orders), from their respective duties on all days during which they are employed with or without pay under the orders of or authorization of competent authority on active duty during training or duty with troops, field exercises or instruction for a total period not to exceed the lesser of 30 working days or hours times shift based on the Federal government fiscal year in any two consecutive years.

N. Civic Duty Leave

1. General

Upon substantiated application, an employee shall be granted leave with pay as civic duty leave while serving as a juror, complying with a subpoena or voting.

2. Use of Civic Duty Leave

Except for voting pursuant to ARIZ. REV. STAT. § 16-401 (primary elections) or ARIZ. REV. STAT. § 16-402, (general elections) as amended, an employee granted civic duty leave shall report for work whenever the employee's presence is not required for the civic duty, unless:

- a. The distance to the work location would preclude timely reporting for the civic duty; or
- b. The employee cannot return to work at least one hour before the end of the work shift;
- c. Civic duty leave will not count towards hours worked for purpose of computing overtime.

3. General Election Day

- a. The biannual general election day (the first Tuesday following the first Monday in November of every even-numbered year) is not a legal holiday. However, every public officer or employee is entitled to have adequate time to vote, as set forth in ARIZ. REV. STAT. § 16-402, as amended. The three consecutive hours immediately after the opening or the three consecutive hours prior to the closing of the polls is provided for this purpose.
- b. Arrangements must be made with the supervisor prior to general election day and the supervisor may determine which hours are more suitable in accordance with the needs of the department.

4. Appearance as a Witness

An employee who is subpoenaed as a witness by any court or administrative, executive, or judicial body in this state may be absent with pay unless the testimony or evidence to be given relates to the employee's own personal business.

5. Jury and Witness Compensation

Employees who are granted civic duty leave when called for jury duty or subpoenaed as a witness shall remit any compensation to the City Finance and Budget Department, except for mileage allowance.

O. Victim's Leave

1. Purpose and Eligibility

The City will allow employees who are victims of crimes to leave work to exercise their right to be present at legal proceedings related to the crimes in accordance with Arizona State Victim's Leave Law (ARIZ. REV. STAT. §§ 8-420, 13-4439, 23- 373) as amended. Any City employee is eligible for leave under this policy, except if the employee's family member is the victim and the employee is in custody for an offense or is the accused.

2. Use of Victims Leave

A request for victim's leave must be made to the immediate supervisor providing as much notice as practical. In making this request, the employee shall provide both of the following documents:

- a. A copy of the form provided to the employee by the law enforcement agency.
- b. A copy of the notice of each scheduled proceeding that is provided to the victims by the responsible agency.

Leave records under this policy shall be maintained in a confidential manner. When using victim's leave, the eligible employee may use accrued sick leave, vacation or time earned. Compensatory time earned may be used for non-exempt employees to remain in a pay status while absent from work. If the employee has exhausted all accrued leave balances or if the employee is not benefit eligible, the leave of absence shall be unpaid and need to be approved by the City Manager. While there is no maximum amount of time allocated for the victim's leave, the City reserves the right to limit the leave provided under state law if the employees' absence from work creates an undue hardship to City business.

P. Administrative Leave

The Human Resources Department may authorize the granting of administrative leave to temporarily relieve an employee of his/her duties during an investigation and/or pending the outcome of a personnel or disciplinary hearing. Administrative leave may be authorized with or without pay depending upon the specific circumstance.

Q. Health, Dental, Life and Optional Insurances

Subject to the approval of City Council, the City provides health, dental and life insurance to regular status full-time employees. Insurance coverage begins 31 days after the first day of the month following the employee's first day of employment.

1. Medical Insurance

Employees hired in 30-40 hour positions are eligible to elect coverage under the City's medical insurance plans. Employees may elect to cover their dependents at the cost which has been negotiated by the City and the insurance carrier. The City may elect to pay a

portion of the dependent's coverage. Employees hired in a position with hours less than 30 hours are not eligible to enroll in the City's medical insurance plans.

2. Dental Insurance

Employees hired in 30-40 hour positions are eligible to elect coverage under the City's dental insurance plans. Employees may elect to cover their dependents at the cost which has been negotiated by the City and the insurance carrier. The City may elect to pay a portion of the dependent's coverage. Employees hired in a position with hours less than 30 hours are not eligible to enroll in the City's dental insurance plans.

3. Life Insurance

Employees hired in 30-40 hour positions are covered by the City's basic life insurance plan. These employees may purchase additional life insurance. Employees hired in a position with hours less than 30 hours are not eligible to enroll in the City's life insurance plans.

4. Optional Insurance Benefits

The City may provide optional benefits through payroll deduction.

R. Continuation of Health Insurance under Consolidated Omnibus Budget Reconciliation Act ("COBRA")

Under the Consolidated Omnibus Budget Reconciliation Act of 1985, better known as COBRA, if an employee terminates employment with the City, the employee is entitled to continue participating in the City's group health plan for a prescribed period of time, usually 18 months. (In certain circumstances, such as an employee's divorce or death, the length of coverage period may be longer for qualified dependents.) COBRA coverage is not extended to employees terminated for gross misconduct.

If a former employee chooses to continue group benefits under COBRA, he/she must pay the total applicable premium plus a 2% administrative fee. Coverage will cease if the former employee fails to make premium payments as scheduled, becomes covered by another group plan that does not exclude pre-existing conditions, or becomes eligible for Medicare.

For detailed information or questions on COBRA, employees are requested to check with the Human Resources Department.

S. Workers' Compensation Insurance

1. General

Workers' Compensation provides a medical and hospitalization expenses benefit as well as partial payment in lieu of salary for workers injured on the job. All City employees are covered by this form of insurance at no cost to the employee from the first day of

employment. Benefits are based on the statutory limit set forth in the Arizona Revised Statutes.

2. Reporting Period

All job-related personal injuries to employees must be reported to Risk Management within 24 hours of the time the accident occurred.

3. Choice of Care Provider

The City has the right to request that an employee injured on the job, seek medical assistance from a doctor of the City's choice.

T. Retirement Plans

Enrollment in the Arizona State Retirement System or the Public Safety Personnel Retirement System or the Correctional Officers Retirement Plan will be determined based upon eligibility. The Public Safety Personnel Retirement System is for certified peace officers and firefighters.

Deductions for all plans are made from each pay period. The amount of the City's contributions, as well as employee contributions, is determined by state legislation.

U. Deferred Compensation Plans

a. Under these optional plan area several types of programs governed by Internal Revenue Service (IRS) an employee may choose to defer a portion of his/her income through payroll deduction. By deferring income, an employee may lower the income tax they currently pay.

b. The City may elect to contribute funds to employee's Deferred Compensation Plan

V. Health Savings Account (HSA)

1. General

Health Savings Accounts (HSA) were created by Public Law 108-173, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. H.S.A. are designed to help individuals save for qualified medical and retiree health expenses on a tax-advantaged basis.

2. Employee Choice

Employees who select a high deductible health plan may be eligible to participate in an HSA.

3. City Contribution

The City may elect to contribute funds to employee's HSA accounts.

W. Flexible Spending Arrangements (FSA)

1. General

Health Flexible Spending Arrangements and Dependent Care Flexible Spending Arrangements (FSA) allow employees to be reimbursed for medical expenses.

2. Process

- c. Employees may contribute to FSA accounts up to the limit set by the City.
- d. No employment or federal income taxes are deducted from employee contributions to FSA accounts.

CHAPTER 6

Employee Benefits

A. Definitions

Throughout this policy, definitions set out in A.R.S. §23-371 are incorporated by reference. In addition, the following definitions apply:

1. City ~~means~~—the City of Avondale.
2. Department Director - ~~means~~—the director of the City department to ~~when~~ whom the employee is assigned or the department director's designee.
3. Employee ~~means~~ - an employee of the City.
4. Exempt employee ~~means~~ - an employee who is deemed to be exempt from the overtime and maximum hour requirements of the Fair Labor Standards Act, 29 U.S.C.A. § 213, and regulations of the United States Department of Labor.
5. Family Medical Leave (FMLA) - Leave allowed pursuant to the Family Medical Leave Act of 1993 and relevant statutes and regulations.
6. Full time employee ~~means~~— -an employee who works thirty (30) hours or more per week.
7. Non-Exempt employee - ~~means~~—an employee who is not an exempt employee.
8. Part-time employee - ~~means~~—an employee who works less than thirty (30) hours per week.
9. Sick Leave - ~~means~~—an approved period of absence granted to an employee according to this policy. “Sick leave” has the same meaning as “earned paid sick time” as that term is used in A.R.S. §23-371.
10. Fiscal year - ~~means~~—the 365-day period (or 366 days in the case of a leap year) that commences on July 1 and ends on the next June 30.

B. Accumulation of Sick Leave

1. Regular full-time employees will accrue sick leave at the rate of 3.70 hours per biweekly pay period and these hours are accumulated without limit.
2. Regular part-time temporary, and seasonal part-time employees (working less than thirty (30) hours per week) shall receive a bank of forty (40) hours of paid sick leave per year at the commencement of the fiscal year. They shall accrue no other sick leave during the fiscal year.

3. Newly hired regular part-time, temporary, and seasonal part-time employees (working less than thirty (30) hours per week) are eligible to use sick leave from their bank on the ninetieth calendar day after commencing employment.
4. When an employee is promoted, demoted or transferred, the employee shall retain all accrued sick leave.
5. Upon hiring any employee, a department director may request that an employee be hired with sick leave already established up to a maximum of 80 hours for employees below the rank of department directors and 120 hours for department directors and above. The Human Resources Director must review and approve this request prior to any official written offer of employment.

C. Sick Leave Usage

1. Employees may use accrued paid sick leave time for any of the following reasons:
 - a. An employee's mental or physical illness, injury or health condition; an employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; an employee's need for preventive medical care.
 - b. Care of a family member with a mental or physical illness, injury or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury or health condition; care of a family member who needs preventive medical care. For purposes of sick leave usage under this section C, the term "family member" is as defined in A.R.S. §23-371, which is the following:
 - 1) Regardless of age, a biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child to whom the employee stands *in loco parentis*, or an individual to whom the employee stood *in loco parentis* when the individual was a minor;
 - 2) A biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee's spouse or domestic partner or a person who stood *in loco parentis* when the employee or employee's spouse or domestic partner was a minor child;
 - 3) A person to whom the employee is legally married under the laws of any state, or a domestic partner of an employee as registered under the laws of any state or political subdivision;
 - 4) A grandparent, grandchild or sibling (whether of a biological, foster, adoptive or step relationship) of the employee or the employee's spouse or domestic partner; or
 - 5) Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship

- c. Reasons related to child care, domestic violence, sexual violence, abuse or stalking, and legal services as described in A.R.S. §§23-371 and 23-373.
 - d. Closure of the employee's place of business by order of a public official due to a public health emergency or an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency, or care for oneself or a family member when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or family member's presence in the community may jeopardize the health of others because of his or her exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease
 - e. In the case of adoption of a minor child, an employee who is a potential or actual adoptive parent may request sick leave to include appointments with adoption agencies, social workers, attorneys, court proceedings, required travel and any other activities necessary and related to adoption of a minor child.
- 2. An employee will not be subject to retaliation or discrimination for using sick leave, so long as the employee complies with City policy.
 - 3. An employee will not be required to search for or find a replacement worker to cover the hours during which the employee is using sick leave.
 - 4. Employees are subject to discipline for misuse or abuse of sick leave or for violation of City policy.
 - 5. Sick leave may be taken when approved by the employee's department director according to the notification and documentation procedures of City policy.
 - 6. An absence of three or more days shall be reported to the Human Resources Department to determine if FMLA leave is warranted.
 - 7. Sick leave hours taken will not count toward hours worked for purposes of computing overtime.
 - 8. Sick leave must be used in increments of not less than fifteen (15) minutes per occurrence for non-exempt employees.

D. Notification

- 1. An employee shall notify his/her department director as soon as he/she knows that he/she will be unable to work, but no later than the starting time of the employee's work day. The employee shall make a good faith effort to provide notice to the department to which the employee is assigned in advance and make a reasonable effort to schedule the time off in a manner that does not unduly disrupt the operations of the department.

2. An oral or written request by the employee is acceptable. The following methods may be used:

- a. Telephone call
- b. Email
- c. Text message

Employees are responsible to ensure text message or email was successfully delivered. Supervisors shall confirm receipt of notification.

3. When possible, the employee shall include the expected duration of the absence in the request.
4. An employee must notify his/her supervisor on each day of absence unless a notification includes a specific number of days required for the leave or other arrangements have been made ~~or~~ for FMLA. All FMLA must be approved through Human Resources.
5. While on short term disability ~~-(see section H Short Term Disability)~~, employees are required to report periodically to the Human Resources Department, at least every thirty (30) days, regarding the status of their medical condition and their intent to return to work. Employees will be required to provide medical evidence substantiating their need for continued leave to the Human Resources Department who will then submit it to the Third Party Administrator (TPA) for review. **See City Short Term Disability Policy.**
6. If an employee fails to return to work following any authorized leave and fails to notify Human Resources of the need for an extension, the employee will be considered to have abandoned the job.
 - a. Human Resources shall send written notice to the employee's last known address requiring the employee to return to duty within forty-eight (48) hours.
 - b. Failure to return to work within forty-eight (48) hours of receipt of the notification will be cause for immediate discharge and the employee automatically waives all appeal rights under this policy.

E. Documentation

1. For earned paid sick time of three or more consecutive work days, a department director may require reasonable documentation that the earned paid sick time has been used for a reason or purpose set out in the definition of sick leave in this policy. Documentation signed by a health care professional indicating that earned paid sick time is necessary shall be considered reasonable documentation for purposes of this section. In cases of domestic violence, sexual violence, abuse or stalking, one of the following types of documentation selected by the employee shall be considered reasonable documentation:

- a. A police report indicating that the employee or the employee's family member was a victim of domestic violence, sexual violence, abuse or stalking;
- b. A protective order; injunction against harassment; a general court order; or other evidence from a court or prosecuting attorney that the employee or employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual violence, abuse, or stalking;
- c. A signed statement from a domestic violence or sexual violence program or victim services organization affirming that the employee or employee's family member is receiving services related to domestic violence, sexual violence, abuse, or stalking;
- d. A signed statement from a witness advocate affirming that the employee or employee's family member is receiving services from a victim services organization;
- e. A signed statement from an attorney, member of the clergy, or a medical or other professional affirming that the employee or employee's family member is a victim of domestic violence, sexual violence, abuse or stalking; or
- f. An employee's written statement affirming that the employee or the employee's family member is a victim of domestic violence, sexual violence, abuse, or stalking, and that the leave was taken for one of the purposes of ~~subsection A, paragraph 4 of this section~~ the Victim's Leave section in this policy. The employee's written statement, by itself, is reasonable documentation for absences under this paragraph. The written statement does not need to be in an affidavit format or notarized, but shall be legible if handwritten and shall reasonably make clear the employee's identity, and if applicable, the employee's relationship to the family member.

F. Compensation for Unused Sick Leave upon Resignation or Retirement.

- 1. Compensation upon resignation will be 33.3% of accrued sick leave at the employee's current hourly rate.
- 2. Compensation upon retirement will be as follows:
 - a. Employees with 10 years of continuous service with the City will receive 100% of accrued sick leave up to 250 hours at the employee's current hourly rate, or 33.3% of the total balance of accrued sick leave, whichever is greater.
 - b. Employees with 15 years of continuous service with the City will receive 100% of accrued sick leave up to 375 hours at the employee's current hourly rate, or 33.3% of the total balance of accrued sick leave, whichever is greater.
 - c. Employees with 20 years of continuous service with the City will receive 100% of accrued sick leave up to 500 hours at the employee's current hourly rate, or 33.3% of the total balance of accrued sick leave, whichever is greater.

3. Employees who resign from their employment with the City but return to employment with the City within a nine (9) month period shall have any unused or unreimbursed sick leave reinstated upon rehire.
4. Employees who are involuntarily terminated from their employment are not eligible for compensation of accrued sick leave.
5. An employee may not use sick leave after their last day worked.

G. Family and Medical Leave Act (FMLA)

1. General Provisions

It is the policy of the City to grant up to 12 weeks of FMLA leave during any 12-month period to eligible employees. The City may grant up to a maximum of 26 weeks in a 12-month period for employees taking FMLA Injured Servicemember leave. FMLA may be paid, unpaid or a combination of paid and unpaid leave depending on the circumstances of the leave and as specified in this policy. The City has the right to designate leave, paid or unpaid, as FMLA leave, even if the employee does not request leave as FMLA. Sick leave may be granted under Servicemember Leave of the FMLA and only during this time can sick leave be used.

2. Eligibility

To qualify to take FMLA leave under this policy, the employee must meet all of the following conditions:

- a. The employee must have worked for the City for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week.
- b. The employee must have worked at least 1250 hours during the 12-month period immediately before the date when the FMLA leave is requested to commence. The principles established under the Fair Labor Standards Act (FLSA) determine the number of hours worked by an employee. The FLSA does not include time spent on paid or unpaid leave as hours worked. Consequently, these hours of leave will not be counted in determining the 1250 hours eligibility test for an employee under FMLA.

3. Types of Leave Covered

- a. To qualify as FMLA leave under this policy, the employee must be taking leave for one of the reasons listed below:
 - 1) The birth of a child and in order to care for that child;
 - 2) The placement of a child for adoption or foster care and to care for the newly placed child;

- 3) To care for a close family member (usually a spouse, child, or parent) with serious health condition; or
- 4) The serious health condition (described below) of the employee.
 - a) An employee may take FMLA leave due to a serious health condition that makes the employee unable to perform the functions of the employee's position. A serious health condition can include inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition which requires continuing care by a licensed health care provider. However, a serious illness may also include other ailments short of hospitalization.
 - b) This FMLA leave policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long term health condition which, if left untreated, would result in a period of incapacity of more than three days, would be considered a serious health condition.
- 5) Qualifying Exigency Leave (necessity) arising out of the fact that the spouse, son, daughter or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.
- 6) Service member Family Leave - An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member shall be entitled to a total of 26 work weeks of FMLA leave during a 12-month period to care for the service member. The leave described in this paragraph shall only be available during a single 12-month period. During the single 12-month period, an eligible employee shall be entitled to a combined total of 26 work weeks of leave. If both spouses work for the City, each spouse may only take a combined total of 26 workweeks of leave.
 - b. If an employee takes paid sick leave for a condition that progresses into a serious health condition and the employee requests unpaid FMLA leave as provided under this policy, the City may designate all or some portion of related leave taken as FMLA leave under this policy, to the extent that the earlier leave meets the necessary qualifications.
 - c. Employees with questions about who and what situations are covered under this FMLA leave policy or under the City's sick leave policies are encouraged to consult with the Human Resource Department.
 - d. The City requires an employee to provide a doctor's certification of the serious health condition. The certification process is outlined in this policy. The City relies heavily on the physician's assessment.

- e. An eligible employee can take up to 12 weeks of leave under this policy during any rolling 12-month period. The City will measure the 12-month period forward from the date any employee's first FMLA leave begins. Each time an employee takes leave, the City will compute the amount of leave the employee has taken under this policy and subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.
 - f. If spouses both work for the City, and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a child, or parent with a serious health condition, each spouse may each take 12 weeks each of leave.
4. Employee Status and Benefits During Leave
- a. While an employee is on leave, the City will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.
 - b. If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, the City will require the employee to reimburse the City the amount it paid for the employee's health insurance premium during the leave period.
 - c. The employee pays a portion of the dependent health care premium. While on paid leave, the City will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received in the Finance and Budget Department by the 10th day of each month. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave. The City will provide 15 days' notification prior to the employee's loss of coverage.
 - d. If the employee contributes to a dental plan, life insurance, disability plan or any other type of insurance plan the City will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee may request continuation of such benefits; provided, however, that the employee shall pay their portion of the premiums. If the employee does not continue these payments, the City ~~may~~will discontinue coverage during the leave and Consolidated Omnibus Budget Reconciliation Act (COBRA) would be offered. If the City maintains coverage, the City will ~~may~~ recover the costs incurred for paying the employee's share of any premiums whether or not the employee returns to work.

5. Employee Status After Leave

Upon return from FMLA leave, an employee is entitled to be returned to the same position held when leave commenced, or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment.

6. Use of Paid and Unpaid Leave

a. ~~If the employee has accrued or earned sick leave, the employee must use paid sick leave first and exhaust all accrued sick leave balances prior to taking any portion of the 12 weeks as unpaid FMLA leave.~~ An employee who is taking FMLA leave because of the employee's own serious health condition or the serious health condition of a family member must use all sick leave prior to being eligible for **short term disability** or unpaid leave.

b. Disability leave for the birth of a child and for an employee's serious health condition, including Workers' Compensation leave (to the extent that it qualifies), will be designated as FMLA leave and will run concurrently with FMLA leave. For example, if the City provides six weeks of pregnancy disability leave, the six weeks can be designated as FMLA leave and counted toward the employee's 12-week entitlement. The employee may then be required to substitute accrued (or earned) paid leave as appropriate before being eligible for unpaid leave for what remains of the 12-week entitlement.

7. Intermittent Leave or a Reduced Work Schedule

a. An employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the work week or work day, resulting in a reduced hour schedule. In all circumstances, the leave may not exceed a total of 12 work weeks over a rolling 12-month period. For the birth of a child, the employee may take up to 12 consecutive work weeks.

b. The City may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, for FMLA leave for the employee or employee's family member that is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth, or placement for adoption or foster care.

c. ~~If the employee is taking~~ **Eligible employees may take FMLA leave for a on an intermittent or reduced schedule basis when medically necessary due to the serious health condition or because of of a covered family member or the employee or the serious health condition injury or illness of a family member, the employee should try to reach agreement with the City before taking intermittent covered**

~~servicemember. (See §825.202). Eligible employees may also take FMLA leave or working on an intermittent or reduced schedule basis when necessary because of a reduced hour schedule. If this is not possible, then the employee must prove that the use of the FMLA leave is medically necessary. The City requires certification of the medical necessity as set forth in this policy.~~ **qualifying exigency as defined in this policy.**

- d. Employees using intermittent leave or leave on a reduced schedule must make a reasonable effort to avoid disrupting operations, including scheduling doctor's appointments outside of work hours, if possible.
 - 1) An employee using intermittent leave due to medical necessity should notify his/her supervisor as soon as he/she knows that he/she will be unable to work, but no later than the starting time of the employee's work day.
 - 2) An employee must notify his/her supervisor on each day of absence unless other arrangements have been made. Human Resources should be contacted if there are additional questions on intermittent leave.

8. Certification of the Serious Health Condition

- a. A serious health condition means an illness, injury, impairment or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider.
- b. The City requires certification of a serious health condition.
 - 1) The employee shall make every effort to respond to such a request within 15 calendar days of the request, or provide a reasonable explanation for the delay.
 - 2) Failure to provide certification may result in a denial of continuation of FMLA leave.
 - 3) Medical certification may be provided by using the medical certification form.
 - 4) Request for a medical certificate must be made in writing as part of the City's response to employee request for FMLA leave.
- c. If the employee plans to take intermittent FMLA leave or work a reduced schedule, the certification must also include dates and the duration of treatment as well as a statement of medical necessity for taking intermittent FMLA leave or working a reduced schedule.
- d. The City has the right to ask for a second opinion if it has reason to doubt the certification. The City will pay for the employee to get a certification from a second doctor, which the City will select. The employee will be temporarily entitled to leave and benefits under the FMLA pending the second opinion.

9. Certification related to active duty orders or call to active duty.

The City may require that a request under active duty or call to active duty be supported by either a leave certification or issued military orders at such time and in such manner as prescribed by Federal law. Please consult with the Human Resources Department for current Federal guidelines regarding notification and documentation.

10. Procedure for Requesting Leave

- a. All employees requesting leave under this policy must provide notice with an explanation of the reason(s) for the needed leave to the Human Resources Department ~~and their immediate supervisor.~~ as soon as practicable. If the leave is foreseeable, the employee is required to provide a written request for leave and reasons(s) to the Human Resources Department. The City will provide individual notice of rights and obligations to each employee requesting leave as soon as practicable.
- b. When an employee plans to take leave under this policy, the employee must give the City 30 days' notice. If it is not possible to give 30 days' notice, the employee must give as much notice as is practicable. An employee who is to undergo planned medical treatment is required to make a reasonable effort to schedule the treatment in order to minimize disruptions to the City's operations.
 - c. ~~If an employee fails to provide 30 days' notice for foreseeable leave with no reasonable excuse for the delay, the leave request may be denied until at least 30 days from the date the employer receives notice.~~
- c. While on leave, employees must report periodically to the Human Resources Department regarding the status of the medical condition and their intent to return to work.
- d. Employees who are unable to return to work at the end of the expected FMLA leave should notify their supervisors and Human Resources in writing at least two (2) weeks in advance or as soon as possible and must have the physician re-certify that the extended leave is medically necessary.
- e. If an employee does not provide proper notification to Human Resources, the employee will be considered to have abandoned the job and ~~the employee will~~ may be subject to disciplinary action up to and including termination.

11. Job Benefits and Protection

- a. For the duration of FMLA leave, the employer must maintain the employee's health coverage under the "group health plan" unless requested in writing from the employee or other legal directives given.
- b. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

- c. The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.
- d. FMLA makes it unlawful for any employer to:
 - 1) Interfere with, restrain or deny the exercise of any right provided under FMLA.
 - 2) Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.
- e. Notwithstanding the exhaustion of FMLA leave, an employee may be granted additional leave as required under the Americans with Disabilities Act. As an accommodation, additional leave may be granted based on medical necessity and the City's requirements/ability to accommodate. Accommodations will be evaluated upon request.

12. Enforcement

- a. The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.
- b. An eligible employee may bring a civil action against an employer for violations.
- c. FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law which provides greater family or medical leave rights.

1. **Short-Term Disability**

~~1. The short-term disability benefit provided by the City is an income replacement for employees who are unable to work due to illness or injury (non-job related).~~

~~1. Eligibility~~

~~1. A regular, full-time employee who is unable to work due to illness or injury (non-job related) is eligible for short-term disability benefits. The employee must have exhausted all paid sick leave and be absent from work for a minimum of 14 consecutive calendar days prior to being eligible for the short-term disability benefit. Employees changing leave status from Administrative Leave to Short-Term Disability will be subject to a 14-day waiting period. For injuries or illnesses requiring immediate hospitalization, the benefit shall commence on the date of hospitalization. An employee receiving Workers' Compensation or disability pay under any State of Arizona plan policy is ineligible for this benefit. To be eligible for continued disability benefits, the employee must not engage in outside employment and is expected to avoid activities that may delay recovery and a return to work. While on short-term disability employees are not permitted to report to work or participate with work activities unless specific prior authorization has been approved in writing by Human Resources. Violations of this policy will result in disciplinary action up to, and including dismissal from City employment. Disability benefits cannot be collected while employed elsewhere.~~

~~1. Benefit Payment~~

~~1.~~

~~1. The short term disability benefit payment is 60% of the employee's base weekly wages or salary, to a maximum of \$1,500 per week. The benefit may be paid for a maximum up to 25 weeks in a one-year period. Payments are made in accordance with the City payroll periods. The benefit is taxable income.~~

~~1. Medical Certification~~

~~1. The employee must provide medical certification of the disability that includes the starting and expected ending date of the disability. This certification will be submitted to the City's Third Party Administrator ("TPA") who will review the certification and make a determination on benefit qualification.~~

~~1. Reporting Requirement~~

~~1. While on short term disability, employees are required to report periodically to the Human Resources Department, at least every 30 days, regarding the status of their medical condition and their intent to return to work. Employees will be required to provide medical evidence substantiating their need for continued leave to the Human Resources Department who will then submit it to the TPA.~~

~~1. Return to Work~~

~~H. The employee must return to work as soon as permitted by his or her healthcare provider. The employee must submit a fitness-to-return-to-duty clearance to the Human Resources Department prior to returning to work. An employee whose absence has been designated as FMLA leave is eligible for reinstatement as provided by the FMLA leave policy upon his/her return to work.~~

~~H. Employee Benefits~~

~~H. The City will pay its portion of the cost of the employee's benefits including health, dental, life and disability insurance benefits while an employee is on FMLA with or without paid leave (vacation or sick). The employee must continue to pay his or her portion of the benefits which may be made by payroll deductions (when applicable) or by personal check which must be submitted to the Human Resources Department. The payment must be received in the Human Resources Department by the 10th day of each month. If the payment is more than 30 days late, the employee's health care coverage may be dropped. The City will provide 15 days' notification prior to the employee's loss of coverage. If the employee fails to pay his or her portion of the benefits for more than 30 days, the employee's coverage(s) will be terminated and he/she will be offered COBRA to continue benefits, excluding life and disability insurance.~~

~~H.~~

~~H. When the twelve-week period for FMLA coverage has ended and the employee has exhausted all paid leave, the employee will be responsible for the total cost of the health insurance premiums on any health insurance coverage the employee or the employee's family is receiving through the City during this extended leave period, unless otherwise provided by law.~~

~~H.~~

~~H. Short Term Disability may only be used when an employee has a continuous, incapacitating serious health condition as certified by a physician. Short Term Disability cannot be used for an intermittent leave or to care for a family member. Employees with any questions regarding this policy should contact the Human Resources Department.~~

~~H. Leave Accruals~~

~~H.~~

H. ~~While on short term disability leave accruals will discontinue until employee is released back to work.~~

H. Vacation Leave

1. Accumulation of Vacation Leave

- a. All full-time employees, excluding sworn firefighters, will accrue vacation leave as follows:

Non-Exempt	Tenure	Hours per Pay Period	Hours per Year
	0-1.99 Years	3.7	96.2
	2-4.99 Years	4.47	116.2
	5-9.99 Years	5.39	140.12
	10-14.99 Years	6.31	164.04
	15 + Years	6.93	180.16

Exempt	Tenure	Hours per Pay Period	Hours per Year
	0-1.99 Years	4.62	120.12
	2-4.99 Years	5.39	140.12
	5-9.99 Years	6.31	164.04
	10 + Years	6.93	180.16

- b. All assistant department directors will accrue vacation leave as follows:

ASSISTANT DEPARTMENT DIRECTORS		
Tenure	Hours per Pay Period	Hours per Year
First 5 Years	6.31	164.04
5+ Years	6.93	180.18

- c. All department directors ~~and~~ Deputy City Managers, Assistant City Managers and will accrue vacation leave as follows:

Department Directors, Deputy City Managers, and Assistant City Managers And Department Directors	
Hours per Pay Period	Hours per Year
6.93	180.18

d. Battalion Chiefs working a 56-hour schedule

Battalion Chiefs		
Tenure	Hours per Pay Period	Hours per Year
0-1.99 Years	11.21	291.46
2-4.99 Years	12.28	319.28
5-9.99 Years	13.57	352.30
10 + Years	14.44	375.30

- e. Upon hiring any employee, a department director may request that an employee be hired with vacation leave already established up to a maximum of 80 hours for employees below the rank of department directors and 120 hours for department directors and above. The Human Resources Director must review and approve this request prior to any official written offer of employment.
- f. Part-time regular employees are not eligible to accrue vacation leave.
- g. Vacation leave hours taken will not count toward hours worked for purposes of computing overtime.

2. ~~Regular part-time employees (working 30 hours or less) hired after September 15, 2009, are not eligible for vacation leave.~~

2. Maximum Accumulation of Vacation Time

Eligible employees have a maximum accrual of vacation time of ~~280~~320 hours at the end of the calendar year 2020. Fire Battalion Chiefs assigned to a 24-hour shift schedule will have a maximum accrual of vacation time of ~~392~~504 hours at the end of the calendar year. The maximum accrual rates are temporary and will be reviewed by the end of 2021 due to the COVID-19 impact on City operations.

- a. Employees must use all hours over the maximum accrual by the end of each calendar year. Employees will lose any vacation leave hours over the maximum accrual amount not used by December 31st of each calendar year.
- b. Vacation leave accumulated in excess of ~~280~~320 hours or ~~392~~504 hours for Fire Battalion Chiefs as of the last day of the last pay period starting in any calendar year shall be forfeited, unless the City Manager authorizes an exception in an individual case. The application for exception submitted through the Human Resources Department shall contain a plan to use the excess hours during the following calendar year, pay the employee for the excess hours or a combination of both.

3. Use of Vacation Leave

Vacation leave shall be taken with the approval of the department director or designee (i.e., immediate supervisor).

- a. Vacation will only be granted during such time as it is not disruptive to the work schedule of the department concerned.
 - b. During the original probationary period, vacation leave may be granted at the discretion of the department director.
 - c. Vacation leave granted shall not exceed an employee's accrued balance.
4. Vacation Sell Back
- Employees may be paid for a portion of accrued vacation. See Administrative Policy 40 (AP-40) for guidelines.
5. Compensation for Vacation Leave
- Compensation upon separation from the City will be 100% of accrued vacation leave at the employee's current hourly rate. An employee may not use vacation leave after their last day worked. Vacation will be paid per city policy.

I. Holiday Leave Policy

1. Objectives

The objectives for the development of the holiday leave policy are:

- a. Equalize the holiday leave allocation, so that each full-time regular employee receives 88 hours of holiday leave hours per fiscal year ~~and each part-time employee receives 44 hours of holiday leave per fiscal year.~~
- b. Identify the methods to maximize the number of days that City offices are open to serve citizens.
- c. Ensure that the adoption of a Green Friday schedule or other alternate schedule does not increase the cost of doing business for the City.
- d. Implement a system to increase the flexibility for employees to utilize their holiday compensation.

2. Accumulation of Holiday Leave

- a. The annual holiday leave bank for each full-time, regular employee is 88 hours ~~and for each regular part-time employee is 44 hours per fiscal year.~~ Temporary, temporary and seasonal employees are not eligible for holiday compensation or holiday differential pay. For the purposes of this policy, the holiday will be defined as the 24-hour period (12:00 AM -11:59 PM) on the designated holiday.
- b. Employees will be provided with a bank of 88 hours (full-time) ~~and 44 hours (part-time)~~ per fiscal year (July 1-June 30) to utilize for holiday compensation for designated holidays or floating holidays as set forth below. The leave banks will be populated during the first payroll period in July and January. The first allocation will be in July

for 50 hours (full-time) ~~and 25 (part-time)~~, the second in January for 38 hours (full-time) ~~and 19 hours (part-time)~~. New hires will receive a prorated number of hours based upon their hire date.

3. ~~Regular part-time employees (working 30 hours or less) hired after September 15, 2009, are not eligible for holiday bank hours or holiday compensation.~~

3. Designated Holidays; Floating Holidays

A listing of City-designated holidays will be prepared for each fiscal year. This listing will be included in the Administrative Policy and posted no later than June 1 of each year. The listing will specify any and all designated holidays for the City.

- a. If a designated holiday falls on a scheduled work day, employees will be required to use their holiday leave to cover their scheduled work hours. Employees required to work on a designated holiday due to business need, or who are not scheduled to work on a designated holiday, will not be required to utilize their holiday leave. Any holiday leave hours not used for designated City holidays shall be considered floating holiday leave.
- b. In the event an employee is on paid leave when a holiday occurs, the employee shall receive no pay in addition to holiday pay. Therefore, the employee shall not be charged with applicable paid leave time (i.e., vacation or sick leave).
- c. Floating holiday leave shall be approved to be used at such a time that is mutually agreeable to the employee and the employee's supervisor. Holiday leave will not be available for use on an unplanned or call-in basis.

4. Holidays Eligible for Differential Pay

- a. Each June, a listing will be included in the Administrative Policy of any holidays that will be paid a holiday differential. Non-exempt employees who are required to work on one of the listed holidays shall be given, in addition to regular hourly rate, holiday differential pay equal to one-half of their regular straight-time hourly rate for hours worked on designated holidays. This compensation may be in overtime or compensatory time, depending on the needs of the department (compensatory time guidelines have been established in Chapter 5 of the City of Avondale Policies & Procedures Policy Manual) The additional compensation would only be for the actual day of the holiday, not the Friday or Monday before or after (example: July 4th is on a Sunday; employees working on July 4th would be eligible for additional compensation; employees working on July 3rd or 5th would not).
- b. Exempt employees would not be eligible for any additional compensation if required to work on one of the holidays eligible for differential pay.

5.

5. ~~Regular part-time employees (working 30 hours or less) hired after September 15, 2009, are not eligible for holiday differential pay.~~

5. Use of Holiday Leave

- a. It will be the employees' responsibility to monitor their holiday leave usage.
- b. ~~Holiday leave must be used in full day increments. A full day will be considered the number of hours scheduled for the day that the leave was taken (e.g. employee was scheduled to work ten hours on a holiday, ten hours of holiday pay would be utilized).~~ In the event that the employee does not have enough holiday hours in her/his bank to cover a full day's absence, vacation hours or compensatory time will be used to make up the difference. ~~The same concept shall apply to all regular part-time employees.~~
- c. All holiday hours not taken prior to the last day of employment with the City, shall be forfeited.
- d. Holiday hours must be used by June 30 of each year or will be forfeited. There will be no "cash out" or carryover of holiday hours.
- e. In the event that an exempt or non-exempt employee does not have either holiday hours, compensatory hours or vacation hours to cover a designated holiday, they will be placed in a leave without pay (LWOP) status. This will mean that both an exempt and nonexempt employee will have the uncompensated hours deducted to cover their absence.
- f. Holiday hours and holiday differential pay will not count toward hours worked for purposes of overtime for hourly employees.

6. ~~Holiday differential is paid in addition to any overtime pay due. Holiday differential pay will not be included in determining the regular hourly rate of pay for the purpose of calculating overtime payments.~~

6. Certain Police Employees Not Participating

Sworn police officers (except the Criminal Investigations and Professional Standards Bureau) ("Specified Police Employees") will not be participating in the holiday leave program set forth above. Specified Police Employees will receive 8 hours of compensation for each of the following holidays as they occur in the calendar:

<u>SPECIFIED POLICE EMPLOYEE HOLIDAYS</u>
<u>INDEPENDENCE DAY</u>
<u>LABOR DAY</u>
<u>VETERAN'S DAY</u>
<u>THANKSGIVING</u>
<u>DAY AFTER THANKSGIVING</u>
<u>CHRISTMAS DAY</u>
<u>NEW YEAR'S DAY</u>
<u>MARTIN LUTHER KING JR. DAY</u>
<u>PRESIDENT'S DAY</u>
<u>MEMORIAL DAY</u>
<u>PERSONAL DAY TO BE SCHEDULED BY EMPLOYEE</u>

- a. Specified Police Employees will have one 8-hour personal day to schedule at their discretion with their supervisor each fiscal year. Personal days and holidays will not be carried over into a new fiscal year. A personal day (8 hours) will be given to the employee on July 1 of each fiscal year. New hires will receive a personal day upon their hire. The personal day must be scheduled in the fiscal year it is earned. Unused personal days will not be paid out at the end of the fiscal year or upon resignation of the employee.
- b. The Specified Police Employee holiday hours set forth above will not count as hours worked for the purpose of overtime compensation. Employees who are required to work on designated holidays shall be given, in addition to regular hourly rate, holiday differential pay equal to one-half of their regular straight-time hourly rate for hours worked on designated holidays.

Example 1: Employee works 14 hours on the holiday (Wednesday*) and works three other days in the week.

Time	Total	M	T	W*	Th	F	S	Su
Hours worked	46	10	11	14	11			

End Result:

Hours worked	46
Holiday compensation at straight rate	8
Regular Hours at straight rate	40
Overtime at 1.5	6
Holiday Differential at .5	14

Example 2: Employee works 14 hours on the holiday (Wednesday*) and calls in sick on Monday for the entire shift of 10 hours.

Time	Total	M	T	W*	Th	F	S	Su
Hours worked	36		11	14	11			
Sick Leave	10	10						

End Result:

Hours worked	36
Holiday compensation at straight rate	8
Sick leave at straight rate	10
Regular Hours at straight rate	54
Overtime at 1.5	0
Holiday Differential at .5	7

J. Industrial Leave

2. Workers' Compensation Coverage

The City provides Workers' Compensation insurance coverage to employees at no cost. If an injury or illness is determined to be job related, the employee will receive medical benefits and, if eligible, temporary compensation.

3. Determination of Compensability

The City's Workers' Compensation carrier will determine compensability for workplace injuries and illnesses.

4. Separation During a Claim

An individual who separates from City employment will only be entitled to the compensation required under Arizona Workers' Compensation Law.

5. Filing a Claim

An injury or illness is covered under Workers' Compensation if it is determined to be job related. It is the employee's responsibility to make sure the injury is reported to his/her supervisor as soon as possible. A claim must be filed within one year of the date of injury. It is the employee's responsibility to ensure the claim has been filed. The supervisor will work with the Risk Management department to provide information to assist in filing the claim. Risk Management will serve as the point person for employees with questions regarding Workers' Compensation.

6. Types of Claims

There are two types of Workers' Compensation claims. One is called a "medical only" claim, which means that only medical expenses are paid. The other is called a "time lost"

claim. This means that both medical expenses and temporary compensation benefits for lost wages are paid.

- a. "Medical only" claims are those types of claims for which the insurance company will pay all of the medical expenses associated with the injury, but will not pay compensation benefits for lost wages, as the employee did not lose more than seven days' time from work.
- b. "Time lost" claims are those claims in which the treating doctor states that the employee is unable to work due to their injury and employee is off work more than seven days. The employee would then be eligible for compensation for their lost wages. The days off do not have to be consecutive (in a row) but are cumulative (total). Entitlement to compensation is based on calendar days (not work days) and includes Saturdays, Sundays and holidays.

7. Compensation for Time Lost Claims

- a. The first seven days are not paid for lost wages unless the disability extends to 14 days. For example: If the employee is off ten days, they get paid for days eight, nine and ten only. If the employee is off 14 full days, compensation is retroactive (goes back) to the date of injury and is paid for 14 days. Compensation is not generally paid for the date of injury, as the employee was working that day and was typically compensated already for that day.
 - b. Compensation is based on ~~66 2/3% of the monthly wage up to~~ the statutory limit set forth in the Arizona Revised Statutes. The state law establishes a maximum wage figure which can be used to calculate the average monthly wage. This compensation is tax-free to the employee. Payments will be administered through the City's payroll system and will be issued on a bi-weekly basis.
 - c. Sick time or vacation time may be utilized to cover the seven-day waiting period or to supplement their Workers' Compensation payments. Employees would need to notify Payroll in writing if they wish to utilize sick time or vacation time to cover their waiting period or supplement their wages.
- a. Requirements While Under Workers' Compensation
 - a. ~~For public safety employees on Workers' Compensation, retirement contributions cease unless the injured employee fills out a form provided by the Risk Management department.~~
 - a. An employee may not leave the state for more than two weeks while under active medical treatment without approval from the Arizona Industrial Commission. If the employee is planning to be outside the state for more than two weeks, the employee must have written approval from the Arizona Industrial Commission before the employee leaves the state.

- b. Employees are not permitted to engage in outside employment while receiving Workers' Compensation from the City of Avondale unless written permission is granted from Human Resources and Risk Management.
- c. FMLA leave, if eligible, will run consecutively while on Workers' Compensation. While under active medical care, the insurance company has the right to have the employee periodically examined, at a reasonably convenient time and place, by a doctor of its choosing. Failure to attend the examination could result in suspension of Workers' Compensation benefits and the employee could be required to pay for the cost of the missed examination.

8. Return to Work

- a. While under active medical care, a doctor may release an employee to return to modified duty or to the employee's regular job.
- b. If released to regular duty, an employee must be able to perform the essential functions of the employee's job, with or without reasonable accommodations. If an employee requires accommodations, Human Resources will coordinate an evaluation of the employee's ability to return to the workplace.
- c. If returned to work with restrictions, the physician must provide in writing a detailed outline of what the restrictions are and the duration of those restrictions. Human Resources, Risk Management and the department will work together to determine if there is work available that meets the restrictions outlined. Modified duty is not guaranteed. It will be up to the City to determine if work is available. At no time will an employee be allowed to be on modified duty for a period of time greater than twelve (12) months from the date of injury or date of onset of illness. Modified duty work would no longer be available once an employee is medically able to return to his or her regular job.
- d. If an employee fails to accept a modified duty work assignment that he or she is medically capable of performing, his or her compensation benefits may be reduced or eliminated by the City.
- e. Risk Management may require a fit for duty evaluation before an employee is returned to regular duty.

K. General Leave Without Pay

- 1. General leave may be requested for personal reasons that are not covered by the FMLA. This leave is not intended for employees needing time away from work for their own medical condition.
 - a. General leave will last for no more than sixty (60) calendar days.

4. ~~Failure on the part of an employee to return to duty within 48 hours after written notice to return has been sent to his/her last known address will be cause for immediate discharge and the employee automatically waives all appeal rights under this policy.~~

4. Vacation and Sick leave will not accrue while the employee is on general leave.

L. Bereavement Leave

1. General

General

Upon the death of an employee's immediate family member, an employee may be granted paid bereavement leave not to exceed five work days or 40 hours. Additional hours beyond the limit may be charged to an employee's sick leave or vacation leaves at the employee's discretion and with the department director's approval. Upon the death of an employee's aunt, uncle, cousin, niece, or nephew, an employee may be granted paid bereavement leave not to exceed one work day or eight hours. Only full-time regular and/or probationary employees are eligible for bereavement leave. Part-time employees are not eligible for bereavement leave.

2. Immediate Family Defined

For purposes of bereavement leave, "immediate family" shall refer to a spouse, son, son in-law, daughter, daughter in-law, mother, mother in-law, father, father in-law, brother, brother in-law, sister, sister in-law, grandparent, grandparent in-law, grandchild or step-child, step-parent, step-brother or step-sister.

3. Co-workers

At the discretion of the employee's department director, an employee may be granted up to four (4) hours of bereavement leave for attendance at a co-worker's funeral or memorial service.

M. Military Leave

All regular employees who are or may be members of the National Guard or the Military Reserves (U.S. Armed Forces) will be entitled to leave of absence with pay (upon written request to the employees department director and submittal of appropriate documentation of military active duty orders), from their respective duties on all days during which they are employed with or without pay under the orders of or authorization of competent authority; on active duty during training or duty with troops, field exercises or instruction for a total period not to exceed the lesser of 30 working days or 240 hours times shift based on the Federal government fiscal year in any two consecutive years.

N. Civic Duty Leave

1. General

Upon substantiated application, an employee shall be granted leave with pay as civic duty leave while serving as a juror, complying with a subpoena or and voting.

2. Use of Civic Duty Leave

Except for voting pursuant to ARIZ. REV. STAT. § 16-401 (primary elections) or ARIZ. REV. STAT. § 16-402, (general elections) as amended, an employee granted civic duty leave shall report for work whenever the employee's presence is not required for the civic duty, unless:

- a. The distance to the work location would preclude timely reporting for the civic duty; or
- b. The employee cannot return to work at least one hour before the end of the work shift;
- c. Civic duty leave will not count towards hours worked for purpose of computing overtime.

3. General Election Day

- a. The biannual general election day (the first Tuesday following the first Monday in November of every even-numbered year) is not a legal holiday. However, every public officer or employee is entitled to have adequate time to vote, as set forth in ARIZ. REV. STAT. § 16-402, as amended. The three consecutive hours immediately after the opening or the three consecutive hours prior to the closing of the polls is provided for this purpose.
- b. Arrangements must be made with the supervisor prior to general election day and the supervisor may determine which hours are more suitable in accordance with the needs of the department.

4. Appearance as a Witness

An employee who is subpoenaed as a witness by any court or administrative, executive, or judicial body in this state may be absent with pay unless the testimony or evidence to be given relates to the employee's own personal business.

5. Jury and Witness ~~Fees~~Compensation

Employees who are granted civic duty leave when called for jury duty or subpoenaed as a witness shall remit any ~~fees~~compensation to the City Finance and Budget Department, except for mileage allowance.

O. Victim's Leave

1. Purpose and Eligibility

The City will allow employees who are victims of crimes to leave work to exercise their right to be present at legal proceedings related to the crimes in accordance with Arizona State Victim's Leave Law (ARIZ. REV. STAT. §§ 8-420, 13-4439, 23-~~273~~ 373) as amended. Any City employee is eligible for leave under this policy, except if the employee's family member is the victim and the employee is in custody for an offense or is the accused.

2. Use of Victims Leave

A request for victim's leave must be made to the immediate supervisor providing as much notice as practical. In making this request, the employee shall provide both of the following documents:

- a. A copy of the form provided to the employee by the law enforcement agency.
- b. A copy of the notice of each scheduled proceeding that is provided to the victims by the responsible agency.

Leave records under this policy shall be maintained in a confidential manner. When using victim's leave, the eligible employee may use accrued sick leave, vacation or time earned. Compensatory time earned may be used for non-exempt employees to remain in a pay status while absent from work. If the employee has exhausted all accrued leave balances or if the employee is not benefit eligible, the leave of absence shall be unpaid and need to be approved by the City Manager. While there is no maximum amount of time allocated for the victim's leave, the City reserves the right to limit the leave provided under state law if the employees' absence from work creates an undue hardship to City business.

P. Administrative Leave

The Human Resources Department may authorize the granting of administrative leave to temporarily relieve an employee of his/her duties during an investigation and/or pending the outcome of a personnel or disciplinary hearing. Administrative leave may be authorized with or without pay depending upon the specific circumstance.

Q. Health, Dental, Life and Optional Insurances

Subject to the approval of City Council, the City provides health, dental and life insurance to regular status full-time employees. Insurance coverage begins 3031 days after the first day of the month following the employee's first day of employment. ~~All regular part-time employees hired after September 15, 2009, are not eligible for any health, dental, life or optional insurances.~~

1. Medical Insurance

Employees hired in 30-40 hour positions are ~~covered by~~eligible to elect coverage under the ~~City's regular~~City's medical insurance plans. Employees may elect to cover their dependents at the cost which has been negotiated by the City and the insurance carrier. The City may elect to pay a portion of the dependent's coverage. Employees hired in a position with hours less than 30 hours are not eligible to enroll in the City's medical insurance plans.

2. Dental Insurance

Employees hired in 30-40 hour positions are ~~covered by~~eligible to elect coverage under the City's dental insurance plans. Employees may elect to cover their dependents at the cost which has been negotiated by the City and the insurance carrier. The City may elect to pay a portion of the dependent's coverage. Employees hired in a position with hours less than 30 hours are not eligible to enroll in the City's dental insurance plans.

3. Life Insurance

Employees hired in 30-40 hour positions are covered by the City's basic life insurance plan. These employees may purchase additional life insurance. Employees hired in a position with hours less than 30 hours are not eligible to enroll in the City's life insurance plans.

4. Optional Insurance Benefits

The City may provide optional benefits through payroll deduction.

R. Continuation of Health Insurance under Consolidated Omnibus Budget Reconciliation Act ("COBRA")

Under the Consolidated Omnibus Budget Reconciliation Act of 1985, better known as COBRA, if an employee terminates employment with the City, the employee is entitled to continue participating in the City's group health plan for a prescribed period of time, usually 18 months. (In certain circumstances, such as an employee's divorce or death, the length of coverage period may be longer for qualified dependents.) COBRA coverage is not extended to employees terminated for gross misconduct.

If a former employee chooses to continue group benefits under COBRA, he/she must pay the total applicable premium plus a 2% administrative fee. Coverage will cease if the former employee fails to make premium payments as scheduled, becomes covered by another group plan that does not exclude pre-existing conditions, or becomes eligible for Medicare.

For detailed information or questions on COBRA, employees are requested to check with the Human Resources Department.

S. Workers' Compensation Insurance

1. General

Workers' Compensation provides a medical and hospitalization expenses benefit as well as partial payment in lieu of salary for workers injured on the job. All City employees are covered by this form of insurance at no cost to the employee from the first day of employment. Benefits are based on ~~66 2/3% of the monthly wage up to~~ the statutory limit set forth in the Arizona Revised Statutes.

2. *Temporary Disability and Sick Leave*

~~2. An employee receiving temporary disability payments pursuant to the laws related to Workers' Compensation may elect to use accumulated sick leave in order to continue his/her regular income if employed with the City less than one year. Sick leave must be used in increments of not less than eight hours per pay period. The purpose of this policy is to ensure that an employee does not suffer economic hardship as a result of his/her injury; however, the employee shall not make a financial gain as a result of his/her injury or illness.~~

2. Reporting Period

All job-related personal injuries to employees must be reported to Risk Management within 24 hours of the time the accident occurred.

3. Choice of Care Provider

The City has the right to request that an employee injured on the job, seek medical assistance from a doctor of the City's choice.

T. Retirement Plans

Enrollment in the Arizona State Retirement System or the Public Safety Personnel Retirement System or the Correctional Officers Retirement Plan will be determined based upon eligibility. The Public Safety Personnel Retirement System is for certified peace officers and firefighters.

Deductions for all plans are made from each pay period. The amount of the City's contributions, as well as employee contributions, is determined by state legislation.

U. Deferred Compensation Plans

- a. Under ~~this~~these optional plan, ~~which is area several types of programs~~ governed by Internal Revenue Service (IRS) ~~Code 457~~, an employee may choose to defer a portion of his/her income through payroll deduction. ~~The deferred amount is not taxable until withdrawn, and various options are available for the investment of these funds. There are no City matching funds for this benefit.~~ By deferring income, an employee may lower the income tax they currently pay.

- b. ~~The City may elect to contribute funds to employee's FSA-Deferred Compensation Plan accounts.~~

V. Health Savings Account (HSA)

1. General

Health Savings Accounts (HSA) were created by Public Law 108-173, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. H.S.A. are designed to help individuals save for qualified medical and retiree health expenses on a tax-advantaged basis.

2. Employee Choice

Employees who select a high deductible health plan may be eligible to participate in an H.S.A.HSA.

3. City Contribution

The City may elect to contribute funds to ~~employee's H.S.A.~~employee's HSA accounts.

W. Flexible Spending Arrangements (FSA)

1. General

Health Flexible Spending Arrangements and Dependent Care Flexible Spending Arrangements (FSA) allow employees to be reimbursed for medical expenses.

2. Process

- c. Employees may contribute to FSA accounts up to the limit set by the City.
- d. No employment or federal income taxes are deducted from employee contributions to FSA accounts.
- e. ~~The City may elect to contribute funds to employee's FSA accounts.~~

CITY COUNCIL REPORT

SUBJECT: Resolution 1077-1120 - Canvass of Votes for the November 3, 2020 Special Election

MEETING DATE: 11/16/2020

TO: Mayor and Council

FROM: Marcella Carrillo, City Clerk, (623) 333-1214

THROUGH: Cherlene Penilla, Deputy City Manager, (623) 333-1015

STRATEGIC PLAN:

PURPOSE:

City Council will consider a request to adopt Resolution 1077-1120 canvassing the results of the November 3, 2020 Special Election and authorize the Mayor, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

Pursuant to Arizona Revised Statutes § 16-642, City Council must meet and canvass the Special Election held on November 3, 2020. The canvass is the act that declares the election results official. State Statute requires the canvass be completed not less than six days, and not more than twenty days, following the election. The deadline for this action is November 23, 2020.

On February 3, 2020, City Council called a Primary Election to be held on August 4, 2020 and if necessary, an election on November 3, 2020. The Council authorized the City Clerk and the City Attorney to take all action necessary to conduct the election. On June 1, 2020, City Council adopted Resolution 1036-0620 proposing a Tax Code amending Ordinance be submitted to the voters at November Election. The proposed Ordinance amends the sales tax code from 2.5% to 2.7%, provides for a Recreation and Quality of Life Tax fund, and provides for an automatic repeal as of December 31, 2045.

On November 3, 2020, a Special Election of the City of Avondale was conducted by Maricopa County Elections.

DISCUSSION:

The preliminary results, as published by Maricopa County, show that Prop 443 did **not** pass. The final results will be uploaded and presented to City Council after they have been adopted by the Maricopa County Board of Supervisors.

If the election results are not finalized by the November 16th City Council Meeting, staff will request this item be pulled from the agenda and a Special City Council Meeting will be scheduled.

BUDGET IMPACT:

Adopting the results of the election is statutorily required and does not have a direct impact on the budget.

RECOMMENDATION:

Staff is recommending City Council adopt a Resolution canvassing the results of the November 3, 2020 Special Election.

Contact person for document distribution:

RESOLUTION NO. 1077-1220

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE,
ARIZONA, DECLARING AND ADOPTING THE RESULTS OF THE
SPECIAL ELECTION HELD ON NOVEMBER 3, 2020.

WHEREAS, the City of Avondale (the “City”), Arizona, did hold a Special Election on November 3, 2020 (the “Election”); and

WHEREAS, the Election returns, which are attached hereto, have been presented to, and have been canvassed by, the Council of the City of Avondale.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. That (i) the number of active registered voters, (ii) the number ballots cast in each precinct, (iii) the number of votes cast in each precinct, and (iv) the number of votes by precinct received by the proposition, as reported by Maricopa County, are set forth on Exhibit A – Final Official Results, attached and incorporated into this resolution.

SECTION 2. That the number of rejected ballots by precinct, as reported by Maricopa County, are set forth on Exhibit B – Early Voting Rejections and Provisional Totals by Precinct report, attached and incorporated into this resolution.

SECTION 3. The votes cast for Proposition 443, a proposal relating to an increase in the tax rate to 2.7% for items under \$5,000 and establishing a Recreation and Quality of Life Tax fund to provide enhanced parks, recreation, and community facilities, amenities, and programs to benefit citizens, and providing for the repeal of the proposal as of December 31, 2045.

YES	9,624
NO	20,217

SECTION 4. It is hereby found, determined and declared of record, that Proposition 443 did not receive the majority of votes cast and was thereby not approved by the voters of Avondale.

SECTION 5. This Resolution shall be in full force and effect immediately upon its adoption; a certified permanent copy of which shall be filed with the City Clerk, who shall maintain it as a permanent record.

SECTION 6. 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 Council of the City of Avondale, Arizona, December 7, 2020.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION 1077-1220

[Precinct Canvass]

See following pages.

FINAL OFFICIAL RESULTS

General Election

Maricopa County

November 3, 2020

Elector Group	Counting Group	Ballots	Voters	Registered Voters	Turnout
Total	EARLY VOTE	28,454	28,454	44,110	64.51%
	ELECTION DAY	3,511	3,511		7.96%
	PROVISIONAL	134	134		0.30%
	Total	32,099	32,099		72.77%

Registered Voters: 32,099 of 44,110 (72.77%)

Ballots Cast: 32,099

Avondale-PROPOSITION 443 (Vote for 1)

	Total	
Times Cast	32,099 / 44,110	72.77%
Undervotes	2,256	
Overvotes	2	

Candidate	Party	Total	
YES	NON	9,624	29.98%
NO	NON	20,217	62.98%
Total Votes		29,841	

		Total
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FINAL OFFICIAL RESULTS

General Election

Maricopa County

November 3, 2020

Precinct	Registered Voters	Cards Cast	Voters Cast	% Turnout
County				
Election Wide				
0016 ALVARADO				
EARLY VOTE	2,146	1,340	1,340	62.44%
ELECTION DAY	2,146	248	248	11.56%
PROVISIONAL	2,146	13	13	0.61%
Total	2,146	1,601	1,601	74.60%
0037 AVONDALE				
EARLY VOTE	2,289	1,132	1,132	49.45%
ELECTION DAY	2,289	164	164	7.16%
PROVISIONAL	2,289	15	15	0.66%
Total	2,289	1,311	1,311	57.27%
0121 COLDWATER RIDGE				
EARLY VOTE	4,057	2,541	2,541	62.63%
ELECTION DAY	4,057	334	334	8.23%
PROVISIONAL	4,057	10	10	0.25%
Total	4,057	2,885	2,885	71.11%
0158 CRYSTAL GARDENS				
EARLY VOTE	5,583	3,766	3,766	67.45%
ELECTION DAY	5,583	477	477	8.54%
PROVISIONAL	5,583	10	10	0.18%
Total	5,583	4,253	4,253	76.18%
0188 DESSIE				
EARLY VOTE	3,294	1,577	1,577	47.87%
ELECTION DAY	3,294	272	272	8.26%
PROVISIONAL	3,294	12	12	0.36%
Total	3,294	1,861	1,861	56.50%
0189 DEVONSHIRE				
EARLY VOTE	5,608	3,989	3,989	71.13%
ELECTION DAY	5,608	394	394	7.03%
PROVISIONAL	5,608	9	9	0.16%
Total	5,608	4,392	4,392	78.32%
0282 HADLEY				
EARLY VOTE	2,486	1,584	1,584	63.72%
ELECTION DAY	2,486	188	188	7.56%
PROVISIONAL	2,486	8	8	0.32%
Total	2,486	1,780	1,780	71.60%
0350 LA REATA				
EARLY VOTE	2,187	1,619	1,619	74.03%
ELECTION DAY	2,187	145	145	6.63%
PROVISIONAL	2,187	2	2	0.09%
Total	2,187	1,766	1,766	80.75%
0465 ORME				
EARLY VOTE	4,795	3,223	3,223	67.22%
ELECTION DAY	4,795	425	425	8.86%
PROVISIONAL	4,795	16	16	0.33%
Total	4,795	3,664	3,664	76.41%
0474 PALMBROOK				
EARLY VOTE	4,466	3,215	3,215	71.99%
ELECTION DAY	4,466	308	308	6.90%
PROVISIONAL	4,466	13	13	0.29%
Total	4,466	3,536	3,536	79.18%
0574 SANTA FE				
EARLY VOTE	2,349	1,724	1,724	73.39%
ELECTION DAY	2,349	162	162	6.90%
PROVISIONAL	2,349	4	4	0.17%
Total	2,349	1,890	1,890	80.46%
0707 WARNER				
EARLY VOTE	4,850	2,744	2,744	56.58%
ELECTION DAY	4,850	394	394	8.12%
PROVISIONAL	4,850	22	22	0.45%
Total	4,850	3,160	3,160	65.15%
Election Wide - Total	44,110	32,099	32,099	72.77%
County - Total	44,110	32,099	32,099	72.77%
EARLY VOTE	44,110	28,454	28,454	64.51%
ELECTION DAY	44,110	3,511	3,511	7.96%
PROVISIONAL	44,110	134	134	0.30%

Avondale-PROPOSITION 443 (Vote for 1)

Precinct	Times Cast	Registered Voters	Undervotes	Overvotes
County				
Election Wide				
0016 ALVARADO				
EARLY VOTE	1,340	2,146	75	0
ELECTION DAY	248	2,146	22	0
PROVISIONAL	13	2,146	1	0
Total	1,601	2,146	98	0
0037 AVONDALE				
EARLY VOTE	1,132	2,289	66	0
ELECTION DAY	164	2,289	16	0
PROVISIONAL	15	2,289	2	0
Total	1,311	2,289	84	0
0121 COLDWATER RIDGE				
EARLY VOTE	2,541	4,057	166	0
ELECTION DAY	334	4,057	37	1
PROVISIONAL	10	4,057	1	0
Total	2,885	4,057	204	1
0158 CRYSTAL GARDENS				
EARLY VOTE	3,766	5,583	239	0
ELECTION DAY	477	5,583	56	0
PROVISIONAL	10	5,583	2	0
Total	4,253	5,583	297	0
0188 DESSIE				
EARLY VOTE	1,577	3,294	122	0
ELECTION DAY	272	3,294	30	0
PROVISIONAL	12	3,294	1	0
Total	1,861	3,294	153	0

Precinct	YES (NON)		NO (NON)		Total Votes
County					
Election Wide					
0016 ALVARADO					
EARLY VOTE	450	33.58%	815	60.82%	1,265
ELECTION DAY	60	24.19%	166	66.94%	226
PROVISIONAL	2	15.38%	10	76.92%	12
Total	512	31.98%	991	61.90%	1,503
0037 AVONDALE					
EARLY VOTE	377	33.30%	689	60.87%	1,066
ELECTION DAY	37	22.56%	111	67.68%	148
PROVISIONAL	3	20.00%	10	66.67%	13
Total	417	31.81%	810	61.78%	1,227
0121 COLDWATER RIDGE					
EARLY VOTE	789	31.05%	1,586	62.42%	2,375
ELECTION DAY	72	21.56%	224	67.07%	296
PROVISIONAL	1	10.00%	8	80.00%	9
Total	862	29.88%	1,818	63.02%	2,680
0158 CRYSTAL GARDENS					
EARLY VOTE	1,181	31.36%	2,346	62.29%	3,527
ELECTION DAY	98	20.55%	323	67.71%	421
PROVISIONAL	0	0.00%	8	80.00%	8
Total	1,279	30.07%	2,677	62.94%	3,956
0188 DESSIE					
EARLY VOTE	477	30.25%	978	62.02%	1,455
ELECTION DAY	71	26.10%	171	62.87%	242
PROVISIONAL	1	8.33%	10	83.33%	11
Total	549	29.50%	1,159	62.28%	1,708

Precinct	Times Cast	Registered Voters	Undervotes	Overvotes
0189 DEVONSHIRE				
EARLY VOTE	3,989	5,608	261	0
ELECTION DAY	394	5,608	28	0
PROVISIONAL	9	5,608	2	0
Total	4,392	5,608	291	0
0282 HADLEY				
EARLY VOTE	1,584	2,486	95	0
ELECTION DAY	188	2,486	20	0
PROVISIONAL	8	2,486	3	0
Total	1,780	2,486	118	0
0350 LA REATA				
EARLY VOTE	1,619	2,187	120	0
ELECTION DAY	145	2,187	15	0
PROVISIONAL	2	2,187	0	0
Total	1,766	2,187	135	0
0465 ORME				
EARLY VOTE	3,223	4,795	197	0
ELECTION DAY	425	4,795	53	0
PROVISIONAL	16	4,795	1	0
Total	3,664	4,795	251	0
0474 PALMBROOK				
EARLY VOTE	3,215	4,466	240	0
ELECTION DAY	308	4,466	38	0
PROVISIONAL	13	4,466	2	0
Total	3,536	4,466	280	0
0574 SANTA FE				
EARLY VOTE	1,724	2,349	107	0
ELECTION DAY	162	2,349	11	0
PROVISIONAL	4	2,349	0	0
Total	1,890	2,349	118	0

Precinct	YES (NON)		NO (NON)		Total Votes
0189 DEVONSHIRE					
EARLY VOTE	1,276	31.99%	2,452	61.47%	3,728
ELECTION DAY	80	20.30%	286	72.59%	366
PROVISIONAL	0	0.00%	7	77.78%	7
Total	1,356	30.87%	2,745	62.50%	4,101
0282 HADLEY					
EARLY VOTE	533	33.65%	956	60.35%	1,489
ELECTION DAY	45	23.94%	123	65.43%	168
PROVISIONAL	0	0.00%	5	62.50%	5
Total	578	32.47%	1,084	60.90%	1,662
0350 LA REATA					
EARLY VOTE	459	28.35%	1,040	64.24%	1,499
ELECTION DAY	27	18.62%	103	71.03%	130
PROVISIONAL	2	100.00%	0	0.00%	2
Total	488	27.63%	1,143	64.72%	1,631
0465 ORME					
EARLY VOTE	1,089	33.79%	1,937	60.10%	3,026
ELECTION DAY	91	21.41%	281	66.12%	372
PROVISIONAL	4	25.00%	11	68.75%	15
Total	1,184	32.31%	2,229	60.84%	3,413
0474 PALMBROOK					
EARLY VOTE	927	28.83%	2,048	63.70%	2,975
ELECTION DAY	53	17.21%	217	70.45%	270
PROVISIONAL	0	0.00%	11	84.62%	11
Total	980	27.71%	2,276	64.37%	3,256
0574 SANTA FE					
EARLY VOTE	459	26.62%	1,158	67.17%	1,617
ELECTION DAY	29	17.90%	122	75.31%	151
PROVISIONAL	0	0.00%	4	100.00%	4
Total	488	25.82%	1,284	67.94%	1,772

Precinct	Times Cast	Registered Voters	Undervotes	Overvotes
0707 WARNER				
EARLY VOTE	2,744	4,850	177	1
ELECTION DAY	394	4,850	46	0
PROVISIONAL	22	4,850	4	0
Total	3,160	4,850	227	1
Election Wide - Total	32,099	44,110	2,256	2
County - Total	32,099	44,110	2,256	2

Precinct	YES (NON)		NO (NON)		Total Votes
0707 WARNER					
EARLY VOTE	831	30.28%	1,735	63.23%	2,566
ELECTION DAY	92	23.35%	256	64.97%	348
PROVISIONAL	8	36.36%	10	45.45%	18
Total	931	29.46%	2,001	63.32%	2,932
Election Wide - Total	9,624	29.98%	20,217	62.98%	29,841
County - Total	9,624	29.98%	20,217	62.98%	29,841

EXHIBIT B
TO
RESOLUTION 1077-1220

[Early Voting Rejections and Provisional Totals by Precinct]

See following pages.



PRECINCT #0016

Reason Code	Description	Count
BS	Bad Signature	2
NS	No Signature	1
L	Returned Late	1
PRECINCT #0016 TOTAL		4

PRECINCT #0037

Reason Code	Description	Count
NS	No Signature	1
PRECINCT #0037 TOTAL		1

PRECINCT #0121

Reason Code	Description	Count
BS	Bad Signature	3
NS	No Signature	6
L	Returned Late	2
PRECINCT #0121 TOTAL		11

PRECINCT #0158

Reason Code	Description	Count
BS	Bad Signature	1
NS	No Signature	3
L	Returned Late	4
PRECINCT #0158 TOTAL		8

PRECINCT #0188

Reason Code	Description	Count
BS	Bad Signature	1
NS	No Signature	3
L	Returned Late	1
PRECINCT #0188 TOTAL		5



PRECINCT #0189

Reason Code	Description	Count
BS	Bad Signature	5
NS	No Signature	8
L	Returned Late	1
PRECINCT #0189 TOTAL		14

PRECINCT #0282

Reason Code	Description	Count
BS	Bad Signature	1
NS	No Signature	1
PRECINCT #0282 TOTAL		2

PRECINCT #0350

Reason Code	Description	Count
BS	Bad Signature	1
NS	No Signature	3
PRECINCT #0350 TOTAL		4

PRECINCT #0465

Reason Code	Description	Count
BS	Bad Signature	1
NS	No Signature	4
L	Returned Late	4
PRECINCT #0465 TOTAL		9

PRECINCT #0474

Reason Code	Description	Count
BS	Bad Signature	2
NS	No Signature	3
L	Returned Late	2
PRECINCT #0474 TOTAL		7



PRECINCT #0574

Reason Code	Description	Count
BS	Bad Signature	1
NS	No Signature	1
PRECINCT #0574 TOTAL		2

PRECINCT #0707

Reason Code	Description	Count
BS	Bad Signature	1
NS	No Signature	4
L	Returned Late	4
PRECINCT #0707 TOTAL		9

SUMMARY - ALL PRECINCTS

Reason Code	Description	Count
BS	Bad Signature	19
NS	No Signature	38
Total Rejected		57
L	Returned Late	19
Total Rejected + Late		76



PRECINCT #0016

Counted	Reason Code	Description	Count
Yes			
	A1	NEW RESIDENT BALLOT VERIFIED AND ADDRESS UPDATED	2
	A2	EARLY BALLOT REQUESTED AND NOT RETURNED	4
	A5	REGISTRATION RECEIVED TOO LATE TO BE INCLUDED IN ROSTER	1
	A7	ID ADDRESS DOESN'T MATCH SIGNATURE ROSTER	7
Total Yes			14
No			
	B10	YOU ARE NOT REGISTERED TO VOTE	16
	B12	YOU WERE NOT ELIGIBLE TO VOTE IN THIS ELECTION	6
	B17	CONDITIONAL PROVISIONAL - SUFFICIENT ID NOT PROVIDED BY DEADLINE	2
Total No			24
PRECINCT #0016 TOTAL			38

PRECINCT #0037

Counted	Reason Code	Description	Count
Yes			
	A1	NEW RESIDENT BALLOT VERIFIED AND ADDRESS UPDATED	1
	A2	EARLY BALLOT REQUESTED AND NOT RETURNED	4
	A5	REGISTRATION RECEIVED TOO LATE TO BE INCLUDED IN ROSTER	2
	A7	ID ADDRESS DOESN'T MATCH SIGNATURE ROSTER	8
Total Yes			15
No			
	B10	YOU ARE NOT REGISTERED TO VOTE	12
	B12	YOU WERE NOT ELIGIBLE TO VOTE IN THIS ELECTION	3
Total No			15
PRECINCT #0037 TOTAL			30



PRECINCT #0121

Counted	Reason Code	Description	Count
Yes			
	A1	NEW RESIDENT BALLOT VERIFIED AND ADDRESS UPDATED	1
	A2	EARLY BALLOT REQUESTED AND NOT RETURNED	1
	A5	REGISTRATION RECEIVED TOO LATE TO BE INCLUDED IN ROSTER	4
	A7	ID ADDRESS DOESN'T MATCH SIGNATURE ROSTER	7
Total Yes			13
No			
	B10	YOU ARE NOT REGISTERED TO VOTE	18
	B12	YOU WERE NOT ELIGIBLE TO VOTE IN THIS ELECTION	7
Total No			25
PRECINCT #0121 TOTAL			38

PRECINCT #0158

Counted	Reason Code	Description	Count
Yes			
	A1	NEW RESIDENT BALLOT VERIFIED AND ADDRESS UPDATED	3
	A2	EARLY BALLOT REQUESTED AND NOT RETURNED	1
	A5	REGISTRATION RECEIVED TOO LATE TO BE INCLUDED IN ROSTER	6
	A7	ID ADDRESS DOESN'T MATCH SIGNATURE ROSTER	5
Total Yes			15
No			
	B10	YOU ARE NOT REGISTERED TO VOTE	26
	B12	YOU WERE NOT ELIGIBLE TO VOTE IN THIS ELECTION	8
	B13	YOUR EARLY BALLOT WAS SENT. RETURNED AND COUNTED	1
	B17	CONDITIONAL PROVISIONAL - SUFFICIENT ID NOT PROVIDED BY DEADLINE	1
Total No			36
PRECINCT #0158 TOTAL			51



PRECINCT #0188

Counted	Reason Code	Description	Count
Yes			
	A1	NEW RESIDENT BALLOT VERIFIED AND ADDRESS UPDATED	3
	A2	EARLY BALLOT REQUESTED AND NOT RETURNED	2
	A7	ID ADDRESS DOESN'T MATCH SIGNATURE ROSTER	8
Total Yes			13
No			
	B10	YOU ARE NOT REGISTERED TO VOTE	18
	B12	YOU WERE NOT ELIGIBLE TO VOTE IN THIS ELECTION	4
	B17	CONDITIONAL PROVISIONAL - SUFFICIENT ID NOT PROVIDED BY DEADLINE	2
Total No			24
PRECINCT #0188 TOTAL			37

PRECINCT #0189

Counted	Reason Code	Description	Count
Yes			
	A1	NEW RESIDENT BALLOT VERIFIED AND ADDRESS UPDATED	4
	A2	EARLY BALLOT REQUESTED AND NOT RETURNED	2
	A7	ID ADDRESS DOESN'T MATCH SIGNATURE ROSTER	4
Total Yes			10
No			
	B10	YOU ARE NOT REGISTERED TO VOTE	24
	B12	YOU WERE NOT ELIGIBLE TO VOTE IN THIS ELECTION	11
	B13	YOUR EARLY BALLOT WAS SENT. RETURNED AND COUNTED	3
Total No			38
PRECINCT #0189 TOTAL			48



PRECINCT #0282

Counted	Reason Code	Description	Count
Yes			
	A1	NEW RESIDENT BALLOT VERIFIED AND ADDRESS UPDATED	3
	A2	EARLY BALLOT REQUESTED AND NOT RETURNED	2
	A7	ID ADDRESS DOESN'T MATCH SIGNATURE ROSTER	4
Total Yes			9
No			
	B10	YOU ARE NOT REGISTERED TO VOTE	11
	B12	YOU WERE NOT ELIGIBLE TO VOTE IN THIS ELECTION	8
Total No			19
PRECINCT #0282 TOTAL			28

PRECINCT #0350

Counted	Reason Code	Description	Count
Yes			
	A5	REGISTRATION RECEIVED TOO LATE TO BE INCLUDED IN ROSTER	2
	A7	ID ADDRESS DOESN'T MATCH SIGNATURE ROSTER	2
Total Yes			4
No			
	B10	YOU ARE NOT REGISTERED TO VOTE	10
	B12	YOU WERE NOT ELIGIBLE TO VOTE IN THIS ELECTION	3
Total No			13
PRECINCT #0350 TOTAL			17



PRECINCT #0465

Counted	Reason Code	Description	Count
Yes			
	A1	NEW RESIDENT BALLOT VERIFIED AND ADDRESS UPDATED	1
	A2	EARLY BALLOT REQUESTED AND NOT RETURNED	2
	A5	REGISTRATION RECEIVED TOO LATE TO BE INCLUDED IN ROSTER	4
	A7	ID ADDRESS DOESN'T MATCH SIGNATURE ROSTER	9
Total Yes			16
No			
	B10	YOU ARE NOT REGISTERED TO VOTE	22
	B12	YOU WERE NOT ELIGIBLE TO VOTE IN THIS ELECTION	12
Total No			34
PRECINCT #0465 TOTAL			50

PRECINCT #0474

Counted	Reason Code	Description	Count
Yes			
	A1	NEW RESIDENT BALLOT VERIFIED AND ADDRESS UPDATED	3
	A5	REGISTRATION RECEIVED TOO LATE TO BE INCLUDED IN ROSTER	3
	A7	ID ADDRESS DOESN'T MATCH SIGNATURE ROSTER	8
Total Yes			14
No			
	B10	YOU ARE NOT REGISTERED TO VOTE	16
	B12	YOU WERE NOT ELIGIBLE TO VOTE IN THIS ELECTION	5
	B17	CONDITIONAL PROVISIONAL - SUFFICIENT ID NOT PROVIDED BY DEADLINE	1
Total No			22
PRECINCT #0474 TOTAL			36



PRECINCT #0574

Counted	Reason Code	Description	Count
Yes			
	A2	EARLY BALLOT REQUESTED AND NOT RETURNED	3
	A5	REGISTRATION RECEIVED TOO LATE TO BE INCLUDED IN ROSTER	2
	A7	ID ADDRESS DOESN'T MATCH SIGNATURE ROSTER	1
Total Yes			6
No			
	B10	YOU ARE NOT REGISTERED TO VOTE	14
	B12	YOU WERE NOT ELIGIBLE TO VOTE IN THIS ELECTION	5
Total No			19
PRECINCT #0574 TOTAL			25

PRECINCT #0707

Counted	Reason Code	Description	Count
Yes			
	A1	NEW RESIDENT BALLOT VERIFIED AND ADDRESS UPDATED	3
	A2	EARLY BALLOT REQUESTED AND NOT RETURNED	4
	A5	REGISTRATION RECEIVED TOO LATE TO BE INCLUDED IN ROSTER	5
	A7	ID ADDRESS DOESN'T MATCH SIGNATURE ROSTER	11
Total Yes			23
No			
	B10	YOU ARE NOT REGISTERED TO VOTE	18
	B12	YOU WERE NOT ELIGIBLE TO VOTE IN THIS ELECTION	4
Total No			22
PRECINCT #0707 TOTAL			45



SUMMARY - ALL PRECINCTS

Counted	Reason Code	Description	Count
Yes			
	A1	NEW RESIDENT BALLOT VERIFIED AND ADDRESS UPDATED	24
	A2	EARLY BALLOT REQUESTED AND NOT RETURNED	25
	A5	REGISTRATION RECEIVED TOO LATE TO BE INCLUDED IN ROSTER	29
	A7	ID ADDRESS DOESN'T MATCH SIGNATURE ROSTER	74
Total Yes			152
No			
	B10	YOU ARE NOT REGISTERED TO VOTE	205
	B12	YOU WERE NOT ELIGIBLE TO VOTE IN THIS ELECTION	76
	B13	YOUR EARLY BALLOT WAS SENT. RETURNED AND COUNTED	4
	B17	CONDITIONAL PROVISIONAL - SUFFICIENT ID NOT PROVIDED BY DEADLINE	6
Total No			291
Cumulative Total:			443

SAMPLE BALLOT

ELECTION TITLE:
GENERAL ELECTION

ELECTION DATE:
NOVEMBER 3, 2020

COUNTY OF MARICOPA, STATE OF ARIZONA

TO VOTE: COMPLETELY FILL THE
OVAL(S) NEXT TO YOUR CHOICE(S),
LIKE BELOW

DOE, JANE

TO VOTE FOR A WRITE-IN CANDIDATE:
PRINT THE NAME ATOP OF THE SHADED
TEXT AND COMPLETELY FILL THE OVAL,
LIKE BELOW

Print name of Write-In
Candidate HERE

John Doe

Refer to full text of propositions and questions posted in the polling place, printed on the sample ballot and provided with all mailed early ballots.

1. Put a mark according to the instructions next to the name of each candidate for each office for whom you wish to vote.

2. If you wish to vote for a person whose name is not printed on the ballot, write such name in the blank space provided on the ballot and put a mark according to the instructions next to the name so written.

3. Put a mark according to the instructions next to the word "yes" or "for" for each proposition or question you wish to be adopted. Put a mark according to the instructions next to the word "no" or "against" for each proposition or question you wish not to be adopted.

NONPARTISAN BALLOT

CITY OF AVONDALE

PROPOSITION 443

Proposal Referred to the Voters by the Council of the City of Avondale

RELATING TO AN INCREASE IN THE TAX RATE TO 2.7% FOR ITEMS UNDER \$5,000 AND ESTABLISHING A RECREATION AND QUALITY OF LIFE TAX FUND TO PROVIDE ENHANCED PARKS, RECREATION AND COMMUNITY FACILITIES, AMENITIES AND PROGRAMS TO BENEFIT CITIZENS, AND PROVIDING FOR THE REPEAL OF THIS ORDINANCE AS OF DECEMBER 31, 2045.

A "YES" vote shall increase the tax rate for items under \$5,000 to 2.7% for a period of 25 years and establish a Recreation and Quality of Life Tax Fund to fund approved uses.

A "NO" vote shall maintain the tax rate for items under \$5,000 at 2.5% and the Use Tax rate at 1.5%.

YES

NO

SAMPLE
BALLOT

MUESTRA BOLETA

TÍTULO DE LA ELECCIÓN:

ELECCIÓN GENERAL

FECHA DE LA ELECCIÓN:
3 DE NOVIEMBRE DE 2020

CONDADO DE MARICOPA, ESTADO DE ARIZONA

PARA VOTAR: LLENE
COMPLETAMENTE EL ÓVALO(S)
JUNTO A SU SELECCIÓN(S),
COMO A CONTINUACIÓN

DOE, JANE

PARA VOTAR POR UN CANDIDATO POR
ESCRITO: ESCRIBA EL NOMBRE DE
ENCIMA DEL TEXTO SOMBRÍA Y LLENE
COMPLETAMENTE EL ÓVALO, COMO A
CONTINUACIÓN

Print name of Write-In
Candidate HERE

John Doe

Refiérase al texto completo de las proposiciones y a las preguntas que están puestas en el lugar de votación impresas en la Boleta de Muestra y que se suministraron en las boletas tempranas enviadas por correo.

1. Ponga una marca de acuerdo con las instrucciones junto al nombre de cada candidato para cada cargo por el que usted desea votar.

2. Si usted desea votar por una persona cuyo nombre no está impreso en la boleta, escriba ese nombre en el espacio en blanco proporcionado en la boleta y ponga una marca de acuerdo con las instrucciones junto al nombre escrito así.

3. Ponga una marca de acuerdo con las instrucciones junto a las palabras "sí" o "a favor de" para cada proposición o pregunta que usted desea que se apruebe. Ponga una marca de acuerdo con las instrucciones junto a las palabras "no" o "en contra de" para cada proposición que usted no desea que sea aprobada.

CIUDAD DE AVONDALE

PROPOSICIÓN 443

Propuesta Enviada a los Votantes por el Concejo de la Ciudad de Avondale

RELACIONADA CON UN AUMENTO EN LA TASA DE IMPUESTOS A 2.7% PARA ARTÍCULOS DE MENOS DE \$5,000 Y EL ESTABLECIMIENTO DE UN FONDO DE IMPUESTOS DE RECREACIÓN Y CALIDAD DE VIDA PARA PROPORCIONAR MEJORES PARQUES, INSTALACIONES DE RECREATIVAS Y COMUNITARIAS, SERVICIOS Y PROGRAMAS PARA BENEFICIAR A LOS CIUDADANOS, Y PROPORCIONANDO LA DEROGACIÓN DE ESTA ORDENANZA A PARTIR DEL 31 DE DICIEMBRE DE 2045.

Un voto de "SÍ" aumentará la tasa de impuestos para artículos de menos de \$5,000 al 2.7% por un período de 25 años y establecerá un Fondo de Impuestos de Recreación y Calidad de Vida para financiar usos aprobados.

Un voto de "NO" mantendrá la tasa de impuestos para los artículos de menos de \$5,000 al 2.5% y la tasa del Impuesto de Uso al 1.5%.

SÍ

NO

MUESTRA
BOLETA

CITY COUNCIL REPORT

SUBJECT: Ordinance 2043-1120 - Chapter 23 Code Amendment Regarding Speed limits on Residential and Commercial Streets

MEETING DATE: 11/16/2020

TO: Mayor and Council

FROM: Kevin Murphy, Development & Engineering Services Department Director, (623) 333-4011

THROUGH: Gina Montes, Assistant City Manager, (623) 333-1012

STRATEGIC PLAN:

PURPOSE:

City Council will consider a request to adopt Ordinance 2043-1120, amending Chapter 23, Section 23-15 relating to speed limits on residential and commercial streets by assigning a speed limit of 40 mph to Avondale Boulevard between Lower Buckeye Road and Weir Avenue, allowing for future speed limit changes to be approved administratively and authorize the Mayor, or City Manager, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

There have been several recent crashes at the intersection of Avondale Boulevard and Broadway Road. In an effort to improve the safety of the traveling public, it is recommended that the speed limit on Avondale Boulevard be reduced from 50 mph to 40 mph.

In addition to the speed limit change on Avondale Boulevard, it is requested that future changes to maximum speeds on City streets be approved by the City Manager after proper review by City Traffic Staff, without the requirement of amending the City Code.

DISCUSSION:

Last year, the City of Avondale annexed Avondale Boulevard between Lower Buckeye Road and Weir Avenue from Maricopa County. The speed limit on this section of Avondale Boulevard is 50 mph, which was initially set by the County, and remained 50 mph after the City annexed it.

In light of the recent crashes that occurred at or near the intersection of Avondale Blvd and Broadway Road, The City has recommended several improvements to enhance safety. One of these improvements include reducing the speed limit on Avondale Boulevard between Lower Buckeye Road and Southern Boulevard from 50 to 40 mph. The City has annexed only as far south as Weir Avenue, so we are recommending the reduction of the speed limit within our jurisdiction.

City Staff is coordinating with the Maricopa County Department of Transportation, and they have agreed to reduce the speed on Avondale Boulevard from Weir Avenue to Southern Boulevard from 50 to 40 mph as well, so the new speed limit will be a continuous 40 mph from Lower Buckeye Road to Southern Boulevard.

STRATEGIC PLAN ALIGNMENT

Initiative: Foster Sustainable Community Development

Goal: Maintain and Expand Quality Infrastructure and Improve Connectivity to City Amenities

BUDGET IMPACT:

This action has no budgetary impact

RECOMMENDATION:

It is recommended that City Council adopt the Ordinance assigning the maximum speed limit of 40 mph to Avondale Boulevard between Lower Buckeye Road and Weir Avenue, and allow for future changes to speed limits on City streets to be approved administratively by the City Manager.

Contact person for document distribution:

ORDINANCE NO. 2043-1120

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING THE AVONDALE CITY CODE, CHAPTER 23, TRAFFIC, ARTICLE I, IN GENERAL, SECTION 23-15, SPEED LIMITS ON RESIDENTIAL AND COMMERCIAL STREETS AND ARTICLE II, ADMINISTRATION AND ENFORCEMENT, DIVISION 1, GENERALLY, SECTION 23-30, TRAFFIC CONTROL DEVICES.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The Avondale City Code, Chapter 23 (Traffic), Article I (In General), Section 23-15 (Speed Limits on Residential and Commercial Streets) is hereby amended to read as follows:

- (a) ~~Unless otherwise designated below according to authority prescribed in Ariz. Rev. Stat. § 28-703, the maximum speed limit on all residential and commercial streets within the City of Avondale shall be the prima facie reasonable speed as prescribed in Ariz. Rev. Stat. § 28-701, and the maximum speed limit approaching school crossings shall be as prescribed in Ariz. Rev. Stat. § 28-701.B.1. School crossings shall be established in accordance with Ariz. Rev. Stat. § 28-797 and the most recent edition of the Arizona Department Of Transportation "Traffic Safety For School Areas Guidelines" Manual.~~ A PERSON SHALL NOT DRIVE A VEHICLE ON A RESIDENTIAL OR COMMERCIAL STREET IN THE CITY AT A SPEED GREATER THAN IS REASONABLE AND PRUDENT UNDER THE CIRCUMSTANCES, CONDITIONS AND ACTUAL AND POTENTIAL HAZARDS THEN EXISTING. A PERSON SHALL CONTROL THE SPEED OF A VEHICLE AS NECESSARY TO AVOID COLLIDING WITH ANY OBJECT, PERSON, VEHICLE OR OTHER CONVEYANCE ON, ENTERING OR ADJACENT TO THE ROADWAY IN COMPLIANCE WITH LEGAL REQUIREMENTS AND THE DUTY OF ALL PERSONS TO EXERCISE REASONABLE CARE FOR THE PROTECTION OF OTHERS. THE CITY MANAGER ACTING ON BEHALF OF THE LOCAL AUTHORITY MAY DESIGNATE MAXIMUM SPEED LIMITS FOR RESIDENTIAL AND COMMERCIAL STREETS IN THE CITY. SUCH SPEED LIMITS DESIGNATED BY THE CITY MANAGER SHALL BE DEEMED THE MAXIMUM REASONABLE AND PRUDENT SPEED ON THE DESIGNATED STREET.

- (b) ~~The maximum speed limit on the following collector streets shall be:~~ UPON DESIGNATION OF A MAXIMUM SPEED LIMIT BY THE CITY MANAGER FOR ANY OF THE RESIDENTIAL AND COMMERCIAL STREETS IN THIS SECTION THE MAXIMUM SPEED LIMIT FOR SUCH RESIDENTIAL AND/OR COMMERCIAL STREET PROVIDED FOR IN THIS SECTION SHALL BE DEEMED REPEALED. THE MAXIMUM SPEED LIMIT APPROACHING SCHOOL CROSSINGS SHALL BE AS PRESCRIBED IN ARIZ. REV. STAT. § 28-701.B.1. SCHOOL CROSSINGS SHALL BE ESTABLISHED IN ACCORDANCE WITH ARIZ. REV. STAT. § 28-797 AND THE MOST RECENT EDITION OF THE ARIZONA DEPARTMENT OF TRANSPORTATION "TRAFFIC SAFETY FOR SCHOOL AREAS GUIDELINES MANUAL."
- (C) UNTIL OTHERWISE DESIGNATED BY THE CITY MANAGER, THE MAXIMUM SPEED LIMIT ON THE FOLLOWING COLLECTOR STREETS SHALL BE:

Street Name	From	To	Max. speed limit (MPH)
Rancho Santa Fe Boulevard	Thomas Road	Dysart Road	25
Santa Fe Trail	Indian School Road	Rancho Santa Fe Boulevard	25
Garden Lakes Parkway	Thomas Road	107th Avenue	25
Lakeshore Drive	Garden Lakes Parkway	107th Avenue	25
Westwind Parkway	Indian School Road	Thomas Road	30
Crystal Gardens Parkway	107th Avenue	Thomas Road	30
Encanto Boulevard	Crystal Gardens Parkway	Avondale Boulevard	30
Encanto Boulevard	Avondale Boulevard	119th Avenue	25
103rd Avenue	McDowell Road	1,400 feet north	35
103rd Avenue	McDowell Road	1,300 feet south	25
116th Lane	Palm Lane	Encanto Boulevard	25

Street Name	From	To	Max. speed limit (MPH)
Harbor Shores Boulevard	McDowell Road	107th Avenue	30
Fairway Drive	Van Buren Street	Coldwater Springs Boulevard	30
Coldwater Springs Boulevard	126th Avenue	Avondale Boulevard	30
Coldwater Springs Boulevard	Avondale Boulevard	East End	25
Civic Center Drive	Avondale Boulevard	Coldwater Springs Boulevard	25
Links Drive	Van Buren Street	Coldwater Springs Boulevard	30
118th Avenue	Coldwater Springs Boulevard	Western Avenue	25
Maricopa Street	118th Lane	Avondale Boulevard	25
Maricopa Street	Avondale Boulevard	East End	30
Pima Street	Avondale Boulevard	114th Avenue	25
4th Street/Pima Street (Cashion)	113th Avenue	107th Avenue	25
121ST Avenue/Whyman Avenue	Durango Street	117th Avenue	30
Durango Street	El Mirage Road	119th Drive	30
Durango street	West End	121st Avenue/Cocopah Circle North	30
Durango street	Cocopah Circle North	Avondale Boulevard	30
Durango Street	Avondale Boulevard	107th Avenue	25

Street Name	From	To	Max. speed limit (MPH)
Cocopah Circle North	Durango Street/117th Avenue	121st Avenue/Cocopah Circle South	30
Cocopah Circle South/121st Avenue	Whyman Avenue	Cocopah Circle North	30
117th Avenue	Durango Street (East End)	Whyman Avenue	25
119th Avenue	Cocopah Circle	Buckeye Road	30
Eliseo C. Felix Jr. Way	Van Buren Street	Riley Drive	25
Eliseo C. Felix Jr. Way	North End	Van Buren Street	25
Riley Drive	4th Street	East End	25
Roosevelt Street	99th Avenue	107th Avenue	35
Roosevelt Street	East End	Avondale Boulevard	35
Roosevelt Parkway South	110th Drive	107th Avenue	25
Roosevelt Parkway North	Roosevelt Parkway South	Van Buren Street	25
Whyman Avenue	117th Avenue	Avondale Boulevard	25
Whyman Avenue	Avondale Boulevard	Durango Street	30
109th Avenue	Lower Buckeye Road	Whyman Avenue	30
112th Lane	Whyman Avenue	Lower Buckeye Road	30
114th Avenue	Pima Street	Durango Street	25
109th Avenue/Jessie May Way	Durango Street	Buckeye Road	25
111th Avenue	Durango Street	Buckeye Road	25

Street Name	From	To	Max. speed limit (MPH)
113th Avenue/James Arthur Drive	Durango Street	Buckeye Road	25
111th Avenue	Indian School Road	Garden Lakes Parkway	25
111th Avenue	Thomas Road	Lakeshore Drive	25
119th Avenue	Lower Buckeye Road	Cocopah circle south	30
119th Avenue	Cocopah Circle North	MC 85/Buckeye Road	30
119th Avenue	McDowell Road	Encanto Boulevard	30
Vermeersch Road/127th Avenue	Broadway Road	Lower Buckeye Road	40
4th Street (Old Town Avondale)	Madden Drive	Van Buren Street	25
Central Avenue	Lower Buckeye Road	MC 85/Buckeye Road	25
Central Avenue	MC 85/Buckeye Road	Van Buren Street	35
Central Avenue	Van Buren Street	North End	25
Osborn Road	Indian School Road	Santa Fe Trail	25
132nd Avenue	Osborn Road	Indian School Road	25
137th Avenue	Thomas Road	Indian School Road	30
Plaza Circle Drive	132nd Avenue	137th Avenue	25

(e-D) All other collector streets not listed above OR SUBSEQUENTLY DESIGNATED BY THE CITY MANAGER shall have a posted speed limit of 25 mph.

(d E) UNTIL OTHERWISE DESIGNATED BY THE CITY MANAGER The maximum speed limit on the following arterial streets shall be:

Street Name	From	To	Max. speed limit (MPH)
107th Avenue	Southern Avenue	Durango Street	45
107th Avenue	Durango Street	MC 85/Buckeye Road	40
107th Avenue	MC 85/Buckeye Road	McDowell Road	45
107th Avenue	McDowell Road	Indian School Road	35
AVONDALE BOULEVARD	WEIR AVENUE	LOWER BUCKEYE ROAD	40
Avondale Boulevard	Lower Buckeye Road	Durango Street	40
Avondale Boulevard	Durango Street	MC 85/Buckeye Road	35
Avondale Boulevard	MC 85/Buckeye Road	Interstate 10	45
Avondale Boulevard	McDowell Road	Encanto Boulevard	40
Avondale Boulevard	Encanto Boulevard	Thomas Road	35
El Mirage Road	Elwood Street	MC 85/Buckeye Road	45
El Mirage Road	Van Buren Street	North End	25
Dysart Road	Harrison Drive	MC 85/Buckeye Road	35
Dysart Road	MC 85/Buckeye Road	Western Avenue	20
Dysart Road	Western Avenue	Riley Drive	30
Dysart Road	Riley Drive	Van Buren Street	35
Dysart Road	Van Buren Street	McDowell Road	40
Dysart Road	McDowell Road	Indian School Road	45
Indian School Road	Old Litchfield Road	Dysart Road	45
Thomas Road	99th Avenue	Avondale Boulevard	45
Thomas Road	Avondale Boulevard	119th Avenue	35

Street Name	From	To	Max. speed limit (MPH)
Thomas Road	Santa Fe Trail	137th Avenue	35
McDowell Road	99th Avenue	Avondale Boulevard	45
McDowell Road	Avondale Boulevard	Dysart Road	40
Van Buren Street	99th Avenue	Avondale Boulevard	45
Van Buren Street	Avondale Boulevard	West End of Agua Fria River Bridge	45
Van Buren Street	Eliseo C. Felix Jr. Way	La Jolla Boulevard	40
Western Avenue	Dysart Road	4th Avenue	25
MC 85/Main Street	Central Avenue	Dysart Road	40
MC 85/Main Street	Dysart Road	West Side of Agua Fria River	40
MC 85/Buckeye Road	1180 feet east of Avondale Boulevard	107th Avenue	45
Lower Buckeye Road	El Mirage Road	1300 feet to the east	45
Indian Springs Road	133rd Avenue	El Mirage Road	45

~~(d) The city shall post such signs and install such other traffic control devices as may be deemed appropriate and necessary to give notice of speed limits established by this ordinance.~~

(F) THE CITY SHALL FILE A COPY OF THE CITY MANAGER'S DESIGNATION OF MAXIMUM SPEED LIMITS UNDER THIS SECTION WITH THE CITY CLERK, POLICE DEPARTMENT AND MUNICIPAL COURT. THE DESIGNATION OF MAXIMUM SPEED LIMITS BY THE CITY MANAGER SHALL BECOME EFFECTIVE UPON CERTIFICATION BY THE CITY ENGINEER THAT ALL SIGNS AND TRAFFIC DEVICES AS MAY BE APPROPRIATE AND NECESSARY TO GIVE NOTICE OF SPEED LIMITS HAVE BEEN POSTED.

SECTION 2. The Avondale City Code, Chapter 23 (Traffic), Article II (Administration and Enforcement), Division 1 (Generally), Section 23-30 (Traffic-Control Devices) is hereby amended to read as follows:

- (A) THE CITY ADOPTS THE MANUAL AND SPECIFICATIONS FOR A UNIFORM SYSTEM OF TRAFFIC CONTROL DEVICES AS ADOPTED BY THE ARIZONA DEPARTMENT OF TRANSPORTATION. THE CITY ENGINEER WITH THE APPROVAL OF THE CITY MANAGER MAY ADOPT UPDATES AS APPROPRIATE.
- (B) The ~~public works director~~ CITY ENGINEER, with the approval of the city manager, shall place and maintain traffic-control devices, sign, and signals IN ACCORDANCE WITH THE ADOPTED MANUAL AND SPECIFICATIONS FOR A UNIFORM SYSTEM OF TRAFFIC CONTROL DEVICES AND when and as required under the traffic regulations of the city to make effective the provisions of said regulations, and may place and maintain such additional traffic-control devices as he may deem necessary to regulate traffic under the traffic laws of the city or under state law or to guide or warn traffic.
- (C) THE CITY ENGINEER AND/OR THE POLICE CHIEF WITH THE APPROVAL OF THE CITY MANAGER MAY PLACE AND MAINTAIN TEMPORARY TRAFFIC-CONTROL DEVICES AND/OR ESTABLISH TEMPORARY SPEED RESTRICTIONS AS THEY DEEM NECESSARY TO REGULATE TRAFFIC DURING SPECIAL EVENTS.
- (D) THE CITY ENGINEER, WITH THE APPROVAL OF THE CITY MANAGER, SHALL PLACE AND MAINTAIN TRAFFIC-CONTROL DEVICES, SIGN, AND SIGNALS IN ACCORDANCE WITH THE ADOPTED MANUAL AND SPECIFICATIONS FOR A UNIFORM SYSTEM OF TRAFFIC CONTROL DEVICES FOR ALL ROADWAYS, PARKING FACILITIES AND TRAILS LOCATED ON CITY PROPERTY.

SECTION 3. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

SECTION 4. 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 Ordinance.

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona,
November 16, 2020.

Kenneth N. Weise, Mayor

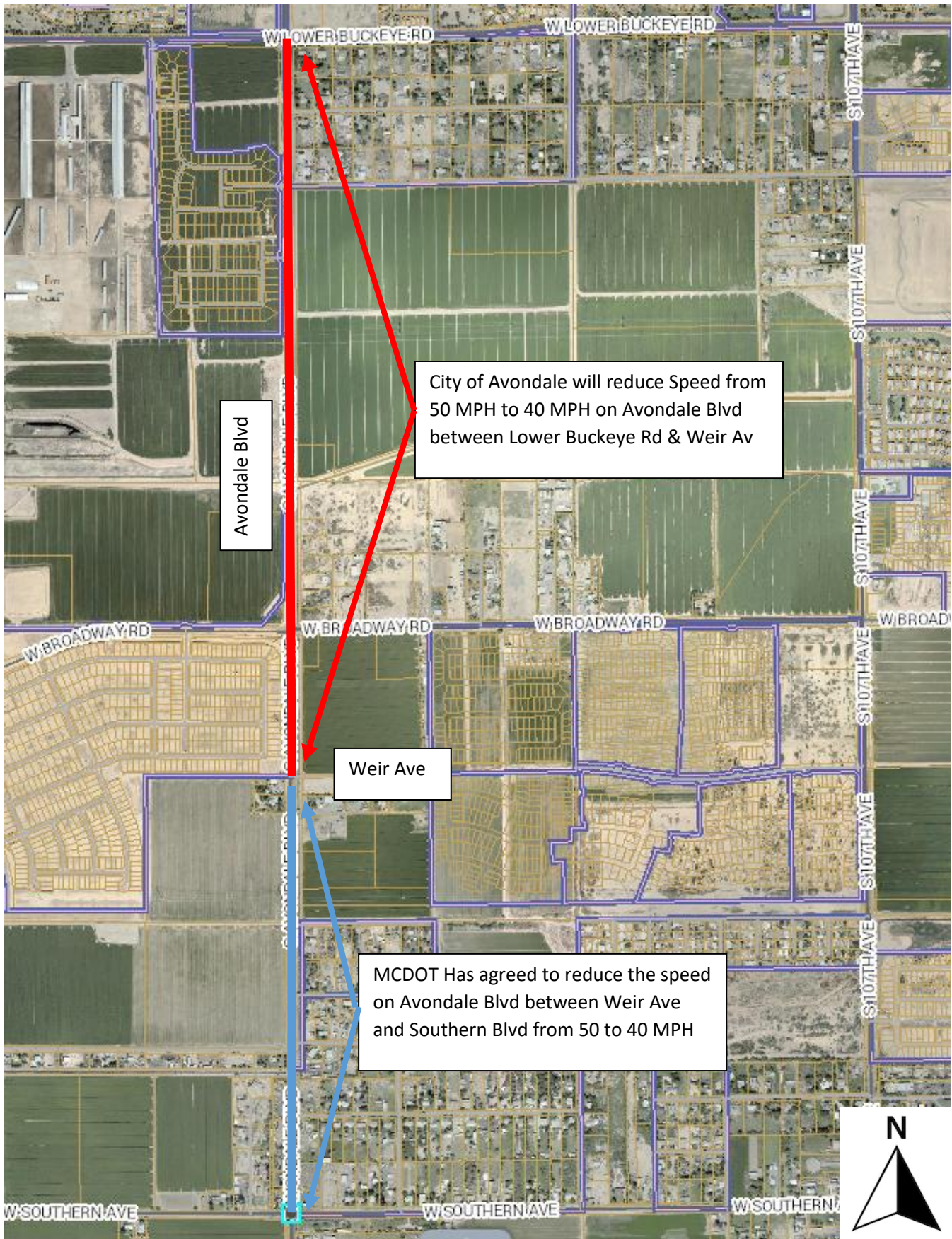
ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

Assign Speed Limit of 40 MPH to Avondale BLVD between Lower Buckeye Rd & Weir Avenue



CITY COUNCIL REPORT

SUBJECT: Ordinance 2041-1120 - Granting an Easement to the United States Department of the Interior Bureau of Reclamation (BOR)

MEETING DATE: 11/16/2020

TO: Mayor and Council

FROM: Kevin Murphy, Director Development and Engineering Services, (623) 333-4011

THROUGH: Gina Montes, Assistant City Manager, (623) 333-1012

STRATEGIC PLAN:

PURPOSE:

City Council will consider a request to adopt Ordinance 2041-1120 granting an easement to the United States Department of the Interior Bureau of Reclamation (BOR) and its assigns in connection with the 107th Avenue and McDowell Road Intersection Improvement Project and authorize the Mayor or City Manager, and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

The City is in the process of improving the intersection of 107th Avenue and McDowell Road. As part of the roadway widening/construction project, existing SRP irrigation pipes on McDowell Road and 107th Avenue need to be relocated to right of way that was previously acquired by the City.

DISCUSSION:

There are two (2) easements that will be dedicated to the BOR, who, in turn, will be assigning the easements to SRP at a later date. These easements are located on the south side of McDowell Road and the west side of 107th Avenue.

A form of contract is attached, and will be finalized by the BOR for future signature by the City Manager. The BOR needs to have this pre-authorization before they can prepare the final Contract and Easement Agreement.

Also attached are the legal descriptions for the two easements.

STRATEGIC PLAN ALIGNMENT

INITIATIVE - Foster Sustainable Community Development

GOAL - Maintain and Expand Quality Infrastructure

BUDGET IMPACT:

The proposed pre-authorization for dedication of the easements to the BOR and its assigns will have no budgetary impact on the City.

RECOMMENDATION:

Staff recommends that City Council adopt an Ordinance pre-authorizing the City Manager to enter into a Contract and Grant Easement with the United States Department of the Interior Bureau of Reclamation and its assigns in connection with the 107th Avenue and McDowell Road Capital Project, and authorize the Mayor or City Clerk and City Attorney to execute the necessary documents.

Contact person for document distribution:

ORDINANCE NO. 2041-1120

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE,
ARIZONA, GRANTING AN EASEMENT TO THE UNITED STATES
DEPARTMENT OF THE INTERIOR BUREAU OF RECLAMATION FOR
CONSTRUCTION, RECONSTRUCTION, OPERATION AND
MAINTENANCE OF WATER DISTRIBUTION SYSTEM PIPELINES.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. An easement is hereby granted to the United States Department of the Interior Bureau of Reclamation for construction, reconstruction, operation and maintenance of water distribution system pipelines, as part of the Salt River Project water distribution system, for 107th Avenue and McDowell Road Widening and Well Relocation Project (the “Project”) in, through, over, under and across $\pm$ 0.27 acres of real property located along McDowell Road west of 107th Avenue (“Easement 1”), as legally described and depicted as part of Exhibit A attached hereto and incorporated herein by reference.

SECTION 2. An easement is hereby granted to the United States Department of the Interior Bureau of Reclamation for construction, reconstruction, operation and maintenance of water distribution system pipelines, as part of the Salt River Project water distribution system, for the Project through, over, under and across $\pm$ 0.23 acres of real property generally located along 107th Avenue south of McDowell Road (“Easement 2”), as legally described and depicted as part of Exhibit A attached hereto and incorporated herein by reference.

SECTION 3. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute all documents and take all steps necessary to carry out the purpose and intent of this Ordinance.

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona,
November 16, 2020.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 2041-1120

[Legal Descriptions and Maps]

See following pages.

EASEMENT 1

EXHIBIT "A"
DESCRIPTION OF REAL ESTATE IN MARICOPA COUNTY
STATE OF ARIZONA

The following described Parcel of land located in the Northeast Quarter (NE1/4) of Section Six (6), Township One (1) North, Range One (1) East of the Gila and Salt River Meridian, Maricopa County, Arizona:

Commencing at the Northeast corner of said Section 6, being marked by a City of Phoenix brass cap in handhole per point 23106-1 description on the Record of Survey recorded in Maricopa County Recorders Office (MCR) Book 699, page 26, from which for a bearing reference the North Quarter corner of said Section 6, being marked by a City of Avondale brass cap in handhole per point 23107-1 description on the said Record of Survey recorded in MCR Book 699, page 26, bears South 88° 48' 15" West, 2637.80 feet (as recorded, Arizona Central Zone state plane NAD 83 distance); and from which for a second bearing reference the East Quarter corner of said Section 6, being marked by a City of Avondale brass cap in handhole, being a stamped replacement survey monument per MCR instrument 2018-0509467 for the previous Maricopa County Highway Department brass cap in handhole point 54214-1 per Record of Survey MCR Book 686, page 43, bears South 00° 04' 04" East, 2640.45 feet (as recorded, Arizona Central Zone state plane NAD 83 distance);

Thence along the north line of said Section 6, South 88° 48' 15" West, 533.05 feet;

Thence leaving said north Section line, South 01° 11' 45" East, 43.00 feet to the south line of the north 43.00 feet of said Section 6 and the POINT OF BEGINNING;

Thence leaving last said south line, continuing South 01° 11' 45" East, 22.00 feet to the south line of the north 65.00 feet of said Section 6;

Thence along last said south line, North 88° 48' 15" East, 45.68 feet;

Thence leaving last said south line, South 86° 21' 46" East, 225.51 feet to the south line of the north 84.00 feet of said Section 6;

Thence along last said south line, North 88° 48' 15" East, 158.09 feet;

Thence leaving last said south line, South 46° 09' 50" East, 24.47 feet;

Thence North 41° 13' 17" East, 8.03 feet;

Thence North 01° 09' 44" West, 16.94 feet;

Thence North 46° 09' 50" West, 20.41 feet to the south line of the north 64.00 feet of said Section 6;

(Parcel of land description continued next page)

Thence along last said south line, South 88° 48' 15" West, 30.17 feet;

Thence leaving last said south line, North 66° 26' 30" East, 70.76 feet;

Thence North 06° 39' 07" East, 21.08 feet;

Thence South 89° 25' 54" West, 4.56 feet;

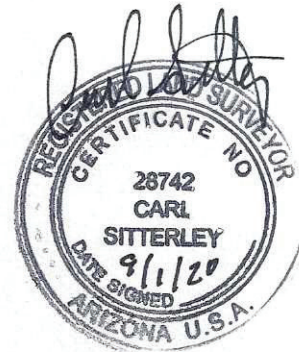
Thence South 66° 26' 30" West, 120.52 feet to the south line of the north 62.00 feet of said Section 6;

Thence along last said south line, South 88° 48' 15" West, 87.57 feet;

Thence leaving last said south line, North 86° 21' 46" West, 225.51 feet back to the said south line of the north 43.00 feet of Section 6;

Thence along said south line of the north 43.00 feet of Section 6, South 88° 48' 15" West, 46.61 feet back to the POINT OF BEGINNING.

Parcel of land contains 11,891 square feet or 0.27 acre, more or less.



NORTH QUARTER CORNER
SECTION 6, T1N, R1E

(BASIS OF BEARING)

2637.80'

S88°48'15"W

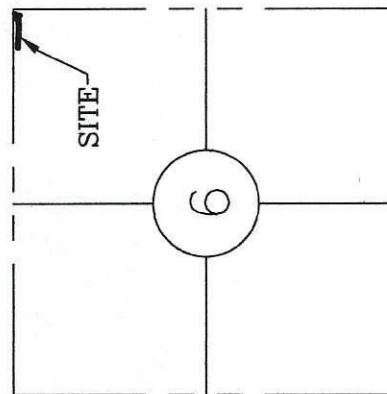
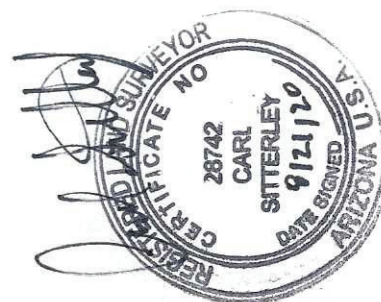
45 500.0404 E - (BASIS OF BEARING)

SECTION
LINE 7

EAST QUARTER CORNER
SECTION 6
T.1N., R.1E.,
G&SRM
--"B"

** = AS RECORDED,
 ARIZONA CENTRAL
 ZONE STATE PLANE DISTANCES
 UPPER MCR BOOK 699, PAGE 26
 AND MCR BOOK 686, PAGE 43

SEE PAGE 2 OF 2 FOR LEGEND
AND FOR LINE TABLE



SCALE 2"=1 MILE
SECTION 6, T.1N., R.1E.,
G&SRM

SCALE:
1"=60'

EXHIBIT
PROPOSED
EASEMENT
USA
EXHIBIT PAGE 1 OF 2

CRS

CONSULTANT REGISTERED
SURVEYING
8732 E. PICCADILLY ROAD
SCOTTSDALE, ARIZONA
480-620-1382

EXHIBIT PROPOSED EASEMENT

EXHIBIT PAGE 2 OF 2

LINE TABLE

L1= S01°11'45"E	43.00'
L2= S01°11'45"E	22.00'
L3= N88°48'15"E	45.68'
L4= S86°21'46"E	225.51'
L5= N88°48'15"E	158.09'
L6= S46°09'50"E	24.47'
L7= N41°13'17"E	8.03'
L8= N01°09'44"W	16.94'

LINE TABLE

L9= N46°09'50"W	20.41'
L10= S88°48'15"W	30.17'
L11= N66°26'30"E	70.76'
L12= N06°39'07"E	21.08'
L13= S89°25'54"W	4.56'
L14= S66°26'30"W	120.52'
L15= S88°48'15"W	87.57'
L16= N86°21'46"W	225.51'
L17= S88°48'15"W	46.61'

LINE TYPE LEGEND

	= PROPOSED PARCEL EASEMENT
	= EXISTING SECTION LINE

LEGEND

** = AS RECORDED, ARIZONA CENTRAL
ZONE STATE PLANE DISTANCE
PER MCR BOOK 699, PAGE 26
AND MCR BOOK 686, PAGE 43

"A" = CITY OF PHOENIX
BRASS CAP IN HANDHOLE

"B" = REPLACED MARICOPA COUNTY
HIGHWAY DEPARTMENT
BRASS CAP IN HANDHOLE

"C" = CITY OF AVONDALE
BRASS CAP IN HANDHOLE

◦ = ANGLE POINT OF DESCRIPTION

◆ = SECTION CORNER POSITION

◆ = QUARTER SECTION CORNER

OR ◆ POSITION IN DIRECTION OF
SECTION LINE

MCR=MARICOPA COUNTY
RECORDERS OFFICE

P.O.B.= POINT OF BEGINNING

P.O.C.= POINT OF COMMENCING

T.1N.= TOWNSHIP ONE NORTH

R.1E.= RANGE ONE EAST

G&SRM = GILA AND SALT
RIVER MERIDIAN



CRS

CONSULTANT REGISTERED
SURVEYING
8732 E. PICCADILLY ROAD
SCOTTSDALE, ARIZONA
480-620-1382

EASEMENT 2

EXHIBIT "A"
DESCRIPTION OF REAL ESTATE IN MARICOPA COUNTY
STATE OF ARIZONA

The following described Parcel of land located in the Northeast Quarter (NE1/4) of Section Six (6), Township One (1) North, Range One (1) East of the Gila and Salt River Meridian, Maricopa County, Arizona:

Commencing at the Northeast corner of said Section 6, being marked by a City of Phoenix brass cap in handhole per point 23106-1 description on the Record of Survey recorded in Maricopa County Recorders Office (MCR) Book 699, page 26, from which for a bearing reference the East Quarter corner of said Section 6, being marked by a City of Avondale brass cap in handhole, being a stamped replacement survey monument per MCR instrument 2018-0509467 for the previous Maricopa County Highway Department brass cap in handhole point 54214-1 per Record of Survey MCR Book 686, page 43, bears South 00° 04' 04" East, 2640.45 feet (as recorded, Arizona Central Zone state plane NAD 83 distance); and from which for a second bearing reference the North Quarter corner of said Section 6, being marked by a City of Avondale brass cap in handhole per point 23107-1 description on the said Record of Survey recorded in MCR Book 699, page 26, bears South 88° 48' 15" West, 2637.80 feet (as recorded, Arizona Central Zone state plane NAD 83 distance);

Thence along the east line of said Section 6, South 00° 04' 04" East, 383.57 feet;

Thence leaving said east Section line, South 89° 55' 56" West, 47.00 feet to the west line of the east 47.00 feet of said Section 6, also being the west line of the parcel described in MCR instrument number 1983 076160, and the POINT OF BEGINNING;

Thence continuing South 89° 55' 56" West, 7.62 feet;

Thence North 16° 05' 55" West, 37.59 feet to the west line of the east 65.00 feet of said Section 6;

Thence along said west line, North 00° 04' 04" West, 27.01 feet;

Thence leaving said west line, North 14° 07' 29" West, 41.17 feet to the west line of the east 75.00 feet of said Section 6;

Thence along last said west line, North 00° 04' 04" West, 155.00 feet;

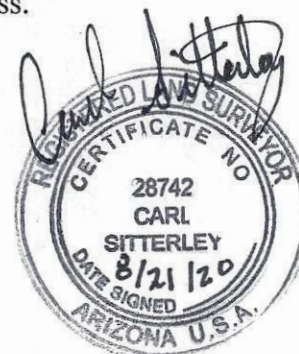
Thence leaving last said west line, North 45° 37' 54" West, 14.10 feet;

Thence North 01° 02' 00" West, 12.61 feet;

Thence North 41° 13' 17" East, 8.03 feet;

(Parcel of land description continued next page)

Thence North 01° 09' 44" West, 22.69 feet;
Thence North 51° 55' 06" East, 22.21 feet;
Thence North 06° 39' 07" East, 59.19 feet;
Thence North 88° 50' 16" East, 20.19 feet;
Thence South 06° 39' 07" West, 42.12 feet;
Thence North 51° 55' 06" East, 5.25 feet;
Thence South 32° 38' 31" East, 30.14 feet;
Thence South 51° 55' 06" West, 32.88 feet;
Thence South 01° 02' 49" East, 12.46 feet;
Thence South 88° 50' 16" West, 12.67 feet;
Thence South 01° 09' 44" East, 5.33 feet;
Thence North 88° 50' 16" East, 4.19 feet;
Thence South 45° 37' 54" East, 13.23 feet to the west line of the east 45.00 feet of said Section 6;
Thence along last said west line, South 00° 04' 04" East, 77.09 feet to the north line of the 47.00 feet wide parcel described in said MCR instrument number 1983 076160;
Thence leaving last said west line, along said north parcel line, South 89° 55' 56" West, 2.00 feet back to said west line of the east 47.00 feet of Section 6, also being the northwest corner of the said 47.00 feet wide parcel described in said MCR instrument number 1983 076160;
Thence along last said west line, South 00° 04' 04" East, 193.58 feet back to the POINT OF BEGINNING.
Parcel of land contains 10,214 square feet or 0.23 acre, more or less.



NORTH QUARTER CORNER
SECTION 6, T.1N., R.1E.,
G&SRM--"C"

SECTION
LINE

P.O.C.-
NORTHEAST CORNER
SECTION 6, T.1N., R.1E.,
G&SRM--"A"

McDOWELL ROAD
S88°48'15"W **2637.80'
(BASIS OF BEARING)

*** = NORTH LINE
47' WIDE PARCEL PER
MARICOPA COUNTY
RECORDERS OFFICE
INSTRUMENT NUMBER
1983 076160

SCALE:
1"=60'

WEST LINE
47' WIDE PARCEL PER
MARICOPA COUNTY
RECORDERS OFFICE
INSTRUMENT NUMBER
1983 076160

(0.23 ACRE)

PARCEL DESCRIBED
IN SEPARATE
INSTRUMENT

** = AS RECORDED,
ARIZONA CENTRAL ZONE
STATE PLANE DISTANCES
MCR BOOK 699, PAGE 26
MCR BOOK 686, PAGE 43

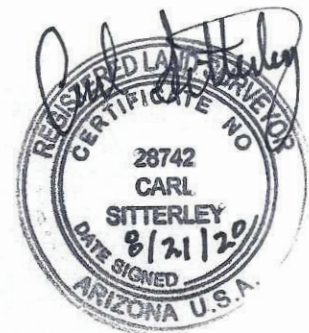


EXHIBIT PROPOSED USA EASEMENT

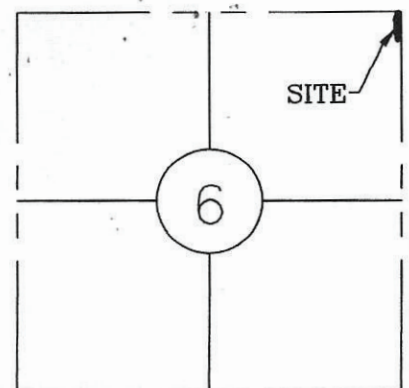
EXHIBIT PAGE 1 OF 2

CRS

CONSULTANT REGISTERED
SURVEYING
8732 E. PICCADILLY ROAD
SCOTTSDALE, ARIZONA
480-620-1382

EAST QUARTER CORNER
SECTION 6
T.1N., R.1E.,
G&SRM
--"B"

SEE PAGE 2 OF 2 FOR LEGEND
AND FOR LINE TABLE



SCALE 2"=1 MILE
SECTION 6, T.1N., R.1E.,
G&SRM

EXHIBIT PROPOSED EASEMENT

EXHIBIT PAGE 2 OF 2

LINE TABLE

L1= S89°55'56"W	47.00'
L2= S89°55'56"W	7.62'
L3= N16°05'55"W	37.59'
L4= N00°04'04"W	27.01'
L5= N14°07'29"W	41.17'
L6= N00°04'04"W	155.00'
L7= N45°37'54"W	14.10'
L8= N01°02'00"W	12.61'
L9= N41°13'17"E	8.03'
L10= N01°09'44"W	22.69'
L11= N51°55'06"E	22.21'
L12= N06°39'07"E	59.19'
L13= N88°50'16"E	20.19'

LINE TABLE

L14= S06°39'07"W	42.12'
L15= N51°55'06"E	5.25'
L16= S32°38'31"E	30.14'
L17= S51°55'06"W	32.88'
L18= S01°02'49"E	12.46'
L18A= S88°50'16"W	12.67'
L19= S01°09'44"E	5.33'
L20= N88°50'16"E	4.19'
L21= S45°37'54"E	13.23'
L22= S00°04'04"E	77.09'
L23= S89°55'56"W	2.00'
L24= S00°04'04"E	193.58'

LINE TYPE LEGEND

	= PROPOSED PARCEL EASEMENT
	= EXISTING SECTION LINE

LEGEND

** = AS RECORDED, ARIZONA CENTRAL
ZONE STATE PLANE DISTANCE
PER MCR BOOK 699, PAGE 26
AND MCR BOOK 686, PAGE 43

"A" = CITY OF PHOENIX
BRASS CAP IN HANDHOLE

"B" = REPLACED MARICOPA COUNTY
HIGHWAY DEPARTMENT
BRASS CAP IN HANDHOLE

"C" = CITY OF AVONDALE
BRASS CAP IN HANDHOLE

◦ = ANGLE POINT OF DESCRIPTION

◆ = SECTION CORNER POSITION

◆ = QUARTER SECTION CORNER
OR ◆ POSITION IN DIRECTION OF
SECTION LINE

MCR=MARICOPA COUNTY
RECORDERS OFFICE

P.O.B.= POINT OF BEGINNING

P.O.C.= POINT OF COMMENCING

T.1N.= TOWNSHIP ONE NORTH

R.1E.= RANGE ONE EAST

G&SRM = GILA AND SALT
RIVER MERIDIAN



CRS

CONSULTANT REGISTERED
SURVEYING
8732 E. PICCADILLY ROAD
SCOTTSDALE, ARIZONA
480-620-1382

Consultant Registered Surveying, Inc

Parcel name: SRP NEW EAST NON ADOT

North: 896445.9599	East : 586206.8135
Line Course: S 89-55-56 W	Length: 7.62
North: 896445.9509	East : 586199.1935
Line Course: N 16-05-55 W	Length: 37.59
North: 896482.0668	East : 586188.7701
Line Course: N 00-04-04 W	Length: 27.01
North: 896509.0768	East : 586188.7382
Line Course: N 14-07-29 W	Length: 41.17
North: 896549.0021	East : 586178.6913
Line Course: N 00-04-04 W	Length: 155.00
North: 896704.0020	East : 586178.5080
Line Course: N 45-37-54 W	Length: 14.10
North: 896713.8617	East : 586168.4285
Line Course: N 01-02-00 W	Length: 12.61
North: 896726.4697	East : 586168.2011
Line Course: N 41-13-17 E	Length: 8.03
North: 896732.5096	East : 586173.4926
Line Course: N 01-09-44 W	Length: 22.69
North: 896755.1949	East : 586173.0324
Line Course: N 51-55-06 E	Length: 22.21
North: 896768.8937	East : 586190.5146
Line Course: N 06-39-07 E	Length: 59.19
North: 896827.6852	East : 586197.3710
Line Course: N 88-50-16 E	Length: 20.19
North: 896828.0947	East : 586217.5569
Line Course: S 06-39-07 W	Length: 42.12
North: 896786.2583	East : 586212.6778
Line Course: N 51-55-06 E	Length: 5.25
North: 896789.4964	East : 586216.8102
Line Course: S 32-38-31 E	Length: 30.14
North: 896764.1168	East : 586233.0673
Line Course: S 51-55-06 W	Length: 32.88
North: 896743.8369	East : 586207.1864
Line Course: S 01-02-49 E	Length: 12.46
North: 896731.3790	East : 586207.4141
Line Course: S 88-50-16 W	Length: 12.67
North: 896731.1220	East : 586194.7467
Line Course: S 01-09-44 E	Length: 5.33
North: 896725.7931	East : 586194.8548
Line Course: N 88-50-16 E	Length: 4.19
North: 896725.8781	East : 586199.0440
Line Course: S 45-37-54 E	Length: 13.23
North: 896716.6268	East : 586208.5015
Line Course: S 00-04-04 E	Length: 77.09
North: 896639.5368	East : 586208.5927
Line Course: S 89-55-56 W	Length: 2.00
North: 896639.5345	East : 586206.5927
Line Course: S 00-04-04 E	Length: 193.58
North: 896445.9546	East : 586206.8217

Closure
East Parcel
Non-ADOT



Perimeter: 858.34 Area: 10,214 Sq Ft 0.23 Ac.

Mapcheck Closure - (Uses listed courses, radii, and deltas)

Error Closure: 0.0098 Course: S 57-01-04 E

Error North: -0.00533 East : 0.00821

Precision 1: 87,586.73

Page 1 of 2

Parcel name: SRP NEW EAST NON ADOT

North: 896829.5806	East : 586253.3607
Line Course: S 00-04-04 E	Length: 383.57
North: 896446.0109	East : 586253.8144
Line Course: S 89-55-56 W	Length: 47.00
North: 896445.9553	East : 586206.8144
Line Course: S 89-55-56 W	Length: 7.62
North: 896445.9463	East : 586199.1944
Line Course: N 16-05-55 W	Length: 37.59
North: 896482.0622	East : 586188.7711
Line Course: N 00-04-04 W	Length: 27.01
North: 896509.0722	East : 586188.7391
Line Course: N 14-07-29 W	Length: 41.17
North: 896548.9975	East : 586178.6922
Line Course: N 00-04-04 W	Length: 155.00
North: 896703.9974	East : 586178.5089
Line Course: N 45-37-54 W	Length: 14.10
North: 896713.8571	East : 586168.4294
Line Course: N 01-02-00 W	Length: 12.61
North: 896726.4650	East : 586168.2020
Line Course: N 41-13-17 E	Length: 8.03
North: 896732.5049	East : 586173.4935
Line Course: N 01-09-44 W	Length: 22.69
North: 896755.1902	East : 586173.0333
Line Course: N 51-55-06 E	Length: 22.21
North: 896768.8890	East : 586190.5155
Line Course: N 06-39-07 E	Length: 59.19
North: 896827.6806	East : 586197.3719
Line Course: N 88-50-16 E	Length: 20.19
North: 896828.0901	East : 586217.5578
Line Course: S 06-39-07 W	Length: 42.12
North: 896786.2536	East : 586212.6787
Line Course: N 51-55-06 E	Length: 5.25
North: 896789.4917	East : 586216.8111
Line Course: S 32-38-31 E	Length: 30.14
North: 896764.1121	East : 586233.0683
Line Course: S 51-55-06 W	Length: 32.88
North: 896743.8323	East : 586207.1873
Line Course: S 01-02-49 E	Length: 12.46
North: 896731.3743	East : 586207.4150
Line Course: S 88-50-16 W	Length: 12.67
North: 896731.1174	East : 586194.7476
Line Course: S 01-09-44 E	Length: 5.33
North: 896725.7885	East : 586194.8557
Line Course: N 88-50-16 E	Length: 4.19
North: 896725.8734	East : 586199.0449
Line Course: S 45-37-54 E	Length: 13.23
North: 896716.6221	East : 586208.5025
Line Course: S 00-04-04 E	Length: 77.09
North: 896639.5322	East : 586208.5936
Line Course: S 89-55-56 W	Length: 2.00
North: 896639.5298	East : 586206.5936
Line Course: N 13-49-40 E	Length: 195.71
North: 896829.5678	East : 586253.3692

Perimeter: 1291.04 Area: 23,777 Sq Ft 0.55 Ac.

Mapcheck Closure - (Uses listed courses, radii, and deltas)
Error Closure: 0.0153 Course: S 33-42-10 E
Error North: -0.01276 East : 0.00851
Precision 1: 84,382.35

CRS

Page 2 of 2

CITY COUNCIL REPORT

SUBJECT: Ordinance 2042-1120 - Abandonment of a Roadway Easement at the BLVD

MEETING DATE: 11/16/2020

TO: Mayor and Council

FROM: Kevin Murphy, Development and Engineering Services Director, (623) 333-4011

THROUGH: Gina Montes, Assistant City Manager, (623) 333-1012

STRATEGIC PLAN:

PURPOSE:

City Council will consider a request to adopt Ordinance 2042-1120 authorizing the abandonment of a roadway easement generally located north of Van Buren Street and east of Avondale Boulevard, and authorize the Mayor, City Attorney and City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

On October 23, 1984, First American Title Insurance Company of Arizona reserved a 30 foot wide easement for ingress and egress and roadway purposes through a special warranty deed per Maricopa County Recording Number 1984-460464 as recorded in the Maricopa County Recorder's Office.

DISCUSSION:

The City became the owner of this easement when it purchased the parcel from Forrest B. Allison and Gloria A. Allison, Trustees of the Allison Trust dated January 16, 1996. Staff has determined that this easement has no useful purpose and should be abandoned. This 30-foot wide easement is approximately 1,150 feet east of Avondale Boulevard and 550 feet north of Van Buren Street, in the BLVD District.

STRATEGIC PLAN ALIGNMENT

Initiative: Foster Sustainability Community Development

Goal: Maintain Quality Infrastructure

BUDGET IMPACT:

There is no impact to the budget for this action.

RECOMMENDATION:

Staff recommends that the City Council adopt an Ordinance authorizing the abandonment of a roadway easement generally located north of Van Buren Street and east of Avondale Boulevard, and authorize the Mayor, City Clerk and City Attorney to execute the necessary documents.

Contact person for document distribution:

ORDINANCE NO. 2042-1120

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, PROVIDING FOR THE ABANDONMENT OF A ROADWAY EASEMENT GENERALLY LOCATED 550 FEET NORTH OF VAN BUREN STREET AND 1,150 FEET EAST OF AVONDALE BOULEVARD.

WHEREAS, Article I, Section 3 of the Avondale City Charter authorizes the City of Avondale (the “City”) to dispose of its acquired property as the City’s interests may require; and

WHEREAS, through the Special Warranty Deed, recorded at Instrument No. 1984-460464 in the Maricopa County Recorder’s Office on October 23, 1984, the City acquired an easement for ingress, egress, roadway or street purposes, over ± 0.202 acres generally located 550 feet north of Van Buren Street and 1,150 feet east of Avondale Boulevard (the “Ingress/Egress Easement”); and

WHEREAS, the Council of the City of Avondale (the “City Council”) has determined that the Ingress/Egress Easement is no longer needed and therefore, it is necessary and appropriate to abandon said easement.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The Ingress/Egress Easement, as more particularly described and depicted in Exhibit A, attached hereto and incorporated herein by reference, is hereby declared to be no longer necessary for roadway use and is hereby abandoned to the adjacent City parcel, Maricopa County Assessor Parcel No. 102-57-005T.

SECTION 3. Upon recordation of this Ordinance in the office of the Maricopa County Recorder, the Ingress/Egress Easement shall be forever extinguished and all right and title to the real property described therein shall vest in the City.

SECTION 4. The Mayor, the City Manager or authorized designee, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and execute all documents necessary to carry out the purpose and intent of this Ordinance.

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona,
November 16, 2020.

Kenneth Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
ORDINANCE NO. 2042-1120

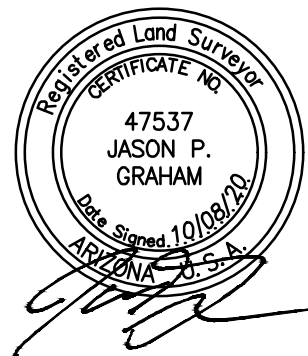
[Legal Description and Map of Ingress/Egress Easement]

See following pages.

EXHIBIT "A"
LEGAL DESCRIPTION
FOR
30 FOOT WIDE INGRESS/EGRESS EASEMENT
TO BE ABANDONED

THAT PART OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 1 NORTH,
RANGE 1 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY,
ARIZONA, DESCRIBED AS FOLLOWS:

BEING ALL OF THAT CERTAIN 30 FOOT WIDE INGRESS/EGRESS EASEMENT
DESCRIBED IN INSTRUMENT 1984-460464, OFFICIAL RECORDS OF MARICOPA
COUNTY, ARIZONA AND CONTAINING 8,818 SQUARE FEET OR 0.202 ACRES OF
LAND, MORE OR LESS.



FILE:\PROJECTS\2018\1018157 Avondale Survey On-Call\CAD\EXHIBITS\18157-ESMNT ABANDONMENT.dwg DATE: Oct, 08, 2020 TIME: 02:01 pm

AVONDALE CITY CENTER PHASE 3
BK 1163, PG 43, MCR

DALE EARNHARDT DR

AVONDALE CITY CENTER
PHASE 1
BK 1027, PG 31, MCR

CITY CENTER DR

AVONDALE CITY CENTER
PHASE 2
BK 1095, PG 5, MCR

WATERFORD SQUARE
BK 683, PG 27, MCR

APN 102-57-253

APN 102-57-005V

APN
102-57-005T

30' INGRESS/EGRESS
EASEMENT
INSTR 1984-460464
TO BE ABANDONED

APN 102-57-005X

APN
102-57-009B

APN 102-57-001B

VAN BUREN ST

SW COR SEC 6,
T1N, R1E



NTS

THIS IS NOT A PROPERTY
BOUNDARY SURVEY.

DIBBLE



Dibble
Project No 1018157

EXHIBIT "A"
INGRESS/EGRESS EASEMENT
ABANDONMENT

A PART OF THE SOUTHWEST QUARTER
SECTION 6, T1N, R1E, GILA & SALT RIVER
MERIDIAN, MARICOPA COUNTY, ARIZONA

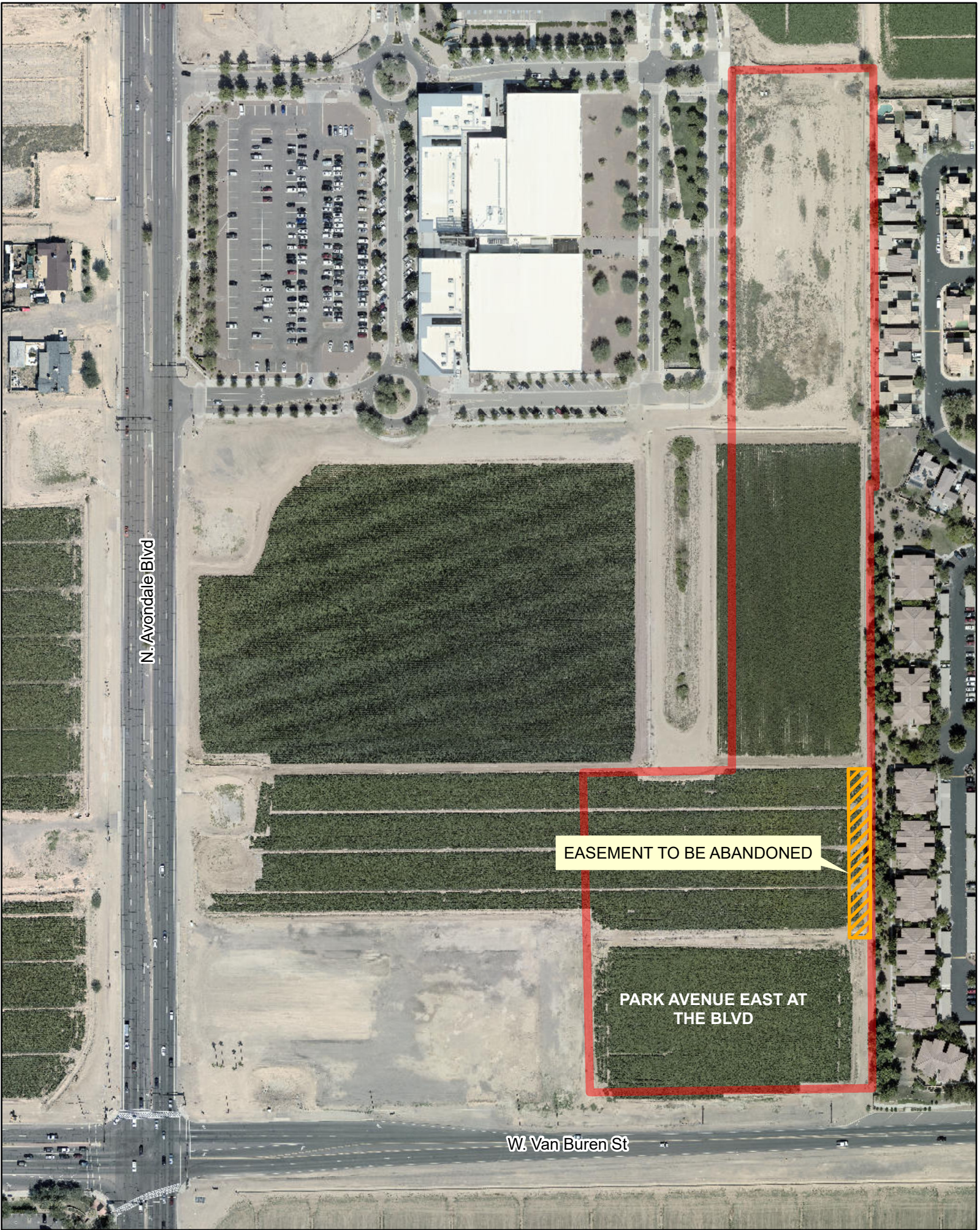
DATE: OCT 2020

DRN: CSD CHK: JPG

PAGE 2



ROADWAY EASEMENT AT THE BLVD TO BE ABANDONED



N. Avondale Blvd

EASEMENT TO BE ABANDONED

PARK AVENUE EAST AT THE BLVD

W. Van Buren St

CITY COUNCIL REPORT

SUBJECT: Final Plat for Park Avenue East at The BLVD - Application PL-20-0237

MEETING DATE: 11/16/2020

TO: Mayor and Council

FROM: Kevin Murphy, Development & Engineering Services Director, (623) 333-4011

THROUGH: Tracy Stevens, Deputy City Manager, (623) 333-1014

STRATEGIC PLAN:

PURPOSE:

City Council will consider a request to approve a Final Plat for Park Avenue East at The BLVD, approximately 12.99 acres of City-owned property located at the southeast corner of Park Avenue and Dale Earnhardt Drive. The proposed Final Plat consolidates six (6) city-owned parcels into single parcel and dedicates an 8-foot public utility easement (PUE) along Van Buren Street. The Council will take appropriate action.

BACKGROUND:

The 12.99-acre City-owned subject property is located at the southeast corner of Park Avenue and Dale Earnhardt Drive (Exhibit A). The southernmost 3.48 acres included in the request was annexed in December 1988; the remainder of the property, approximately 9.51 acres, was annexed in May 2009. The subject property was zoned Agricultural (AG) until August 2009, when it was rezoned to City Center District (CCD). Following adoption of The BLVD Specific Plan in September 2019, the property was rezoned from AG to The BLVD District (BLVDD) in March 2020 (Exhibit B). The property is located within The BLVD's Park Avenue District, the core area for The BLVD, as indicated in the General Plan Land Use Map (Exhibit C). The Park Avenue District is expected to develop with a mix of hotel, retail, restaurant, sports, entertainment, theater, cultural, multi-family residential, studios, office, and education uses all designed to interface with adjacent streets in an urban manner and featuring modern, contemporary design.

The existing uses and zoning of the surrounding properties are as follows:

North: Vacant land currently in agricultural production and zoned BLVDD and within the Park Avenue District.

East: From north to south

- Waterford Square, a 217-unit single-family residential subdivision zoned PAD.
- Versante Apartments, a two-story, 336-unit apartment complex on 18.3 acres zoned as part of the Waterford Square PAD.

South of Van Buren Street: A 78.9-acre County island currently in agricultural production, designated as The BLVD – Neighborhood District on the City's General Plan Land Use Map, and currently zoned in Maricopa

County as RU-43 (Rural Residential)

West of Park Avenue: From north to south

- The American Sports Complex and inline retail and restaurant spaces.
- The property south of The BLVD road alignment is vacant land in agricultural production zoned BLVDD, and within the Park Avenue District.

SUMMARY OF REQUEST:

The Development & Engineering Services Department is requesting approval of a Final Plat of 12.99 acres of City-owned property located at the southeast corner of Park Avenue and Dale Earnhardt Drive. The proposed Final Plat (Exhibit E) consolidates six (6) individual parcels of land into a single parcel for the purpose of marketing and developing this area with high-intensity, urban-form multi-family residential. Additionally, the proposed Final Plat dedicates an 8-foot public utility easement along Van Buren Street. Future dedication of right-of-way for the extension of Park Avenue south to Van Buren Street will be necessary. The final design and location of the Park Avenue right-of-way, pavement, and boulevard landscaping will be determined at the time a development plan is considered for the subject property.

PUBLIC PARTICIPATION:

Public notification is not required for Final Plat applications.

PLANNING COMMISSION ACTION:

The Planning Commission does not review Final Plat applications.

ANALYSIS:

- The proposed Final Plat has been prepared by a Registered Land Surveyor and the document has been confirmed as geometrically accurate and in conformance with Arizona Statutes governing the subdivision of real property.
- The proposed Final Plat is in conformance with the City of Avondale Zoning Ordinance and Subdivision Regulations.

DISCUSSION:

1. The proposed Final Plat is in conformance with the City of Avondale Zoning Ordinance and Subdivision Regulations.
2. The proposed Final Plat is in conformance with The BLVD Specific Plan.
3. The conditions of approval are reasonable to ensure conformance with the provisions as outlined in the Avondale Zoning Ordinance and all other applicable City codes, ordinances, and policies.

STRATEGIC PLAN:

INITIATIVE: Encourage & Support Innovation in Development & Service Delivery

- STRATEGIC GOAL: Encourage a Flexible Environment Responsive to Market Trends

BUDGET IMPACT:

No budget impacts.

RECOMMENDATION:

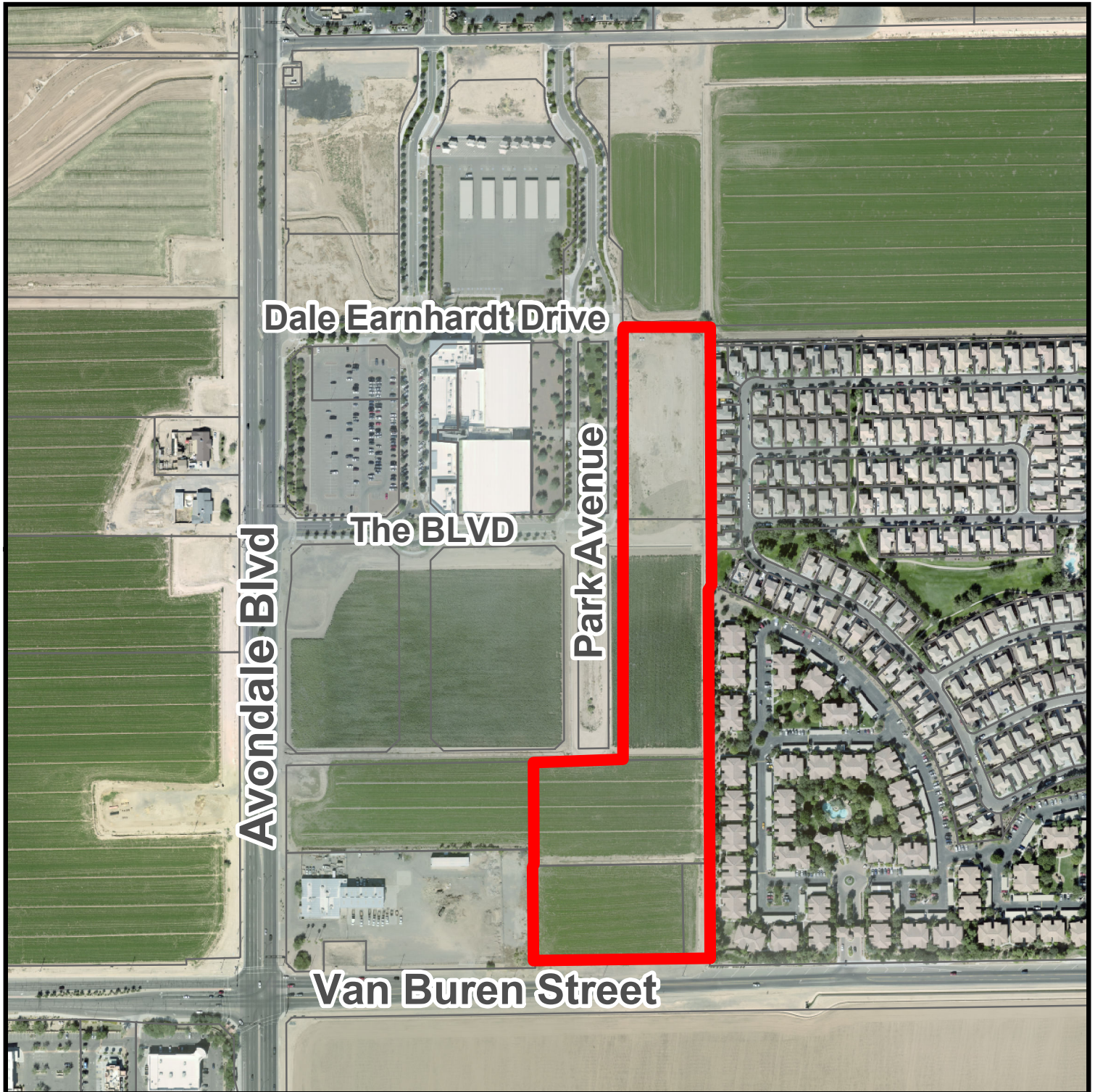
No public hearing is required. The City Council will **APPROVE** Application PL-20-0237, a request for a Final Plat for Park Avenue East at The BLVD, combining six (6) parcels into an approximately 12.99-acre single parcel, subject to the following condition of approval:

1. The recorded plat shall be in conformance with the Final Plat for Park Avenue East at The BLVD date stamped October 14, 2020.

PROPOSED MOTION:

I move that City Council **APPROVE** Application PL-20-0237, a request for a Final Plat for Park Avenue East at The BLVD, combining six (6) parcels into an approximately 12.99-acre single parcel, subject to one (1) condition of approval as listed in the staff report.

Contact person for document distribution:

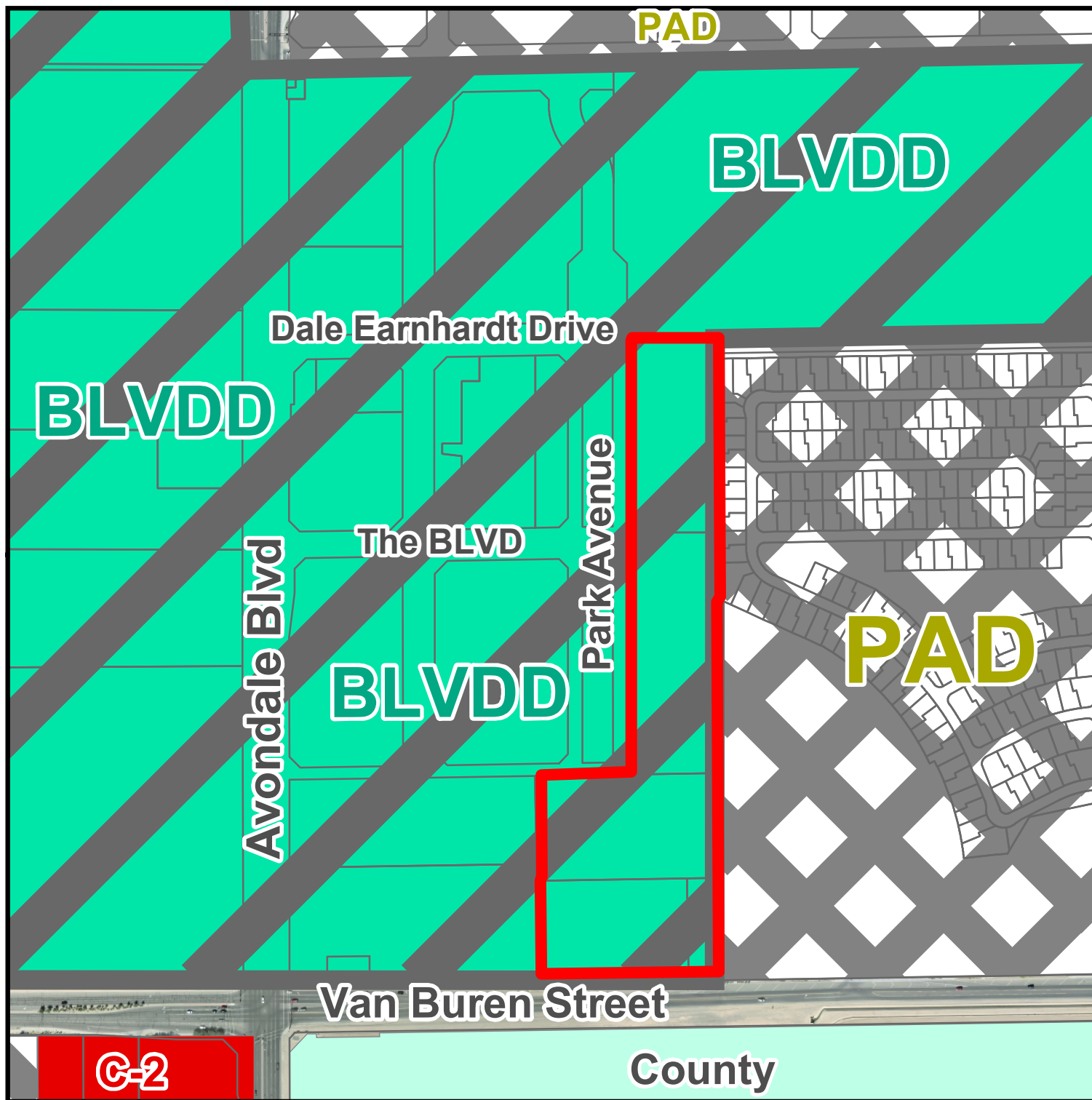


Aerial Photograph



Project Location



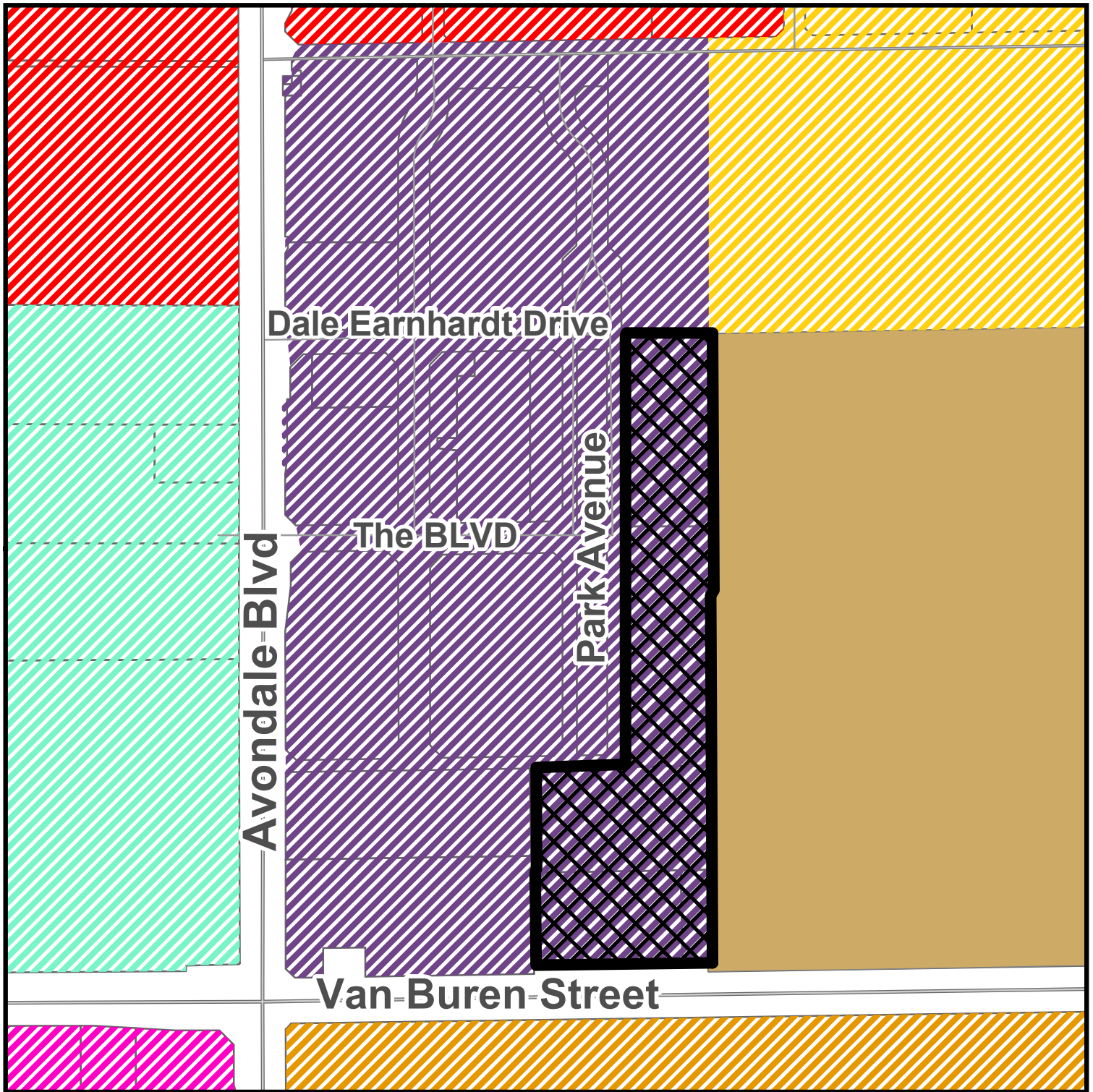


Zoning Vicinity Map



Project Location





General Plan Land Use Map



Neighborhood District



Gateway District



Village District



Park Avenue District



Promenade District



Residential District



Medium/High Density Residential



Subject Property

*SUMMARY OF RELATED FACTS
APPLICATION PL-20-0237*

<i>THE PROPERTY</i>	
PROPERTY SIZE	Approximately 12.99 acres
LOCATION	Southeast corner of Park Avenue and Dale Earnhardt Drive
PHYSICAL CHARACTERISTICS	The subject property is undeveloped and mostly in agricultural production.
GENERAL PLAN LAND USE DESIGNATION	The BLVD – Park Avenue District
EXISTING ZONING	The BLVD District (BLVDD)
ZONING HISTORY	The southernmost 3.48 acres included in the request was annexed in December 1988; the remainder of the property, approximately 9.51 acres, was annexed in May 2009. The subject property was zoned Agricultural (AG) until August 2009, when it was rezoned to City Center District (CCD). Following adoption of The BLVD Specific Plan in September 2019, the property was rezoned from AG to The BLVD District (BLVDD) in March 2020. The property is located within The BLVD’s Park Avenue District, the core area for The BLVD, which is expected to develop with a mix of hotel, retail, restaurant, sports, entertainment, theater, cultural, multi-family residential, studios, office, and education uses all designed to interface with adjacent streets in an urban manner and featuring modern, contemporary design.

<i>SURROUNDING ZONING AND LAND USE</i>	
NORTH	Vacant land currently in agricultural production and zoned BLVD and within the Park Avenue District.
EAST	From north to south: - Waterford Square, a 217-unit single-family residential subdivision zoned PAD. - Versante Apartments, a two-story, 336-unit apartment complex on 18.3 acres zoned as part of the Waterford Square PAD.
SOUTH OF VAN BUREN STREET	A 78.9-acre County island currently in agricultural production, designated as The BLVD – Neighborhood District on the City’s General Plan Land Use Map, and currently zoned in Maricopa County as RU-43 (Rural Residential)
WEST OF PARK AVENUE	From north to south: - The American Sports Complex and in-line retail and restaurant spaces - South of The BLVD road alignment property is vacant land in agricultural production zoned BLVD District, and within the Park Avenue District.

<i>PUBLIC SCHOOLS</i>	
SCHOOL DISTRICT(S)	Littleton Elementary School District Tolleson Union High School District
ELEMENTARY SCHOOL	Student's choice (No defined school). The closest district school is Collier Elementary School located at the southwest corner of Coldwater Springs Boulevard and 114 th Avenue within the Coldwater Springs community.
HIGH SCHOOL	La Joya Community High School, located at the southwest corner of Avondale Boulevard and Durango Street.

<i>STREETS</i>	
Park Avenue	
Classification	The BLVD Custom Major Collector
Existing half street right-of-way	72 feet adjacent to the northern portion of the subject property; none within the southern portion of the property.
Standard half street right-of-way	72 feet
Existing half street improvements	<i>Adjacent to northern portion of property:</i> One (1) travel lane, bike lane, on-street parking lane, median linear park, curb, gutter, detached sidewalk, street lights, and landscaping. <i>Within southern portion of property:</i> No improvements.
Standard half street improvements	One (1) travel lane, bike lane, on-street parking lane, median linear park, curb, gutter, detached sidewalk, street lights, and landscaping.
Fillmore Street	
Classification	The BLVD Custom Local
Existing half street right-of-way	None
Standard half street right-of-way	44 feet
Existing half street improvements	None
Standard half street improvements	One (1) travel lane, angled on-street parking, curb, gutter, detached sidewalk, street lights and landscaping.
Van Buren Street	
Classification	Major Arterial
Existing half street right-of-way	65 feet
Standard half street right-of-way	65 feet
Existing half street improvements	One (1) travel lane.

Standard half street improvements	Three (3) travel lanes, landscaped median, bike lane, curb, gutter, detached sidewalk, street lights, and landscaping.
-----------------------------------	--

UTILITIES

The development site has access to an existing 12-inch water line in Park Avenue and an existing 20-inch water main in Van Buren Street. Additionally, the development has access to an existing 8-inch sewer line in Park Avenue and an 18-inch sewer main in Van Buren Street. New public utility lines in Park Avenue will be required to serve this development. SRP provides electrical service to this area.

Exhibit E

Proposed Final Plat

Park Avenue East at The BLVD

FINAL PLAT FOR PARK AVENUE EAST AT THE BLVD

BEING A REPLAT OF LOT 5 AND 6, AVONDALE CITY CENTER PHASE 2 AS RECORDED IN BOOK 1095 OF MAPS ON PAGE 5, OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA AND A PORTION OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 1 NORTH, RANGE 1 EAST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA

PARCEL DESCRIPTION

THAT PART OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 1 NORTH, RANGE 1 EAST OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:
COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 6 FROM WHICH THE SOUTH QUARTER CORNER OF SAID SECTION 6 BEARS NORTH 89 DEGREES 07 MINUTES 15 SECONDS EAST, A DISTANCE OF 2480.76 FEET;

THENCE UPON AND WITH THE SOUTH LINE OF SAID SOUTHWEST QUARTER, NORTH 89 DEGREES 07 MINUTES 15 SECONDS EAST, A DISTANCE OF 1240.51 FEET;

THENCE DEPARTING SAID SOUTH LINE, NORTH 00 DEGREES 52 MINUTES 45 SECONDS WEST, A DISTANCE OF 2480.76 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 6, TOWNSHIP 1 NORTH, RANGE 1 EAST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, SAME POINT ALSO LYING IN THE NORTH RIGHT OF WAY LINE OF VAN BUREN STREET AND THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL.

THENCE UPON AND WITH SAID NORTH RIGHT OF WAY LINE, SOUTH 89 DEGREES 07 MINUTES 15 SECONDS WEST, A DISTANCE OF 2480.76 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 6, TOWNSHIP 1 NORTH, RANGE 1 EAST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA;

THENCE UPON AND WITH SAID EAST LINE, NORTH 00 DEGREES 04 MINUTES 28 SECONDS WEST, A DISTANCE OF 261.00 FEET;

THENCE CONTINUING UPON AND WITH SAID EAST LINE, NORTH 89 DEGREES 07 MINUTES 15 SECONDS EAST, A DISTANCE OF 0.31 FEET;

THENCE CONTINUING UPON AND WITH SAID EAST LINE, NORTH 01 DEGREES 12 MINUTES 28 SECONDS WEST, A DISTANCE OF 293.71 FEET TO THE SOUTH RIGHT OF WAY LINE OF FLORNO STREET AS SHOWN ON AVONDALE CITY CENTER PHASE 2 AS RECORDED IN BOOK 1095 OF MAPS ON PAGE 5, OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA, SAME POINT ALSO LYING IN THE NORTH RIGHT OF WAY LINE OF VAN BUREN STREET AND THE TRUE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL.

THENCE UPON AND WITH SAID SOUTH RIGHT OF WAY LINE, NORTH 89 DEGREES 05 MINUTES 38 SECONDS EAST, A DISTANCE OF 228.80 FEET TO THE EAST RIGHT OF WAY LINE OF PARK AVENUE;

THENCE UPON AND WITH SAID EAST RIGHT OF WAY LINE, NORTH 00 DEGREES 09 MINUTES 08 SECONDS WEST, A DISTANCE OF 1202.94 FEET TO THE SOUTHWEST CORNER OF LOT "C" OF AVONDALE CITY CENTER PHASE 3 AS RECORDED IN BOOK 1163 OF MAPS ON PAGE 43, OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE UPON AND WITH THE SOUTH LINE OF SAID LOT "C", NORTH 89 DEGREES 04 MINUTES 52 SECONDS EAST, A DISTANCE OF 243.89 FEET TO THE NORTHWEST CORNER OF WATERFORD SQUARE AS RECORDED IN BOOK 685 OF MAPS ON PAGE 27, OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA;

THENCE UPON AND WITH THE WEST LINE OF SAID WATERFORD SQUARE, SOUTH 00 DEGREES 16 MINUTES 11 SECONDS EAST, A DISTANCE OF 520.65 FEET;

THENCE CONTINUING UPON AND WITH SAID WEST LINE, SOUTH 00 DEGREES 18 MINUTES 54 SECONDS EAST, A DISTANCE OF 180.10 FEET TO THE NORTH LINE OF THE AFORESAID PARCEL DESCRIBED IN INSTRUMENT 2005-1162708;

THENCE UPON AND WITH THE NORTH LINE OF SAID PARCEL, NORTH 65 DEGREES 37 MINUTES 35 SECONDS WEST, A DISTANCE OF 11.07 FEET TO THE NORTHWEST CORNER THEREOF;

THENCE UPON AND WITH THE WEST LINE OF SAID PARCEL, SOUTH 00 DEGREES 19 MINUTES 20 SECONDS EAST, A DISTANCE OF 1043.86 FEET TO THE POINT OF BEGINNING AND CONTAINING 565,888 SQUARE FEET OR 12.991 ACRES OF LAND, MORE OR LESS.

NOTES

1. ALL LANDSCAPING WITHIN ADJACENT PUBLIC RIGHT-OF-WAY IS TO BE MAINTAINED BY OWNER EXCLUDING MEDIANS ON ARTERIAL STREETS.
2. ALL UTILITY AND PUBLIC SERVICE EASEMENTS, INCLUDING ANY LIMITATIONS OF EASEMENTS, AND CONSTRUCTION WITHIN SUCH EASEMENTS SHALL BE LIMITED TO UTILITIES, LANDSCAPING, AND ROAD, WIRE OR REMEDIABLE DESIGN TYPE FENCES.
3. ALL EXISTING OVERHEAD UTILITIES SHALL BE INSTALLED UNDERGROUND IN ACCORDANCE WITH MARICOPA COUNTY MUNICIPAL CODE AND AS REQUIRED BY THE ARIZONA CORPORATION COMMISSION.
4. NO ALTERATIONS SHALL BE MADE TO THE STORM WATER RETENTION AREAS AND APPROVED OR EXISTING CONVEYANCE PATTERNS THAT ARE A PART OF THESE PREMISES WITHOUT WRITTEN APPROVAL BY THE CITY OF AVONDALE.
5. NO STRUCTURES SHALL BE CONSTRUCTED IN OR ACROSS NOR SHALL OTHER IMPROVEMENTS OR ALTERATIONS BE MADE TO THE SUBDIVISION OR ANY PART OF THIS SUBDIVISION WITHOUT WRITTEN AUTHORIZATION BY THE CITY OF AVONDALE.
6. NO WALLS/FENCES SHALL BE BUILT WITHOUT PRIOR CITY OF AVONDALE APPROVAL.

APPROVALS

APPROVED BY THE CITY COUNCIL OF THE CITY OF AVONDALE, ARIZONA THIS _____ DAY OF _____, 2020.

BY: _____ MAYOR

ATTEST: _____ CITY CLERK

BY: _____ CITY ENGINEER

SURVEYOR'S CERTIFICATION

THIS CERTIFICATE OF SURVEY IS ONLY VALID IF IT BEARS THE ORIGINAL SEAL AND INKED SIGNATURE OF THE CERTIFYING PROFESSIONAL LAND SURVEYOR.

LASON D. GRAHAM, HEREBY CERTIFY THAT I AM A LICENSED LAND SURVEYOR IN THE STATE OF ARIZONA, THAT THE SURVEY IS TRUE AND COMPLETE AS SHOWN, THAT ALL MONUMENTS ACTUALLY EXIST AS SHOWN, THAT THEIR POSITIONS ARE CORRECTLY SHOWN, AND THAT THE SURVEY IS BASED UPON AN ACTUAL SURVEY PERFORMED ON THE GROUND BY ME OR MY DIRECT SUPERVISION AND THAT SAID SURVEY MEETS OR EXCEEDS MY PROFESSIONAL ABILITIES, KNOWLEDGE, AND BELIEFS.

JASON D. GRAHAM RLS 17537



OWNER

CITY OF AVONDALE
11865 W. CMC CENTER DRIVE
AVONDALE, ARIZONA 85015
Phone: 623-339-4216
CONTACT: DAVID JANDVEK, P.E. - CITY ENGINEER

BASIS OF BEARINGS

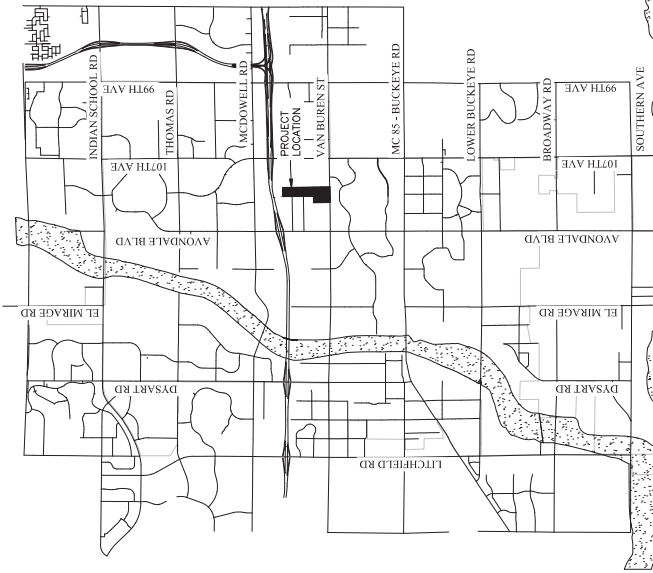
THE SOUTH LINE OF THE SOUTHWEST 1/4 SECTION 6, T. 1 N., R. 1 E. OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA BEARING: SOUTH 89 DEGREES 07 MINUTES 15 SECONDS WEST

REFERENCE DOCUMENTS

BOOK 685 OF MAPS, PAGE 27, MCR
BOOK 1027 OF MAPS, PAGE 31, MCR
BOOK 1095 OF MAPS, PAGE 5, MCR

100 YEAR ASSURED WATER SUPPLY:

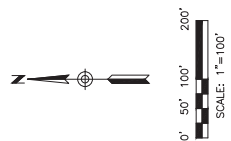
THE AREA PLATTED HEREIN LIES WITHIN THE DOMESTIC WATER SERVICE AREA OF THE CITY OF AVONDALE WHICH IS DESIGNATED AS HAVING AN ASSURED WATER SUPPLY PURSUANT TO SECTION 45-576 ARIZONA REVISED STATUTES.



FINAL PLAT FOR PARK AVENUE
EAST AT THE BLVD
SOUTHWEST 1/4 SECTION 6, T1N, R1E G1LA AND
SALT RIVER MERIDIAN, MARICOPA COUNTY,
ARIZONA

Dibble
Engineering

7/8 N. 16th Street
Suite 300
Phoenix, AZ 85020
P 602.957.1155
F 602.957.2838
www.diblecorp.com



LEGEND

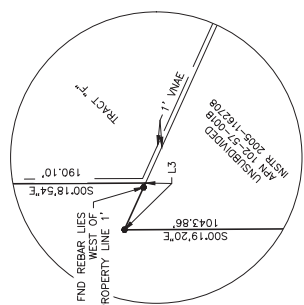
- FOUND BRASS CAP IN HANDHOLE
FOUND BRASS CAP FLUSH
FOUND REBAR
SET REBAR WITH CAP RLS 47537

SECTION LINE _____

CENTERLINE _____

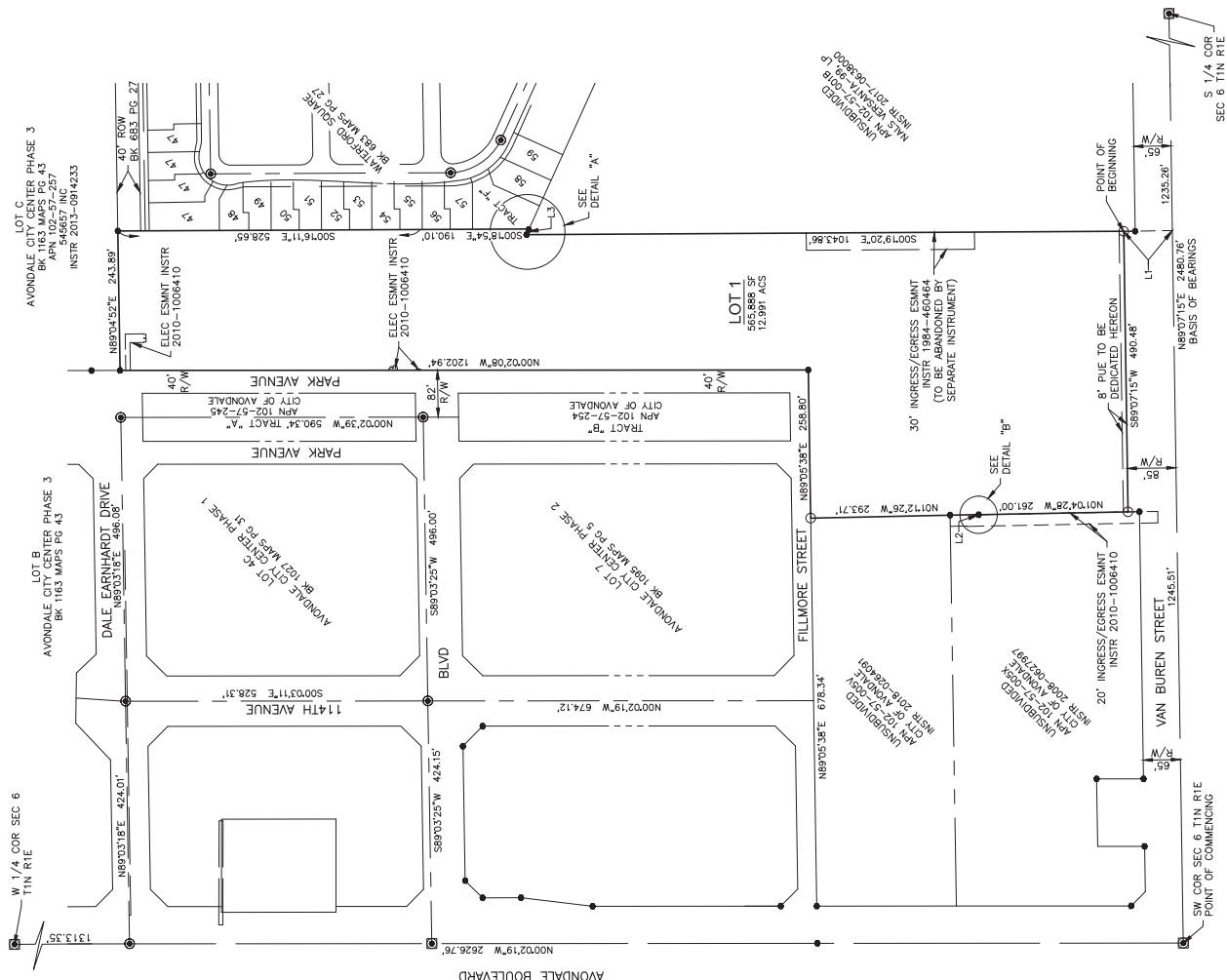
BOUNDARY _____

EASEMENT LINE _____



DETAIL "A"
NTS

LINE DATA TABLE		
LINE	BEARING	DISTANCE
L1	N00°52'45"W	85.00'
L2	N89°07'15"E	0.31'
L3	N65°37'35"W	11.07'



CITY COUNCIL REPORT

SUBJECT: Guardian Self Storage – Minor Land Division – Application PL-19-0209

MEETING DATE: 11/16/2020

TO: Mayor and Council

FROM: Kevin Murphy, Development & Engineering Services Department Director, (623) 333-4011

THROUGH: Tracy Stevens, Deputy City Manager, (623)-333-1014

STRATEGIC PLAN:

PURPOSE:

City Council will consider a request by Philip Gollon, Arc Services Inc. (on behalf of property owner GSA Avondale LLC) for approval of a Minor Land Division (MLD). The site is located at the northeast corner of 119th Avenue and McDowell Road. The proposed MLD dedicates right-of-way and easements on both 119th Avenue and McDowell Road. The Council will take appropriate action.

BACKGROUND:

The 6.2-acre subject property (Exhibits A, B, C), located at the northeast corner of 119th Avenue and McDowell Road, was annexed into the City of Avondale corporate limits on October 19, 1987, by Ordinance No. 422. The site has remained vacant since annexation, and a 3-story, climate-controlled mini-storage warehouse facility with covered recreational vehicle storage is proposed on the property.

The property is zoned Planned Area Development (PAD) (Exhibit B) and is designated as Local Commercial by the General Plan 2030 Land Use Map (Exhibit C). The PAD (case number PL-17-0244), approved on May 7, 2018, allows for custom uses including a mini-storage warehouse facility with covered recreational vehicle storage. The Local Commercial designation is a land use category that is used primarily for providing daily needs of goods and services to the residents residing within the surrounding area. The types of uses allowed in this category specifically for local residents may include grocery stores, gas stations, neighborhood/retail services, and office and medical uses serving consumers residing in adjacent residential areas, which promotes a walkable community.

The property has frontage on two (2) streets: 805 feet of frontage on 119th Avenue and 246 feet of frontage on McDowell Road.

Surrounding uses and zoning districts include:

North: A 3.5-acre vacant parcel zoned Agricultural (AG).

West of 119th Avenue: Palm Meadows, a single-family residential development zoned Planned Area Development (PAD) and a 1.5-acre parcel zoned AG.

South of McDowell Road: Crystal Springs Apartments, a multi-family development zoned PAD.

East: SRP and APS substations and undeveloped land, zoned AG.

SUMMARY OF REQUEST:

The applicant is requesting approval of the Guardian Self Storage MLD (Exhibit D). The proposed MLD dedicates an 8-foot Public Utility Easement (PUE), 40 feet of right-of-way, and a sidewalk easement for a future driveway on 119th Avenue and an 8-foot PUE, 11-foot sidewalk easement, and 50 feet of right-of-way on McDowell Road.

PUBLIC PARTICIPATION:

Public notification is not required for Minor Land Division applications.

PLANNING COMMISSION ACTION:

The Planning Commission does not review Minor Land Division applications.

ANALYSIS:

- The proposed MLD has been reviewed by the City's contracted Registered Land Surveyor and the document has been confirmed as geometrically accurate and in conformance with Arizona Statutes governing the subdivision of real property.
- The proposed MLD is in conformance with the City of Avondale Zoning Ordinance and Subdivision Regulations.
- The proposed MLD dedicates an 8-foot PUE, a sidewalk easement for a future driveway, and 40 feet of right-of-way on 119th Avenue to meet the City's right-of-way standards for Minor Collector streets and an 8-foot PUE, 11-foot sidewalk easement, and 50 feet of right-of-way on McDowell Road to meet the City's right-of-way standards for arterial streets.

STRATEGIC PLAN:

INITIATIVE: Foster sustainable community development.

- STRATEGIC GOAL: Maintain and expand quality infrastructure and improve connectivity to City amenities.

DISCUSSION:

1. The proposed Minor Land Division is in conformance with the City of Avondale Zoning Ordinance and Subdivision Regulations.
2. The condition of approval is reasonable to ensure conformance with the provisions as outlined in the Avondale Zoning Ordinance and all other applicable City codes, ordinances, and policies.

BUDGET IMPACT:

No budget impacts.

RECOMMENDATION:

Staff recommends that City Council **APPROVE** Application PL-19-0209 Guardian Self Storage MLD, with one (1) recommended condition of approval as follows:

1. The recorded plat shall be in conformance with the Guardian Self Storage MLD submitted on October 20, 2020.

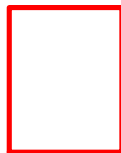
PROPOSED MOTION:

I move that City Council **APPROVE** Application PL-19-0209 Guardian Self Storage MLD, subject to one (1) condition of approval as listed in the staff report.

Contact person for document distribution:



Aerial Vicinity Map

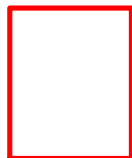


Subject Property





Zoning Vicinity Map



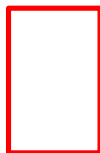
Subject Property





General Plan Land Use Map

- Mixed Use
- Local Commercial
- Medium Density Residential
- Public/Civic
- High Density Residential



Subject Property



Exhibit D

Guardian Self Storage
Minor Land Division

MINOR LAND DIVISION

FOR

GUARDIAN SELF STORAGE

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 2 NORTH,
RANGE 1 WEST, GILA AND SALT RIVER BASE AND MERIDIAN,
MARICOPA COUNTY, ARIZONA.

DEDICATION

STATE OF ARIZONA } SS
COUNTY OF MARICOPA }

KNOW ALL MEN BY THESE PRESENTS

THAT GSA AVONDALE, LLC A CALIFORNIA LIMITED LIABILITY COMPANY, AS OWNER, HAS SUBDIVIDED UNDER THE NAME OF "GUARDIAN STORAGE", LOCATED IN SECTION 36, TOWNSHIP 2 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, A PORTION OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 2 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AND HAS CAUSED THE PRESENT MAP TO BE PREPARED, DRAWN, AND RECORDED IN BOOK 115 OF ROAD MAPS, PAGE 10, RECORDS OF MARICOPA COUNTY, ARIZONA, AND HAS CAUSED THE PRESENT MAP TO BE SET AT COMPLETION OF MASS GRADING. THE DIMENSIONS OF ALL LOTS, EASEMENTS, AND STREETS CONSTITUTING THE SAME, AND THAT EACH LOT, AND STREET SHALL BE KNOWN BY THE NUMBER, AND NAME GIVEN EACH RESPECTIVELY.

THE OWNERS, AS LISTED ABOVE, HEREBY DEDICATES IN FEE ALL RIGHT TITLE AND INTEREST TO THE CITY FOR USE AS SUCH, THE STREET RIGHT OF WAY AS SHOWN ON SAID MAP AND INCLUDED IN THE ABOVE DESCRIBED PREMISES. EASEMENTS ARE HEREBY DEDICATED TO THE CITY FOR THE PURPOSES SHOWN HEREON.

IN WITNESS WHEREOF: GSA AVONDALE, LLC A CALIFORNIA LIMITED LIABILITY COMPANY, AS LEGAL OWNER, HAS HEREUNTO

AFFIXED ITS SIGNATURE THIS _____ DAY OF _____, 20____.

BY: _____

ITS: _____

ACKNOWLEDGEMENT

STATE OF _____ } SS
COUNTY OF _____ }

ON THIS _____ DAY OF _____, 20____, BEFORE ME THE UNDERSIGNED NOTARY PUBLIC PERSONALLY APPEARED, _____ WHO ACKNOWLEDGED SELF TO BE AN OFFICER OF GSA AVONDALE, LLC A CALIFORNIA LIMITED LIABILITY COMPANY AND THAT HE, AS SUCH OFFICER OF DUTY AUTHORIZED TO DO, HEREBY EXECUTED THE FOREGOING INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED BY SIGNING AS SUCH OFFICER.

IN WITNESS WHEREOF, I HEREBY SET BY HAND AND OFFICIAL SEAL.

NOTARY PUBLIC _____

MY COMMISSION EXPIRES _____

LEGAL DESCRIPTION - PARENT PARCEL

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF MARICOPA, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

THE WEST 330 FEET OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 2 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA;

EXCLUDING THE FOLLOWING PORTION OF THE ABOVE PROPERTY WHICH WAS PREVIOUSLY SOLD:

A CERTAIN PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 2 NORTH, RANGE 1 WEST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE BRASS CAP THAT MARKS THE SOUTH QUARTER CORNER OF SECTION 36 AS DESCRIBED IN BOOK 10 OF MAPS, PAGE 7, MARICOPA COUNTY RECORDER, (LATER CORRECTED AND RECORDED IN BOOK 115 OF MAPS, PAGE 10, MARICOPA COUNTY RECORDER); FROM WHENCE THE BRASS CAP THAT MARKS THE SOUTHEAST CORNER, OF SAID SECTION 36 BEARS NORTH 00 DEGREES 52 MINUTES 55 SECONDS EAST, 200+29 FEET DISTANT;

THENCE NORTH 00 DEGREES 52 MINUTES 45 SECONDS EAST ALONG THE NORTH-SOUTH QUARTER SECTION LINE OF SAID SECTION 36, A DISTANCE OF 459.00 FEET TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 36, MARICOPA COUNTY RECORDER AND THE TRUE POINT OF BEGINNING;

THENCE CONTINUING NORTH 00 DEGREES 52 MINUTES 45 SECONDS EAST ALONG SAID NORTH-SOUTH QUARTER SECTION LINE, A DISTANCE OF 459.00 FEET TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 36;

THENCE NORTH 89 DEGREES 51 MINUTES 33 SECONDS EAST ALONG THE NORTH LINE THEREOF, A DISTANCE OF 330.00 FEET TO THE NORTHEAST CORNER OF THE WEST 330 FEET OF THE SOUTHWEST QUARTER OF SECTION 36;

THENCE SOUTH 00 DEGREES 49 MINUTES 45 SECONDS EAST ALONG THE EAST LINE THEREOF WHICH IS COMMON WITH THE WEST LINE OF THOSE CERTAIN PARCELS OF LAND RECORDED IN DOCKET 14020, PAGE 535, AND RECORDED IN DOCKET 14020, PAGE 536, MARICOPA COUNTY RECORDER, A DISTANCE OF 455.59 FEET TO A POINT ON THE NORTH LINE OF SAID SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT RIGHT OF WAY EASEMENT;

THENCE SOUTH 89 DEGREES 15 MINUTES 55 SECONDS WEST ALONG SAID RIGHT OF WAY LINE, A DISTANCE OF 330.08 FEET TO THE TRUE POINT OF BEGINNING;

EXCEPT THAT PORTION DESCRIBED IN RECORDING NO. 2005-0018398, MARICOPA COUNTY, ARIZONA; AND

EXCEPT THE SOUTH 40 FEET THEREOF, WHICH WAS QUIT CLAIMED TO MARICOPA COUNTY, ARIZONA IN BOOK 10 OF ROAD MAPS, PAGE 7 AND AMENDED IN BOOK 115 OF ROAD MAPS, PAGE 10, RECORDS OF MARICOPA COUNTY, ARIZONA.

APN: 501-74-001J

LEGEND

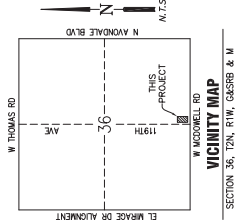
- FOUND BRASS CAP OR AS NOTED.
- FOUND 1/2" REBAR AT PROPERTY CORNER OR AS NOTED
- SET 1/2" IRON BAR & CAP, L.S. 25590 OR AS NOTED.
- NOTED, TO BE SET AT COMPLETION OF MASS GRADING
- PROPERTY LINE LOT CORNER SET 1/2" WITH CAP
- RLS25900 (UNLESS OTHERWISE NOTED)
- SUBDIVISION BOUNDARY LINE
- PUBLIC UTILITY EASEMENT
- RIGHT-OF-WAY

OWNER

GSA AVONDALE, LLC
2942 BUSINESS CENTER DRIVE, SUITE 100
BROCK, ARIZONA 85302
(602) 981-8852
BROCK DANIELSON

PROPERTY ADDRESS

13501 WEST MCDOWELL RD
AVONDALE, ARIZONA 85302



BENCHMARK

CITY OF AVONDALE, BRASS CAP IN HAND HOLE AT 113TH AVE & MCDOWELL RD, #113, EL. 1005.65

NOTES

1. SRP HAS RECORDED A LOCATION NOTICE OF IRRIGATION FACILITIES FOR THIS PROPERTY AS RECORDED IN MCR 2020-0680739.

BASIS OF BEARING

1. THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 36, TOWNSHIP 2 NORTH, RANGE 1 WEST, BEARING N89°15' 59"E.

APPROVALS AND ACCEPTANCE OF DEDICATION

PLAT APPROVED AND DEDICATED RIGHT-OF-WAY AND EASEMENTS ACCEPTED BY THE CITY COUNCIL OF THE CITY OF AVONDALE, ARIZONA.

THIS _____ DAY OF _____, 20____.

MAYOR _____ DATE _____

ATTEST, CITY CLERK _____ DATE _____

CITY ENGINEER _____ DATE _____

SURVEYOR'S CERTIFICATION:

THIS IS TO CERTIFY THAT THIS SURVEY AND SUBDIVISION OF THE PREMISES DESCRIBED AND PLATTED HEREON WAS MADE UNDER MY DIRECTION DURING THE MONTH OF MAY, 2020. THAT THE PLAT IS CORRECT AND ACCURATE. THAT THE MONUMENTS SHOWN HEREON HAVE BEEN LOCATED OR ESTABLISHED AS DESCRIBED AND THE LOT CORNERS PERMANENTLY SET.

REGISTERED LAND SURVEYOR _____ DATE _____



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TWO WORKING DAYS BEFORE YOU DO.
CALL FOR THE BLUE STAKES
1-800-782-5348
BLUE STAKE CENTER

RELEASE	
DATE	

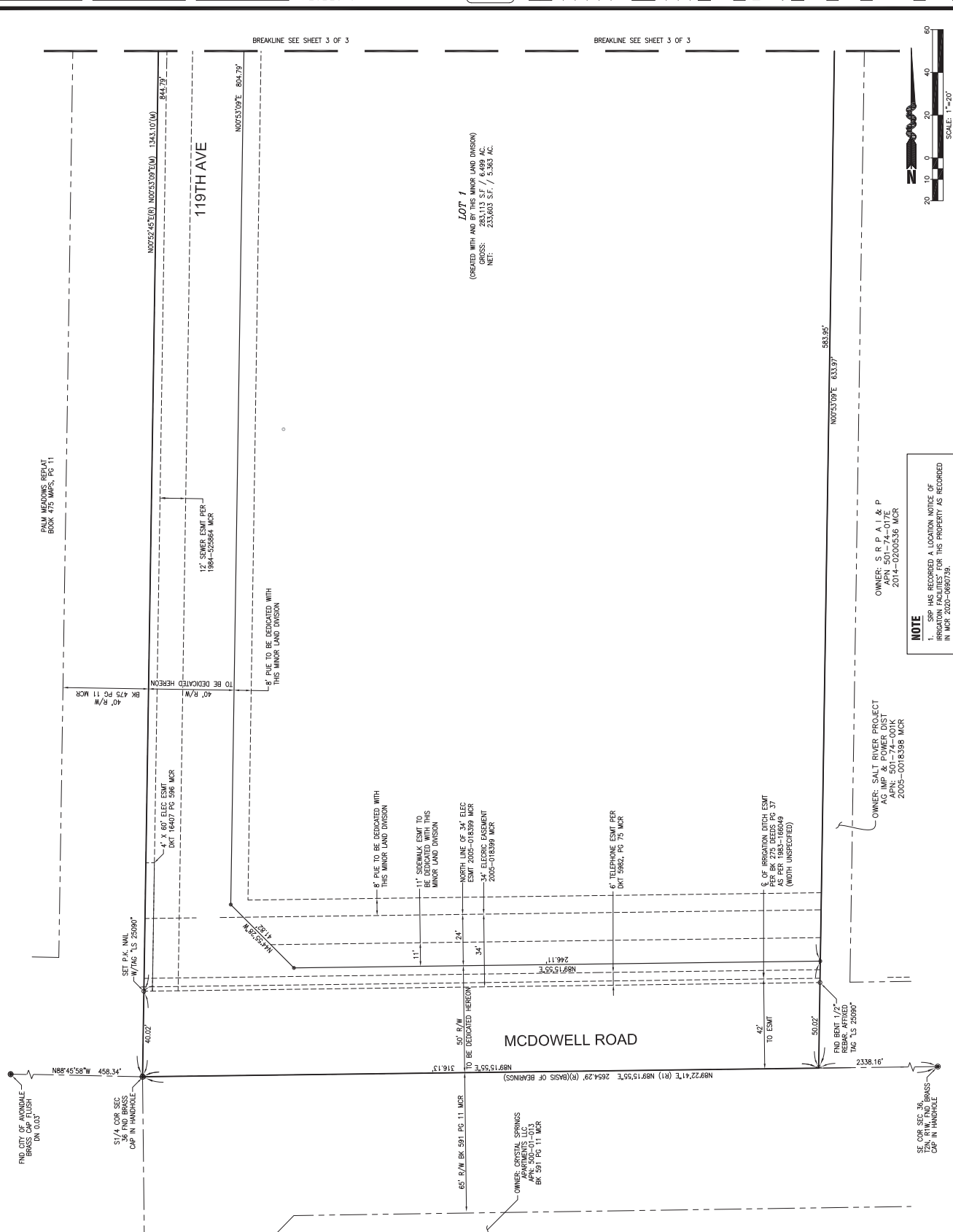
REVISIONS	NO.	DATE
	1	
	2	
	3	

PROJECT NAME	GUARDIAN STORAGE MLD
PROJECT ADDRESS	MCDOWELL ROAD & 119TH AVENUE AVONDALE, AZ 85392

PROJECT AREA	MCDOWELL RD & 119TH AVE
RELX JOB NUMBER	333
IN DOCKET	TDS
CHECKED BY:	MUT

SHEET TITLE	MINOR LAND DIV FOR A PORTION OF THE SE 1/4 OF SEC 36 T2N, R1W, G. & S.R.B. & M.
SHEET	1 OF 3

COVER	1 OF 3
-------	--------



Signature

Professional Seal

Helix Engineering, LLC

Engineering / Surveying / Consulting

3240 E Union Hills

Phoenix, AZ 85006

Phone: 602-788-2616

Fax: 602-782-5348

www.helix.com

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LOT 1
(CREATED WITH AND BY THIS MINOR LAND DIVISION)
GROSS: 283,113 S.F. / 6.499 AC.
NET: 233,603 S.F. / 5.363 AC.

RELEASE	
DATE	

REVISIONS	NO.	DATE

PROJECT NAME
GUARDIAN STORAGE MLD

PROJECT ADDRESS
MCDOWELL ROAD &
119TH AVENUE
AVONDALE, AZ 85392

PROJECT AREA
MCDOWELL RD & 119TH AVE

SHEET TITLE
333

HELIX JOB NUMBER
333

IN FORCE
TDS

CHECKED BY
MUT

MINOR LAND DIV FOR A PORTION
OF THE SE 1/4 OF SEC 36
T2N, R1W, G. & S.R.B. & M.

SHEET
2 OF 3

DATE
10/15/20

PLAT SCALE: 1" = 20'

CITY COUNCIL REPORT

SUBJECT: Resolution 1078-1120 - Grant Acceptance from the Governor's Office of Highway Safety for "Buckle Up Arizona...It's the Law!" Enforcement Campaign

MEETING DATE: 11/16/2020

TO: Mayor and Council

FROM: Dale Nannenga, Chief of Police (623) 333-7207

THROUGH: Gina Montes, Assistant City Manager, (623) 333-1012

STRATEGIC PLAN:

PURPOSE:

City Council will consider a request to adopt Resolution 1078-1120 authorizing the acceptance of a grant provided by the Governor's Office of Highway Safety (GOHS) in the amount of \$3,000, which will support the Police Department's funding of Arizona's safety belt and child passenger safety laws through overtime expenses and authorize the Mayor, the City Attorney and the City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

The Avondale Police Department is an active participant in the education and enforcement of Arizona's safety belt and child passenger laws and recognizes the necessity and responsibility to participate in these events focusing on such. The Avondale Police Department plans to participate in this year's Buckle Up Arizona campaign, which is part of the national "Click it or Ticket" campaign, from November 16, 2020 through November 29, 2020. The funding will be used to conduct dedicated safety belt and child passenger enforcement and education within the City of Avondale

DISCUSSION:

The "Buckle Up Arizona...It's the Law!" campaign is crucial in educating, enforcing, and preventing drivers in the valley from violating Arizona's safety belt and child passenger safety laws. Participation in this campaign is valuable to city staff and the valley. Prior year funding has been used to conduct dedicated safety belt and child passenger safety enforcement within Avondale. This funding would allow for the Avondale Police Department to use its resources to the fullest, extending safety belt and child passenger safety coverage from November 16, 2020 through November 29, 2020.

This Agreement shall become effective on November 16, 2020 and shall terminate on November 29, 2020.

BUDGET IMPACT:

Staff is requesting authorization for the acceptance of Grant Funds for \$3,000 to provide overtime costs associated with the "Buckle Up Arizona...It's the Law!" campaign. There are no match requirements for this Grant. Federal funds will support personnel services (overtime) expenses to enhance safety belt and child passenger safety laws throughout the City of Avondale.

RECOMMENDATION:

Staff recommends that the City Council adopt a resolution authorizing Avondale's acceptance of a grant in the amount of \$3,000 for the Avondale Police Departments "Buckle Up Arizona...It's the Law!" campaign through the Governor's Office of Highway Safety Grant Program.

Contact person for document distribution:

RESOLUTION NO. 1078-1120

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AUTHORIZING THE ACCEPTANCE OF A GRANT FROM THE GOVERNOR'S OFFICE OF HIGHWAY SAFETY FOR SAFETY BELT AND CHILD PASSENGER SAFETY LAWS ENFORCEMENT.

WHEREAS, the Governor's Office of Highway Safety ("GOHS") has awarded the City of Avondale (the "City") a grant in the amount of \$3,000.00 for project funding of a two-week enforcement campaign focusing on enforcing Arizona's safety belt and child passenger safety laws (the "Grant"); and

WHEREAS, the Mayor and Council of the City of Avondale ("City Council") desire to accept the Grant funds.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The City Council hereby authorizes (i) the acceptance of the Grant in an amount not to exceed \$3,000.00 and (ii) the execution of the GOHS Highway Safety Contract with GOHS relating to the acceptance and administration of the Grant funds (the "Agreement") in substantially the form and substance attached hereto as Exhibit A and incorporated herein by reference.

SECTION 3. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute and submit the Agreement and any other necessary or desirable instruments in connection with the Grant and to take all steps necessary to carry out the purpose and intent of this Resolution.

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona,
November 16, 2020.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1078-1120

[Agreement]

See following pages.

HIGHWAY SAFETY CONTRACT

This page, the Project Directors Manual and attached hereto and incorporated herein by reference, constitute the entire contract between the parties hereto unless the Governor's Highway Safety Representative authorizes deviation in writing.

FAIN: 69A3752030000405bAZL		Assistance Listings: 20.616
1. APPLICANT AGENCY Avondale Police Department	GOHS CONTRACT NUMBER 2020-CIOT-001	
ADDRESS 11485 W. Civic Center Dr., Avondale, AZ 85323	PROGRAM AREA 405b	
2. GOVERNMENTAL UNIT City of Avondale	AGENCY CONTACT Jonathon Martin	
ADDRESS 11465 W. Civic Center Dr., Avondale, AZ 85323	3. PROJECT TITLE Buckle Up Arizona Enforcement Campaign (CIOT)	
4. GUIDELINES 405b – Occupant Protection (OP)		
5. BRIEFLY STATE PURPOSE OF PROJECT: Federal 405b funds will support Personnel Services (Overtime) and Employee Related Expenses to participate in the two-week Buckle Up Arizona Enforcement Campaign from November 16, 2020 through November 29, 2020 to enhance seat belt and child safety seat usage throughout the City of Avondale.		
6. BUDGET COST CATEGORY	Project Period FY 2018	
I. Personnel Services	\$2,308.00	
II. Employee Related Expenses (30%)	\$692.00	
III. Professional and Outside Services	\$0.00	
IV. Travel In-State	\$0.00	
V. Travel Out-of-State	\$0.00	
VI. Materials and Supplies	\$0.00	
VII. Capital Outlay	\$0.00	
TOTAL ESTIMATED COSTS	\$3,000.00	
PROJECT PERIOD	FROM: Effective Date (<i>Date of GOHS Director Signature</i>)	TO: 11-29-2020
CURRENT GRANT PERIOD	FROM: 11-16-2020	TO: 11-29-2020
TOTAL FEDERAL FUNDS OBLIGATED THIS FY: \$3,000.00		
A political subdivision or state agency that is mandated to provide a certified resolution or ordinance authorizing entry into this contract must do so prior to incurring any expenditures. Failure to do so may result in termination of the awarded contract.		

PROBLEM IDENTIFICATION AND RESOLUTION:

Motor vehicle collisions continue to be the leading cause of death, injury and property damage in Arizona and the United States. A number of factors contribute to the risk of collision including; vehicle design, speed of operation, road design, road environment, driver skill and/or impairment and driver behavior. The human factor that has been consistently identified in reducing collisions and minimizing their effects is consistent usage of seat belts and child safety seats.

According to the Arizona Motor Vehicle Crash Facts, there were 911 vehicle occupants (driver/passenger) fatalities in 2019, of which 300 (**33%**) were unrestrained. Children under the age of five accounted for 7 passenger fatalities in 2019, of which 1 (**14%**) were unrestrained.

In 2019, seat belt usage in Arizona reached **90.6%**, an increase of **4.7%** since 2018. The noted increase is attributed partly to the Arizona Governor's Office of Highway Safety (GOHS) funded statewide enforcement campaigns, enhanced earned media, and extensive outreach support of educational and public awareness activities.

The summary of the 2015 through 2019 Arizona Seat Belt Use Survey results are presented in the following table:

GROUPS OBSERVED	2015	2016	2017	2018	2019
Total Front Seat Occupants Seat Belt Use	86.6%	88.0%	86.1%	85.9%	90.6%
All Drivers Seat Belt Use	87.1%	88.2%	86.1%	88.4%	92.1%
Front Seat Passenger Seat Belt Use	84.8%	87.3%	86.0%	90.8%	95.4%
Children Safety Restraint Use	N/A	N/A	N/A	N/A	N/A

Seat belts and child safety seats have proven to significantly reduce the chance of death and injuries of passengers in vehicles. According to the Center for Disease Control and Prevention, seat belt use reduces serious crash-related injuries and deaths by about **50%**. The proper and consistent use of Child Safety Seats has been found to reduce the risk of fatal injury by **71%** for infants (younger than 1-year-old) and by **54%** for toddlers (1 to 4 years old) in passenger cars. Properly installed booster seats reduce the risk for serious injury by **45%** among children ages 4 to 8-year-old.

Numerous factors affect the occupant protection enforcement program in Arizona:

- Arizona presently conducts enforcement under a secondary seat belt law and a primary child safety seat law
- Arizona currently came near the national average seat belt usage rate of 90.7% in 2019
- Arizona continues to develop and expand a highly visible Occupant Protection Enforcement Program

Selective Traffic Enforcement Programs (STEP) is a proven approach that can be used to quickly change motorists' behavior in a short period of time. This particular STEP is a widely-publicized enforcement campaign focused on changing a particular behavior among motorists.

As part of the National Click It or Ticket Campaign, Arizona has developed and promoted the **"Buckle Up Arizona... It's the Law!"** program, which has been an effective enforcement message in a secondary law state.

This program unites state-wide law enforcement agencies to engage in aggressive traffic enforcement with a **"zero tolerance"** approach to seat belt and child safety seat violations. The goal is to sustain and increase seatbelt usage rates in the designated geographical areas of the participating agencies.

The mobilizations begin with earned media generated at the State and local level followed by a high visibility enforcement campaign lasting two weeks. Paid media phases in approximately one week later followed by high-visibility enforcement lasting for two weeks. Additional earned media conducted through the GOHS has been paramount in enhancing occupant protection message.

OVERVIEW OF PROGRAM:

Federal 405b funding will support Personnel Services (Overtime) and Employee Related Expenses to participate in the national two-week **"Buckle Up Arizona"** enforcement campaign from **November 16, 2020 through November 29, 2020**.

The purpose of the campaign is for the Avondale Police Department to engage in aggressive traffic enforcement with a **"zero tolerance"** approach to seat belt and child safety seat violations. The goal is to sustain seatbelt usage rates in the designated geographical areas of the participating agencies.

The campaign will be supported by earned media to reinforce the occupant protection message. The Avondale Police Department will participate in other educational and public awareness activities to support the enforcement component.

Occupant protection usage surveys will be conducted subsequent to the enforcement campaign by an independent research organization to analyze the effectiveness of the program. Results will be provided to the respective law enforcement agency upon receipt of the completed study.

GOALS/OBJECTIVES:

The Avondale Police Department is required to complete the following goals and objectives under the guidelines of the contract:

- Provide intensive traffic enforcement during designated period with zero tolerance for safety belt/child restraint laws
- Heighten enforcement visibility through news media contacts, safety belt/child seat inspections, and other public awareness and educational activities
- The Avondale Police Department shall provide a written press release announcing the enforcement program to the local media affecting their respective areas (a copy of this press release shall be sent to the GOHS Director prior to the initiation of the enforcement campaign)

- The Avondale Police Department is additionally encouraged to invite media representatives for live interviews and ride-a-longs during the enforcement activities
- The Avondale Police Department shall develop and participate in some form of enforcement activity, such as saturation patrols, multi-agency enforcement task forces etc. related to respective areas with low restraint usage.
- The Avondale Police Department shall submit a Final Enforcement Summary Report to GOHS no later than **December 4, 2020**.
- The Avondale Police Department shall a Final Statement of Accomplishments Report including press releases, news stories, educational/public awareness activities, enforcement statistics and quality photographs by **December 11, 2020**.
- The Avondale Police Department shall provide the names of top enforcement performers for possible future recognition by GOHS and their respective agency

MEDIA RELEASE

To prepare complete press release information for media (television, radio, print and on-line) during each campaign period including a main press release, schedule of events, departmental plans and relevant data. **The material will emphasize the campaign's purpose, aggressive enforcement and the high cost of Occupant Protection in terms of money, criminal and human consequences.**

The Avondale Police Department will maintain responsibility for **reporting sustained enforcement** activity in a timely manner. Additionally, it is the responsibility of the Avondale Police Department to report all holiday task force enforcement statistics to GOHS on-line at the GOHS website **no later than 10:00a.m. the morning following each day of the event.**

PURSUIT POLICY:

All law enforcement agencies receiving federal funds are encouraged to follow the guidelines established for vehicular pursuits issued by the International Association of Chiefs of Police (IACP) that are currently in effect.

METHOD OF PROCEDURE:

The Avondale Police Department will make expenditures as follows to meet the outlined Program Goals/Objectives:

Personnel Services – To support Overtime for two-week Buckle Up Arizona Enforcement Campaign from November 16, 2020 through November 29, 2020

Employee Related Expenses – To support Employee Related Expenses for Agency Overtime

PRESS RELEASE:

Agencies are required to develop and distribute a press release announcing this grant award (a copy of this press release shall be sent to the GOHS Director at the same time it is sent to the media). This press release shall include the objective and specify that the funding is from the Governor's Office of Highway Safety. A sample press release for the Buckle Up Arizona Campaign will be provided to the agency.

PROFESSIONAL AND TECHNICAL PERSONNEL:

Dale Nannenga, Chief, Avondale Police Department, shall serve as Project Director.

Jonathon Martin, Lieutenant, Avondale Police Department, shall serve as Project Administrator.

Gabriela Gallegos, Occupant Protection Coordinator, Governor's Office of Highway Safety, shall serve as Project Coordinator.

REPORT OF COSTS INCURRED (RCI):

The Project Director shall submit a Report of Costs Incurred (RCI) with supporting documentation attached, to the Governor's Office of Highway Safety within thirty (30) days of the enforcement period in correlation with the required report.

RCIs shall be typed and delivered via mail or hand delivered with appropriate supporting documentation, to the Governor's Office of Highway Safety. **Electronically submitted RCIs will not be accepted.** Expenditures submitted after the expiration date will not be reimbursed and the agency will accept fiscal responsibility.

The RCI template and instructions are available on the Governor's Office of Highway Safety website at <http://www.azgohs.gov/grant-opportunities/>. Failure to meet the reporting requirements may be cause to terminate the project.

FINAL ENFORCEMENT SUMMARY REPORT:

All participating agencies shall complete and submit total enforcement statistical data implementing the attached form no later than **December 4, 2020**, to the Governor's Office of Highway Safety.

FINAL STATEMENT OF ACCOMPLISHMENTS:

The Project Director shall complete and submit the attached Final Statement of Accomplishments Report no later than **December 11, 2020**, to the Governor's Office of Highway Safety. All agencies receiving funding are required to submit a Final Statement of Accomplishments Report. The report is a summary overview of the contracted project and is reviewed by the Governor's Office of Highway Safety project coordinator to determine the effectiveness of the project.

PROJECT MONITORING:

Highway safety grant project monitoring is used by GOHS project coordinators to track the progress of project objectives, performance measures and compliance with applicable procedures, laws, and regulations.

The process is used throughout the duration of the contracted project and serves as a continuous management tool. Project monitoring also presents an opportunity to develop partnerships, share information and provide assistance to contracted agencies. Additionally, project monitoring outlines a set of procedures for project review and documentation.

Project monitoring also serves as a management tool for:

- Detecting and preventing problems
- Helping to identify needed changes
- Identifying training or assistance needed
- Obtaining data necessary for planning, and evaluation
- Identifying exemplary projects

Types of Monitoring

Monitoring is formal and informal, financial and operational. The most common types of monitoring are:

- Ongoing contact with the contracted grantee through phone calls, e-mails, correspondence, and meetings
- On-Site and/or In-House monitoring reviews of project operations, management, and financial records and systems
- Review of project Quarterly Reports
- Review and approval of Report of Costs Incurred (RCIs)
- Desk review of other documents in the project-grant files for timely submission and completeness

Monitoring Schedule	
Total Awarded Amount:	Type of Monitoring:
Under \$50,000	Desk Review/Phone Conference
\$50,000 and over	May have an In-House GOHS Review
\$100,000+	May have an On-Site Review
Capital Outlay Greater than \$25,000 (combined)	May have an On-Site Review
Desk Review and Phone Conference	Internal review of all written documentation related to contractual project including, but not limited to the Contract, Quarterly Reports, enforcement data, financial data, e-mails, letters, notes, press releases, photographs, inventories, and other written correspondence. A phone conference call conducted during the course of the project which includes the date and time of the call, the person(s) contacted, and the results. It serves as an informational review to determine progress of programmatic/financial activities. Both the designated project administrator and fiscal contact should be present, if possible, during the phone conference. If identified financial or operational problems are present, GOHS reserves the right to bring the grantee in for an in-house meeting at GOHS. Monitoring form written by Project Coordinator, any findings, areas of improvement, concern, or recognition will be provided to the grantee.

In-House Review	Documents performance review results including project activities, reimbursement claims review, equipment purchases, approvals, and other information. Reviews applicable information related to the project(s) including, but not limited to the Contract, Quarterly Reports, enforcement data, financial data, e-mails, letters, notes, press releases, photographs, inventories, and other written correspondence. Completed at GOHS in a meeting with appropriate operational and financial personnel. Monitoring form written by Project Coordinator, any findings, areas of improvement, concern, or recognition will be provided to the grantee.
On-Site Monitoring	Documents performance review results including project activities, reimbursement claims review, equipment purchases, and other information. Reviews applicable information related to the project(s) including, but not limited to the Contract, Quarterly Reports, enforcement data, financial data, e-mails, letters, notes, press releases, photographs, inventories, and other written correspondence. Conducted on-site at the grantee's Agency with monitoring form completed on-site by Project Coordinator. Any findings, areas of improvement, concern, or recognition, will be provided to the grantee.

On-site and/or In-house monitoring for grantees of designated projects with large capital outlay purchases, personnel services, and complex projects must be completed within the second or third quarter of the fiscal year. Contracted projects displaying any problems might need on-site monitoring more than once during the fiscal year.

On-site and/or In-house monitoring includes a review and discussion of all issues related to assure the effective administration of the contracted project. The following are the most important items to review:

- Progress toward meeting goals/objectives and performance measures
- Adherence to the contract specifications, timely submission of complete and correct reports, including required documentation
- Quarterly reports
- Status of expenditures related to the outlined budget
- Accounting records
- Supporting documentation (training documentation, inventory sheets, photographs, press releases, etc.)

In addition, the designated project administrator will assure that any equipment purchased will be available for inspection and is being used for the purpose for which it was bought under the outlined contractual agreement.

Documentation

The Governor's Office of Highway Safety will retain all findings documented on the GOHS Monitoring Form in the grantee's respective federal file. Findings will be discussed with the grantee designated contract representative (project administrator, fiscal specialist) by phone and/or e-mail. All noted deficiencies will be provided to the grantee with guidance for improvement and solutions to problems. Grantees that exhibit significantly poor performance will be placed on a performance plan as outlined by the project coordinator. Grantee monitoring information will additionally provide documentation for potential funding in subsequent fiscal year grant proposal review.

PROJECT PERIOD:

The Project Period shall commence on the date the GOHS Director signs the Highway Safety Contract and terminate on November 29, 2020 of that or subsequent year as indicated on the Highway Safety Contract. Any unexpended funds remaining at the termination of the contract shall be released back to the Governor's Office of Highway Safety.

DURATION:

Contracts shall be effective on the date the Governor's Office of Highway Safety Director signs the contract and expire at the end of the project period.

If the Agency is unable to expend the funds in the time specified, the Project Director will submit notification on the Agency's letterhead and hand-deliver or submit via regular mail to the Director of the Governor's Office of Highway Safety a minimum of 90 days prior to the end of the project period.

The Agency shall address all requests to modify the contract to the Director of the Governor's Office of Highway Safety on Agency letterhead and either hand deliver or submit the request via regular mail. All requests for modification must bear the signature of the Project Director.

Failure to comply may result in cancellation of the contract. Any unexpended funds remaining at the termination of the contract shall be released back to the Governor's Office of Highway Safety.

ESTIMATED COSTS:

I.	Personnel Services (overtime)	\$2,308.00
II.	Employee Related Expenses (30%)	\$692.00
III.	Professional and Outside Services	\$0.00
IV.	Travel In-State	\$0.00
V.	Travel Out-of-State	\$0.00
VI.	Materials and Supplies	\$0.00
VII.	Capital Outlay	\$0.00

TOTAL ESTIMATED COSTS	\$3,000.00
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*Includes all applicable training, tax, freight, and advertising costs. The GOHS reserves the right to limit reimbursement of Employee Related Expenses from zero (0) to a maximum rate of 40 percent. This is the maximum ERE amount to be reimbursed. It is agreed and understood that the Avondale Police Department shall absorb any and all expenditures in excess of **\$3,000.00**.

CERTIFICATIONS AND AGREEMENTS

This CONTRACT, is made and entered into by and between the STATE OF ARIZONA, by and through the Governor's Office of Highway Safety (GOHS) hereinafter referred to as "STATE", and the agency named in this Contract, hereinafter referred to as "AGENCY".

WHEREAS, the National Highway Safety Act of 1966, as amended (23 USC §§401-404), provides Federal funds to STATE for approved highway safety projects; and

WHEREAS, STATE may make said funds available to various state, county, tribal, or municipal agencies, governments, or political subdivisions upon application and approval by STATE and the United States Department of Transportation (USDOT); and

WHEREAS, AGENCY must comply with the requirements listed herein to be eligible for Federal funds for approved highway safety projects; and

WHEREAS, AGENCY has submitted an application for Federal funds for highway safety projects;

NOW, THEREFORE, IN CONSIDERATION OF MUTUAL PROMISES AND OTHER GOODS AND VALUABLE CONSIDERATION, it is mutually agreed that AGENCY will strictly comply with the following terms and conditions and the following Federal and State Statutes, Rules, and Regulations:

I. Project Monitoring, Reports, and Inspections

- A. AGENCY agrees to fully cooperate with representatives of STATE monitoring the project, either on-site or by telephone, during the life of the Contract.
- B. AGENCY will submit Quarterly Reports (one for each three-month period of the project year) to STATE in the form and manner prescribed by STATE. Notice of the specific requirements for each report will be given in this Contract or at any time thereafter by giving thirty (30) days written notice to AGENCY by ordinary mail at the address listed on the Contract. Failure to comply with Quarterly Report requirements may result in withholding of Federal funds or termination of this Contract.
- C. AGENCY will submit a Final Report/Statement of Accomplishment at completion of the Contract to include all financial, performance, and other reports required as a condition of the grant to STATE within thirty (30) days of the completion of the Contract.
- D. Representatives authorized by STATE and the National Highway Traffic Safety Administration (NHTSA) will have the right to visit the site and inspect the work under this Contract whenever such representatives may determine such inspection is necessary.

II. Reimbursement of Eligible Expenses

- A. AGENCY's Project Director, or Finance Personnel, will submit a Report of Costs Incurred Form (RCI) to STATE each time there have been funds expended for which reimbursement is

being requested. Failure to meet this requirement may be cause to terminate the project under Section XX herein, "Termination and Abandonment".

- B. AGENCY will reimburse STATE for any ineligible or unauthorized expenses for which Federal funds have been claimed and reimbursement received, as may have been determined by a State or Federal audit.
- C. STATE will have the right to withhold any installments equal to the reimbursement received by AGENCY for prior installments which have been subsequently determined to be ineligible or unauthorized.

III. Property Agreement

- A. AGENCY will immediately notify STATE if any equipment purchased under this Contract ceases to be used in the manner as set forth by this Contract. In such event, AGENCY further agrees to either give credit to the project cost or to another active highway safety project for the residual value of such equipment in an amount to be determined by STATE or to transfer or otherwise dispose of such equipment as directed by STATE.
- B. No equipment will be conveyed, sold, salvaged, transferred, etc., without the express written approval of STATE, or unless otherwise provided elsewhere in this Contract.
- C. AGENCY will maintain or cause to be maintained for its useful life, any equipment purchased under this Contract.
- D. AGENCY will incorporate any equipment purchased under this Contract into its inventory records.
- E. AGENCY will insure any equipment purchased under this Contract for the duration of its useful life. Self-insurance meets the requirements of this section.

IV. Travel

In-State and Out-of-State Travel

In state and out-of-state travel claims will be reimbursed at rates provided by AGENCY's regulations, provided that such regulations are as restrictive as those of STATE. Where they are less restrictive, ARS §38-624 will apply.

The State must approve all out-of-state travel in writing and in advance.

V. Standard of Performance

AGENCY hereby agrees to perform all work and services herein required or set forth, and to furnish all labor, materials, and equipment, except that labor, material, and equipment as STATE agrees to furnish pursuant to this Contract.

VI. Hold Harmless Agreement

Neither party to this agreement agrees to indemnify the other party or hold harmless the other party from liability hereunder. However, if the common law or a statute provides for either a right to indemnify and/or a right to contribution to any party to this agreement then the right to pursue one or both of these remedies is preserved.

VII. Non-Assignment and Sub-Contracts

This Contract is not assignable nor may any portion of the work to be performed be subcontracted unless specifically agreed to in writing by STATE. No equipment purchased hereunder may be assigned or operated by other than AGENCY unless agreed to in writing by STATE.

VIII. Work Products and Title to Commodities and Equipment

- A. The work product and results of the project are the property of STATE, unless otherwise specified elsewhere in this Contract. All property, instruments, non-consumable materials, supplies, and the like, which are furnished or paid for by STATE under the terms of this Contract, unless otherwise provided for elsewhere in this Contract, are and remain the property of STATE and will be returned at the completion of this project upon request of STATE. The work product and results of the project will be furnished to STATE upon request, if no provision is otherwise made by this Contract.
- B. The provisions of subparagraph A apply whether or not the project contracted for herein is completed.

IX. Copyrights and Patents

Any copyrightable materials, patentable discovery, or invention produced in the course of this project may be claimed by STATE and a copyright or patent obtained by it at its expense. In the event STATE does not wish to obtain such copyright or patent, AGENCY may do so, but in any event, provision will be made by AGENCY for royalty-free, nonexclusive, nontransferable, and irrevocable licenses to be given the United States Government and STATE and its political subdivisions to use such copyrightable material, patented discoveries, or inventions in any manner they see fit. The STATE reserves the right to impose such other terms and conditions upon the use of such copyrights or patents as may be deemed in the best interest of STATE in the event AGENCY is allowed to obtain a copyright or patent.

X. "Common Rule" and OMB Circular No. A-102 (Revised)

"Common Rule" (49 CFR Part 18): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

OMB Circular No. A-102 (Revised): Grants and Cooperative Agreements with State and Local Governments

The application of USDOT "Common Rule" and Circular A-102 requires that:

AGENCY and sub-grantees will use their own procurement procedures, which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law. The most stringent purchasing requirement at each level must be met.

The Arizona Procurement Code (ARS §41-2501, et. seq.) and promulgated rules (A.A.C. Title 2, Chapter 7) are a part of this Contract as if fully set forth herein and AGENCY agrees to fully comply with these requirements for any procurement using grant monies from this Contract.

XI. Non-Discrimination

During the performance of this contract/funding agreement, the contractor/funding recipient agrees—

- A. To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time;
- B. Not to participate directly or indirectly in the discrimination prohibited by any Federal non-discrimination law or regulation, as set forth in Appendix B of 49 CFR part 21 and herein;
- C. To permit access to its books, records, accounts, other sources of information, and its facilities as required by the State highway safety office, US DOT or NHTSA;
- D. That, in event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding agreement, the State highway safety agency will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including, but not limited to, withholding payments to the contractor/funding recipient under the contract/agreement until the contractor/funding recipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part; and
- E. To insert this clause, including paragraphs A through E, in every subcontract and subagreement and in every solicitation for a subcontract or sub-agreement, that receives Federal funds under this program.
- F. If AGENCY fails or refuses to comply with its undertaking as set forth in these provisions, STATE or the USDOT may take any or all of the following actions:
 1. Cancel, terminate, or suspend, in whole or in part, the agreement, contract, or other arrangement with respect to which the failure or refusal occurred; and
 2. Refrain from extending any further Federal financial assistance to AGENCY under the Highway Safety Program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from AGENCY.

- G. Pursuant to the requirement of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794), AGENCY must operate this Highway Safety Project so that it is accessible and otherwise non-discriminatory to handicapped persons.

XII. Executive Order 2009-09

It is mutually agreed that AGENCY will comply with the terms and conditions of Executive Order 2009-09, *Non-Discrimination in Employment by Government Contractors and Subcontractors*. Executive Order 2009-09 is located in Part II of the Project Director's Manual.

XIII. Application of Hatch Act

The AGENCY will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

XIV. Minority Business Enterprises (MBE) Policy and Obligation

- A. Policy: It is the policy of the USDOT that minority business enterprises as defined in 49 CFR Part 23, will have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Contract. Consequently, the minority business enterprises requirements of 49 CFR Part 23 apply to this Contract.
- B. Obligation: The recipient or its contractor agrees to ensure that minority business enterprises, as defined in 49 CFR Part 23, have the subcontracts financed in whole or in part with Federal funds provided under this Contract. In this regard, all recipients or contractors will take all necessary and reasonable steps in accordance with 49 CFR, Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors will not discriminate on the basis of race, color, creed, sex, or national origin in the award and performance of USDOT-assigned contracts.

XV. Arbitration Clause, ARS §12-1518

Pursuant to ARS §12-1518, the parties agree to use arbitration, after exhausting applicable administrative reviews, to resolve disputes arising out of this Contract where the provisions of mandatory arbitration apply.

XVI. Inspection and Audit, ARS §35-214

Pursuant to ARS §35-214, all books, accounts, reports, files, and other records relating to this Contract will be subject at all reasonable times to inspection and audit by STATE for five (5) years after completion of this Contract. The records will be produced at the Governor's Office of Highway Safety.

XVII. Appropriation of Funds by U.S. Congress

It is agreed that in no event will this Contract be binding on any party hereto unless and until such time as funds are appropriated and authorized by the U.S. Congress and specifically allocated to

the project submitted herein and then only for the fiscal year for which such allocation is made. In the event no funds are appropriated by the U.S. Congress or no funds are allocated for the project proposed herein for subsequent fiscal years, this Contract will be null and void, except as to that portion for which funds have then been appropriated or allocated to this project, and no right of action or damages will accrue to the benefit of the parties hereto as to that portion of the Contract or project that may so become null and void.

XVIII. Continuation of Highway Safety Program

It is the intention of AGENCY to continue the Highway Safety Program identified in this Contract once Federal funding is completed. This intended continuation will be based upon cost effectiveness and an evaluation by AGENCY of the program's impact on highway safety.

XIX. E-Verify

Both parties acknowledge that immigration laws require them to register and participate with the E-Verify Program (employment verification program administered by the United States Department of Homeland Security and the Social Security Administration or any successor program) as they both employ one or more employees in this State. Both parties warrant that they have registered with and participate with E-Verify. If either party later determines that the other non-compliant party has not complied with E-Verify, it will notify the non-compliant party by certified mail of the determination and of the right to appeal the determination.

XX. Termination and Abandonment

- A. The STATE and AGENCY hereby agree to the full performance of the covenants contained herein, except that STATE reserves the right, at its discretion, to terminate or abandon any portion of the project for which services have not been already performed by AGENCY.
- B. In the event STATE abandons the services or any part of the services as herein provided, STATE will notify AGENCY in writing and within twenty-four (24) hours after receiving such notice, AGENCY will discontinue advancing the work under this Contract and proceed to close said operations under the Contract.
- C. The appraisal value of work performed by AGENCY to the date of such termination or abandonment shall be made by STATE on a basis equitable to STATE and AGENCY and a final reimbursement made to AGENCY on the basis of costs incurred. Upon termination or abandonment, AGENCY will deliver to STATE all documents, completely or partially completed, together with all unused materials supplied by STATE.
- D. AGENCY may terminate or abandon this Contract upon thirty (30) days written notice to STATE, provided there is subsequent concurrence by STATE. Termination or abandonment by AGENCY will provide that costs can be incurred against the project up to and including sixty (60) days after notice is given to STATE.

- E. Any equipment or commodities which have been purchased as a part of this Contract and which have not been consumed or reached the end of its useful life will be returned to STATE upon its written request.

XXI. Cancellation Statute

All parties are hereby put on notice that this Contract is subject to cancellation pursuant to ARS §38-511, the provisions of which are stated below.

In accordance with ARS §38-511, this Contract may be cancelled without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of the STATE, its political subdivisions or any department or agency of either, is at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter or the Contract.

The cancellation shall be effective when written notice from the Governor or Chief Executive Officer or governing body of the political subdivision is received by all other parties to the Contract unless the notice specifies a later time.

AGREEMENT OF UNDERSTANDING AND CERTIFICATION OF COMPLIANCE**Acceptance of Condition**

It is understood and agreed by the undersigned that a grant received as a result of this Contract is subject to the Highway Safety Act of 1966, as amended (23 U.S.C.A. §§401-404), ARS §28-602, and all administrative regulations governing grants established by the USDOT and STATE. It is expressly agreed that this Highway Safety Project constitutes an official part of the STATE's Highway Safety Program and that AGENCY will meet the requirements as set forth in the accompanying Project Director's Manual, which are incorporated herein and made a part of this Contract. All State and Federal Statutes, Rules, Regulations, and Circulars referenced in this Contract are a part of this document as if fully set forth herein. It is also agreed that no work will be performed nor any obligation incurred until AGENCY is notified in writing that this project has been approved by the Governor's Highway Safety Representative.

Certificate of Compliance

This is to certify that AGENCY will comply with all of the State and Federal Statutes, Rules and Regulations identified in this Contract.

Certification of Non-Duplication of Grant Funds Expenditure

This is to certify that AGENCY has no ongoing nor completed projects under contract with other Federal fund sources which duplicate or overlap any work contemplated or described in this Contract. It is further certified that any pending or proposed request for other Federal grant funds which would duplicate or overlap work described in the Contract will be revised to exclude any such duplication of grant fund expenditures. It is understood that any such duplication of Federal funds expenditures subsequently determined by audit will be subject to recovery by STATE.

Single Audit Act

If your political subdivision has had an independent audit meeting the requirements of the Single Audit Act of 1984, (31 U.S.C.A. §7501 et. seq.), please forward a copy to GOHS, Attention: Fiscal Services Officer, within thirty (30) days of the effective date of this Contract. If such audit has not been performed, please advise when it is being scheduled.

Buy America Act

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase only steel, iron, and manufactured products produced in the United States with Federal funds, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than twenty-five (25) percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification to and approved by the Secretary of Transportation.

Prohibition on Using Grant Funds to Check for Helmet Usage

The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

Certification Regarding Debarment and Suspension

- A. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1300.
- B. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- C. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.
- D. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- E. The terms *covered transaction*, *debarment*, *suspension*, *ineligible*, *lower tier*, *participant*, *person*, *primary tier*, *principal*, and *voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and Coverage sections of 2 CFR part 180. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
- F. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by NHTSA.
- G. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled Instructions for Lower Tier Certification including the Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction, provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations

for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1300.

- H. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the list of Parties Excluded from Federal Procurement and Non-procurement Programs.
- I. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- J. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, the department or agency may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

Certification Regarding Debarment, Suspension, and Other Responsibility Matter

- A. The prospective primary participant certifies to the best of its knowledge and belief, that its principal:
 - 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
 - 2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of record, making false statements, or receiving stolen property;
 - 3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - 4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

- B. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Lower Tier Certification

- A. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1300.
- B. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
- C. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- D. The terms covered transaction, debarment, suspension, ineligible, lower tier, participant, person, primary tier, principal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definition and Coverage sections of 2 CFR part 180. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
- E. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by NHTSA.
- F. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1300.
- G. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Non-procurement Programs.

- H. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- I. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, the department or agency with which this transaction originated may disallow costs, annul or terminate the transaction, issue a stop work order, debar or suspend you, or take other remedies as appropriate.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

- A. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- B. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

REIMBURSEMENT INSTRUCTIONS**1. Agency Official preparing the Report of Costs Incurred:**

Name: Melinda Tinney
Title: Accountant
Telephone Number: 623-333-2018 Fax Number: 623-333-0200
E-mail Address: mtinney@avondaleaz.gov

2. Agency's Fiscal Contact:

Name: Melinda Tinney
Title: Accountant
Telephone Number: 623-333-2018 Fax Number: 623-333-0200
E-mail Address: mtinney@avondaleaz.gov
Federal Identification Number: 86-6000233

3. REIMBURSEMENT INFORMATION:

Warrant/Check to be made payable to:

City of Avondale

Warrant/Check to be mailed to:

Avondale Police Department

(Agency)

11485 W Civic Center Dr

(Address)

Avondale, AZ 85323

(City, State, Zip Code)

4. DUNS Number:

00-248-6884

(DUNS #)

11465 W Civic Center Dr Avondale 85323

(Registered Address & Zip Code)

Lobbying Restrictions**Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The undersigned will require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients will certify and disclose accordingly.
- D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 USC §1352. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature of Project Director:

Dale Nannenga, Chief
Avondale Police Department


10/30/2020 623-333-7207

Date

Telephone

*Signature of Authorized Official of
Governmental Unit:*

Charles A. Montoya, City Manager
City of Avondale

Date

Telephone

CITY COUNCIL REPORT

SUBJECT: Resolution 1079-1120 - Grant Acceptance from the Governor's Office of Highway Safety for Occupant Protection Awareness

MEETING DATE: 11/16/2020

TO: Mayor and Council

FROM: Jeff Case, Fire Chief, (623) 333-6100

THROUGH: Gina Montes, Assistant City Manager, (623) 333-1012

STRATEGIC PLAN:

PURPOSE:

City Council will consider a request to adopt Resolution 1079-1120 authorizing the acceptance of a grant provided by the Governor's Office of Highway Safety (GOHS) in the amount of \$10,494 for project funding of occupant protection education and awareness and the purchase of child safety seats and pool noodles throughout the City and authorize the Mayor, the City Manager, the City Attorney and the City Clerk to execute the necessary documents. The Council will take appropriate action.

BACKGROUND:

The Fire department has previously relied on partnerships with non-profit organizations to receive and distribute car seats. The safety focus of the nonprofit recently changed, and it does not support vehicle occupant safety. While the City of Avondale doesn't have such staggering numbers of unrestrained children, the City does have a large segment of the population that is unaware of the dangers to improperly restrained children and doesn't have the means to properly protect their children.

The mission of Avondale Fire and Medical is to protect and save life and property with the highest degree of safety, customer service, pride and professionalism. The department would like to provide the citizens with much needed safety resources by distributing child restraints to those in need and by conducting public education campaigns to ensure that the message is being received by those who need it most.

DISCUSSION:

This grant funding will support Personnel Services (Overtime), Employee Related Expenses, and Materials and Supplies: Child Safety Seats, Pool Noodles to enhance Occupant Protection Education and Awareness throughout the City of Avondale. Avondale Fire and Medical will be providing occupant protection safety education, distributing child restraints and occupant protection safety brochures at various public events and at child restraint inspections and classes. The goal is to educate the public on proper restraint use to decrease child passenger injuries and deaths and be a community resource for those whose financial situation might prevent them from keeping their children safe.

BUDGET IMPACT:

Staff is requesting authorization for the acceptance of Grant Funds for \$10,494. There are no match requirements for this Grant. The Federal funds will support Personnel Services (Overtime), Employee Related Expenses, and Materials and Supplies: Child Safety Seats, Pool Noodles to enhance Occupant Protection Education and Awareness throughout the City of Avondale.

RECOMMENDATION:

Staff recommends City Council adopt Resolution 1079-1120 authorizing the acceptance of a grant provided by the Governor's Office of Highway Safety (GOHS) in the amount of \$10,494 for project funding of occupant protection education and awareness and the purchase of child safety seats and pool noodles throughout the City and authorize the Mayor, the City Manager, the City Clerk and the City Attorney to execute the necessary documents in connection with the Grant.

Contact person for document distribution:

RESOLUTION NO. 1079-1120

A RESOLUTION OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AUTHORIZING THE ACCEPTANCE OF A GRANT FROM THE GOVERNOR'S OFFICE OF HIGHWAY SAFETY FOR OCCUPANT PROTECTION AWARENESS AND RELATED MATERIALS AND SUPPLIES.

WHEREAS, the Governor's Office of Highway Safety ("GOHS") has awarded the City of Avondale (the "City") a grant in the amount of \$10,494.00 for project funding of occupant protection education and awareness and the purchase of child safety seats and pool noodles throughout the City (the "Grant"); and

WHEREAS, the Mayor and Council of the City of Avondale ("City Council") desire to accept the Grant funds.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. The City Council hereby authorizes (i) the acceptance of the Grant in an amount not to exceed \$10,494.00 and (ii) the execution of the GOHS Highway Safety Contract with GOHS relating to the acceptance and administration of the Grant funds (the "Agreement") in substantially the form and substance attached hereto as Exhibit A and incorporated herein by reference.

SECTION 3. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to execute and submit the Agreement and any other necessary or desirable instruments in connection with the Grant and to take all steps necessary to carry out the purpose and intent of this Resolution.

[SIGNATURES ON FOLLOWING PAGE]

PASSED AND ADOPTED by the Council of the City of Avondale, Arizona,
November 16, 2020.

Kenneth N. Weise, Mayor

ATTEST:

Marcella Carrillo, City Clerk

APPROVED AS TO FORM:

Nicholle Harris, City Attorney

EXHIBIT A
TO
RESOLUTION NO. 1079-1120

[Agreement]

See following pages.

GOVERNOR'S OFFICE OF
HIGHWAY SAFETY

STATE OF ARIZONA

HIGHWAY SAFETY CONTRACT

This page, the Project Director's Manual and attached hereto and incorporated herein by reference, constitute the entire Contract between the parties hereto unless the Governor's Highway Safety Representative authorizes deviation in writing.

FAIN: 69A37521300004020AZ0

Assistance Listings: 20.600

1. APPLICANT AGENCY Avondale Fire and Medical	GOHS CONTRACT NUMBER: 2021-OP-002
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ADDRESS
11465 W. Civic Center Dr., Avondale, AZ 85323

PROGRAM AREA:
402-OP

2. GOVERNMENTAL UNIT City of Avondale	AGENCY CONTACT: Susan Anglin
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ADDRESS
11465 W. Civic Center Dr., Avondale, AZ 85323

3. PROJECT TITLE:
Occupant Protection Awareness and Related
Materials and Supplies- Child Safety Seats,
Pool Noodles

4. GUIDELINES: 402–Occupant Protection (OP)	
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5. BRIEFLY STATE PURPOSE OF PROJECT:
Federal 402 funds will support Personnel Services (Overtime), Employee Related Expenses, and Materials and Supplies: Child Safety Seats, Pool Noodles to enhance Occupant Protection Education and Awareness throughout the City of Avondale.

6. BUDGET COST CATEGORY	Project Period FFY 2021
I. Personnel Services	\$517.00
II. Employee Related Expenses (19.73%)	\$102.00
III. Professional and Outside Services	\$0.00
IV. Travel In-State	\$0.00
V. Travel Out-of-State	\$0.00
VI. Materials and Supplies	\$9,875.00
VII. Capital Outlay	\$0.00
TOTAL ESTIMATED COSTS	\$10,494.00

PROJECT PERIOD	FROM: Effective Date (Date of GOHS Director Signature)	TO: 09-30-2021
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CURRENT GRANT PERIOD	FROM: 10-01-2020	TO: 09-30-2021
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TOTAL FEDERAL FUNDS OBLIGATED THIS FFY: \$10,494.00

A political subdivision or State agency that is mandated to provide a certified resolution or ordinance authorizing entry into this Contract must do so prior to incurring any expenditures. Failure to do so may result in termination of the awarded Contract.

PROBLEM IDENTIFICATION AND RESOLUTION:**Agency Background:**

Organization Size: 535

Total Population in city/town or county served: 85,000

County Served: Maricopa County

Agency Problem/Attempts to Solve Problem:

The department has previously relied on partnerships with non-profit organizations to receive and distribute car seats. The safety focus of the nonprofit recently changed, and it does not support vehicle occupant safety. However, Avondale's population is 85,835 (2018 Census), which shows an increase of 9% since the 2010 Census. Census data reveals that a full 16.3 % of the total Avondale population live below the poverty line. While the City of Avondale doesn't have such staggering numbers of unrestrained children, the City does have a large segment of the population that is unaware of the dangers to improperly restrained children and doesn't have the means to properly protect their children.

The mission of Avondale Fire and Medical is to protect and save life and property with the highest degree of safety, customer service, pride and professionalism. AF&M would like to provide the citizens with much needed safety resources by distributing child restraints to those in need and by conducting public education campaigns to ensure that the message is being received by those who need it most.

Agency Funding:

Federal 402 funds will support Personnel Services (Overtime), Employee Related Expenses, and Materials and Supplies: Child Safety Seats, Pool Noodles to enhance Occupant Protection Education and Awareness throughout the City of Avondale.

How Agency Will Solve Problem With Funding:

Avondale Fire and Medical will be providing occupant protection safety education, distributing child restraints and occupant protection safety brochures at various public events and at child restraint inspections and classes. The goal is to educate the public on proper restraint use to decrease child passenger injuries and deaths and be a community resource for those whose financial situation might prevent them from keeping their children safe.

PROJECT MEASURES:**Contract Objectives:**

1. Avondale Fire & Medical and Avondale Care 1st Resource Center will host one public child restraint outreach/educational event each quarter during FFY 2021.
2. Avondale Fire & Medical and Avondale Care 1st Resource Center will participate in two public child restraint check events to promote occupant safety during the grant performance period .
3. Avondale Fire & Medical and Avondale Care 1st Resource Center will distribute the purchased child restraints at outreach/educational events during the performance period of this grant.

GOALS/OBJECTIVES:

Federal 402 funds will support Personnel Services (Overtime), Employee Related Expenses, and Materials and Supplies: Child Safety Seats, Pool Noodles to enhance Occupant Protection Education and Awareness throughout the City of Avondale.

Expenditures of funding pertaining to the OP/Occupant Protection Program including Personnel Services and ERE, Materials and Supplies, Capital Equipment, and/or Travel In and Out-of-State shall comply with the Occupant Protection Program goals provided by the Arizona Governor's Office of Highway Safety. The Occupant Protection Program goal is to improve the use of seatbelts and child safety seats to reduce the number of fatalities and injuries due to vehicular crashes throughout the State of Arizona.

MEDIA RELEASE:

To prepare complete press release information for media (television, radio, print, and on-line) during each campaign period including a main press release, schedule of events, departmental plans, and relevant data. The material will emphasize the campaign's purpose, aggressive enforcement, and the high cost of Occupant Protection in terms of money, criminal, and human consequences.

PLEASE NOTE: Failure to submit Quarterly Reports, and/or Report of Costs Incurred (RCIs) timely and correctly may delay reimbursement for expenditures to your Agency.

METHOD OF PROCEDURE:

The Avondale Fire and Medical will make expenditures, as follows, to meet the outlined Program Goals/Objectives:

Personnel Services - To support Overtime for Occupant Protection Activities

Employee Related Expenses - To support Employee Related Expenses for Agency Overtime

Materials and Supplies - To purchase/procure the following Materials and Supplies for Occupant Protection Activities: Child Safety Seats, Pool Noodles

PRESS RELEASE:

Agencies are **required** to develop and distribute a press release announcing this grant award **upon receipt** of the executed Contract. A copy of this press release shall be sent to the GOHS Director for approval prior to being sent to the media. This press release shall include the objective and specify that the funding is from the Governor's Office of Highway Safety.

METHOD OF PROCUREMENT:

The application of 2 CFR Part 200 "Procurement Standards" requires that:

Grantees and sub-grantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided the procurement procedures conform to applicable Federal laws and standards.

The most stringent purchasing requirement at each level must be met. If the Agency does not have a procurement process, the Agency may use the State procurement process.

A clear audit trail must be established to determine costs charged against this Contract. Substantiation of costs shall, where possible, be made utilizing the Avondale Fire and Medical documentation consisting of, but not limited to, copies of time sheets, purchase orders, copies of invoices, and proof of payment.

The Agency shall retain copies of all documentation in the project file.

State Contract:

Procurement may be made using an open State contract award. Documents submitted to substantiate purchases using an open State contract must bear the contract number.

PROJECT EVALUATION:

This project shall be administratively evaluated to ensure the objectives have been met.

Quarterly Report

The purpose of the Quarterly Report is to provide information on contracted grant activities conducted at the conclusion of each active quarter. The information provided is used to review progress of the funded project and the successfulness in meeting outlined goals and objectives. The information, photos, highlights, obstacles, and mandatory statistical data provided in this report are analyzed by the assigned Project Coordinator. It is critical the report contains the following information:

- **Original signatures on all Quarterly Reports and RCIs**
 - **All Quarterly Reports and RCIs shall include the signature of the Project Director unless prior authorization for another is on file with GOHS.**

Report Schedule

Reporting Period	Due Date
1st Quarterly Report and RCI (October 1 to December 31, 2020)	January 30, 2021
2nd Quarterly Report and RCI (January 1 to March 31, 2021)	April 20, 2021
3rd Quarterly Report and RCI (April 1 to June 30, 2021)	July 20, 2021
4th Quarterly Report and RCI (July 1 to September 30, 2021)	October 15, 2021
Final Statement of Accomplishments	October 15, 2021

The Quarterly Report **shall be completed on the form available on-line and can be submitted by email** to the Governor's Office of Highway Safety.

NOTE: IT IS REQUIRED THAT ALL LAW ENFORCEMENT AGENCIES MUST ENTER STATISTICAL AND ENFORCEMENT ACTIVITY INTO THE ON-LINE GOHS DUI REPORTING SYSTEM, IN ADDITION TO SUBMITTING THE QUARTERLY ENFORCEMENT REPORT.

Final Statement of Accomplishments

The Project Director shall submit a Final Statement of Accomplishments Report to the GOHS **no later than fifteen (15) days after the conclusion of each Federal Fiscal Year (September 30th)**. All agencies receiving funding are required to submit a Final Statement of Accomplishments Report.

Note: Failure to comply with the outlined GOHS reporting requirements may result in withholding of Federal funds or termination of the Contract.

PROFESSIONAL AND TECHNICAL PERSONNEL:

Jeff Case, Fire Chief, Avondale Fire and Medical, shall serve as Project Director.

Susan Anglin, Community Outreach Specialist, Avondale Fire and Medical, shall serve as Project Administrator.

Gabriela Gallegos, Governor's Office of Highway Safety, shall serve as Project Coordinator.

REPORT OF COSTS INCURRED (RCI):

The Agency shall submit a Report of Costs Incurred (RCI), with supporting documentation attached, to the Governor's Office of Highway Safety on a quarterly basis, for each active quarter, in conjunction with the required report. Agencies may submit additional RCI forms for expenditures when funds have been expended for which reimbursement is being requested.

Accepted supporting documentation to submit with a Report of Cost Incurred (RCI) includes, but is not limited to; scanned copies of timesheets, payroll records, paid invoices/purchase orders, and other account records.

RCIs shall be typed and delivered via mail or hand delivered with appropriate supporting documentation to the Governor's Office of Highway Safety. **Electronically submitted RCIs will not be accepted.** Final RCIs will not be accepted fifteen (15) days after the conclusion of each Federal Fiscal Year (September 30th). **Expenditures submitted after the expiration date may not be reimbursed and the Agency will accept fiscal responsibility.**

PROJECT MONITORING:

Highway safety grant project monitoring is used by GOHS project coordinators to track the progress of project objectives, performance measures, and compliance with applicable procedures, laws, and regulations.

The process is used throughout the duration of the contracted project and serves as a continuous management tool. Project monitoring also presents an opportunity to develop partnerships, share information, and provide assistance to contracted agencies. Additionally, project monitoring outlines a set of procedures for project review and documentation.

Project monitoring serves as a management tool for:

- Detecting and preventing problems
- Helping to identify needed changes
- Identifying training or assistance needed
- Obtaining data necessary for planning and evaluation
- Identifying exemplary projects

Types of Monitoring

Monitoring is formal and informal, financial and operational. The most common types of monitoring are:

- Ongoing contact with the contracted grantee through phone calls, e-mails, correspondence, and meetings
- On-Site and/or In-House monitoring reviews of project operations, management, and financial records and systems
- Review of project Quarterly Reports
- Review and approval of Report of Costs Incurred (RCIs)
- Desk review of other documents in the project grant files for timely submission and completeness

Monitoring Schedule	
Total Awarded Amount:	Type of Monitoring:
Under \$50,000	Desk Review/Phone Conference
\$50,000 and over	May have an In-House GOHS Review
\$100,000+	May have an On-Site Review
Capital Outlay Greater than \$25,000 (combined)	May have an On-Site Review
Desk Review and Phone Conference	Internal review of all written documentation related to contractual project including, but not limited to the Contract, Quarterly Reports, enforcement data, financial data, e-mails, letters, notes, press releases, photographs, inventories, and other written correspondence. A phone conference call conducted during the course of the project which includes the date and time of the call, the person(s) contacted, and the results. It serves as an informational review to determine progress of programmatic/financial activities. Both the designated project administrator and fiscal contact should be present, if possible, during the phone conference. If identified financial or operational problems are present, GOHS reserves the right to bring the grantee in for an in-house meeting at GOHS. Monitoring form written by Project Coordinator, any findings, areas of improvement, concern, or recognition will be provided to the grantee.
In-House Review	Documents performance review results including project activities, reimbursement claims review, equipment purchases, approvals, and other information. Reviews applicable information related to the project(s) including, but not limited to the Contract, Quarterly Reports, enforcement data, financial data, e-mails, letters, notes, press releases, photographs, inventories, and other written correspondence. Completed at GOHS in a meeting with appropriate operational and financial personnel. Monitoring form written by Project Coordinator, any findings, areas of improvement, concern, or recognition will be provided to the grantee.
On-Site Monitoring	Documents performance review results including project activities, reimbursement claims review, equipment purchases, and other information. Reviews applicable information related to the project(s) including, but not limited to the Contract, Quarterly Reports, enforcement data, financial data, e-mails, letters, notes, press releases, photographs, inventories, and other written correspondence. Conducted on-site at the grantee's Agency with monitoring form

	completed on-site by Project Coordinator. Any findings, areas of improvement, concern, or recognition, will be provided to the grantee.
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On-site and/or in-house monitoring for grantees of designated projects with large Capital Outlay purchases, personnel services, and complex projects must be completed within the second or third quarter of the fiscal year. Contracted projects displaying any problems may need on-site monitoring more than once during the fiscal year.

On-site and/or In-house monitoring includes a review and discussion of all issues related to ensure the effective administration of the contracted project. The following are the most important items to review:

- Progress toward meeting goals/objectives and performance measures
- Adherence to the contract specifications, timely submission of complete and correct reports, including required documentation
- Quarterly Reports
- Status of expenditures related to the outlined budget
- Accounting records and RCI's
- Supporting documentation (training documentation, inventory sheets, photographs, press releases, etc.)

In addition, the designated Agency will ensure that any equipment purchased will be available for inspection and is being used for the purpose for which it was bought under the outlined contractual agreement.

Documentation

The Governor's Office of Highway Safety will retain all findings documented on the GOHS Monitoring Form in the Agency's respective Federal file. Findings will be discussed with the designated contract representative (Project Administrator, fiscal specialist) by phone and/or e-mail. All noted deficiencies will be provided to the grantee with guidance for improvement and solutions to problems. Grantees that exhibit significantly poor performance may be placed on a performance plan as outlined by the GOHS Director. Grantee monitoring information will additionally provide documentation for potential funding in subsequent fiscal year grant proposal review.

PROJECT PERIOD:

The project period shall commence on the date the GOHS Director signs the Highway Safety Contract and terminate on September 30th of that or subsequent year as indicated on the Highway Safety Contract.

DURATION:

Contracts shall be effective on the date the Governor's Office of Highway Safety Director signs the Contract and expire at the end of the project period.

If the Agency is unable to expend the funds in the time specified, the Agency will submit notification on the Agency's letterhead and hand deliver or submit via regular mail to the Director of the Governor's Office of Highway Safety a minimum of sixty days (60) prior to the end of the project period.

The Agency shall address all requests to modify the Contract to the Director of the Governor's Office of Highway Safety on Agency's official letterhead and either hand deliver or submit the request via regular mail. All requests for modification must bear the signature of the Project Director.

Failure to comply may result in cancellation of the Contract. Any unexpended funds remaining at the termination of the Contract shall be released back to the Governor's Office of Highway Safety.

ESTIMATED COSTS:

I.	Personnel Services (overtime)	\$517.00
II.	Employee Related Expenses (ERE) (19.73%)	\$102.00
III.	Professional and Outside Services	\$0.00
IV.	Travel In-State	\$0.00
V.	Travel Out-of-State	\$0.00
VI.	Materials and Supplies Child Safety Seats, Pool Noodles	\$9,875.00
VII.	Capital Outlay	\$0.00
TOTAL ESTIMATED COSTS		*\$10,494.00

*Includes all applicable training, tax, freight, and advertising costs. The GOHS reserves the right to limit reimbursement of Employee Related Expenses from zero (0) to a maximum rate of forty (40) percent. This is the maximum ERE amount to be reimbursed. It is agreed and understood that the Avondale Fire and Medical shall absorb any and all expenditures in excess of \$10,494.00.

CERTIFICATIONS AND AGREEMENTS

This CONTRACT, is made and entered into by and between the STATE OF ARIZONA, by and through the Governor's Office of Highway Safety (GOHS) hereinafter referred to as "STATE", and the agency named in this Contract, hereinafter referred to as "AGENCY".

WHEREAS, the National Highway Safety Act of 1966, as amended (23 USC §§401-404), provides Federal funds to STATE for approved highway safety projects; and

WHEREAS, STATE may make said funds available to various state, county, tribal, or municipal agencies, governments, or political subdivisions upon application and approval by STATE and the United States Department of Transportation (USDOT); and

WHEREAS, AGENCY must comply with the requirements listed herein to be eligible for Federal funds for approved highway safety projects; and

WHEREAS, AGENCY has submitted an application for Federal funds for highway safety projects;

NOW, THEREFORE, IN CONSIDERATION OF MUTUAL PROMISES AND OTHER GOODS AND VALUABLE CONSIDERATION, it is mutually agreed that AGENCY will strictly comply with the following terms and conditions and the following Federal and State Statutes, Rules, and Regulations:

I. Project Monitoring, Reports, and Inspections

- A. AGENCY agrees to fully cooperate with representatives of STATE monitoring the project, either on-site or by telephone, during the life of the Contract.
- B. AGENCY will submit Quarterly Reports (one for each three-month period of the project year) to STATE in the form and manner prescribed by STATE. Notice of the specific requirements for each report will be given in this Contract or at any time thereafter by giving thirty (30) days written notice to AGENCY by ordinary mail at the address listed on the Contract. Failure to comply with Quarterly Report requirements may result in withholding of Federal funds or termination of this Contract.
- C. AGENCY will submit a Final Report/Statement of Accomplishment at completion of the Contract to include all financial, performance, and other reports required as a condition of the grant to STATE within thirty (30) days of the completion of the Contract.
- D. Representatives authorized by STATE and the National Highway Traffic Safety Administration (NHTSA) will have the right to visit the site and inspect the work under this Contract whenever such representatives may determine such inspection is necessary.

II. Reimbursement of Eligible Expenses

- A. AGENCY's Project Director, or Finance Personnel, will submit a Report of Costs Incurred Form (RCI) to STATE each time there have been funds expended for which reimbursement is being requested. Failure to meet this requirement may be cause to terminate the project under Section XX herein, "Termination and Abandonment".

- B. AGENCY will reimburse STATE for any ineligible or unauthorized expenses for which Federal funds have been claimed and reimbursement received, as may have been determined by a State or Federal audit.
- C. STATE will have the right to withhold any installments equal to the reimbursement received by AGENCY for prior installments which have been subsequently determined to be ineligible or unauthorized.

III. Property Agreement

- A. AGENCY will immediately notify STATE if any equipment purchased under this Contract ceases to be used in the manner as set forth by this Contract. In such event, AGENCY further agrees to either give credit to the project cost or to another active highway safety project for the residual value of such equipment in an amount to be determined by STATE or to transfer or otherwise dispose of such equipment as directed by STATE.
- B. No equipment will be conveyed, sold, salvaged, transferred, etc., without the express written approval of STATE, or unless otherwise provided elsewhere in this Contract.
- C. AGENCY will maintain or cause to be maintained for its useful life, any equipment purchased under this Contract.
- D. AGENCY will incorporate any equipment purchased under this Contract into its inventory records.
- E. AGENCY will insure any equipment purchased under this Contract for the duration of its useful life. Self-insurance meets the requirements of this section.

IV. Travel

In-State and Out-of-State Travel

In state and out-of-state travel claims will be reimbursed at rates provided by AGENCY's regulations, provided that such regulations are as restrictive as those of STATE. Where they are less restrictive, ARS §38-624 will apply.

The State must approve all out-of-state travel in writing and in advance.

V. Standard of Performance

AGENCY hereby agrees to perform all work and services herein required or set forth, and to furnish all labor, materials, and equipment, except that labor, material, and equipment as STATE agrees to furnish pursuant to this Contract.

VI. Hold Harmless Agreement

Neither party to this agreement agrees to indemnify the other party or hold harmless the other party from liability hereunder. However, if the common law or a statute provides for either a right to indemnify and/or a right to contribution to any party to this agreement then the right to pursue one or both of these remedies is preserved.

VII. Non-Assignment and Sub-Contracts

This Contract is not assignable nor may any portion of the work to be performed be subcontracted unless specifically agreed to in writing by STATE. No equipment purchased hereunder may be assigned or operated by other than AGENCY unless agreed to in writing by STATE.

VIII. Work Products and Title to Commodities and Equipment

- A. The work product and results of the project are the property of STATE, unless otherwise specified elsewhere in this Contract. All property, instruments, non-consumable materials, supplies, and the like, which are furnished or paid for by STATE under the terms of this Contract, unless otherwise provided for elsewhere in this Contract, are and remain the property of STATE and will be returned at the completion of this project upon request of STATE. The work product and results of the project will be furnished to STATE upon request, if no provision is otherwise made by this Contract.
- B. The provisions of subparagraph A apply whether or not the project contracted for herein is completed.

IX. Copyrights and Patents

Any copyrightable materials, patentable discovery, or invention produced in the course of this project may be claimed by STATE and a copyright or patent obtained by it at its expense. In the event STATE does not wish to obtain such copyright or patent, AGENCY may do so, but in any event, provision will be made by AGENCY for royalty-free, nonexclusive, nontransferable, and irrevocable licenses to be given the United States Government and STATE and its political subdivisions to use such copyrightable material, patented discoveries, or inventions in any manner they see fit. The STATE reserves the right to impose such other terms and conditions upon the use of such copyrights or patents as may be deemed in the best interest of STATE in the event AGENCY is allowed to obtain a copyright or patent.

X. Uniform Administrative Requirements

(2 CFR Part 1201): *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*:

The application of 2 CFR Part 200 "Procurement Standards" Requires that:

AGENCY and sub-grantees will use their own procurement procedures, which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law. The most stringent purchasing requirement at each level must be met.

The Arizona Procurement Code (ARS §41-2501, et. seq.) and promulgated rules (A.A.C. Title 2, Chapter 7) are a part of this Contract as if fully set forth herein and AGENCY agrees to fully comply with these requirements for any procurement using grant monies from this Contract.

XI. Non-Discrimination

During the performance of this contract/funding agreement, the contractor/funding recipient agrees—

- A. To comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time;
- B. Not to participate directly or indirectly in the discrimination prohibited by any Federal non-discrimination law or regulation, as set forth in Appendix B of 49 CFR part 21 and herein;
- C. To permit access to its books, records, accounts, other sources of information, and its facilities as required by the State highway safety office, US DOT or NHTSA;
- D. That, in event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding agreement, the State highway safety agency will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including, but not limited to, withholding payments to the contractor/funding recipient under the contract/agreement until the contractor/funding recipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part; and
- E. To insert this clause, including paragraphs A through E, in every subcontract and subagreement and in every solicitation for a subcontract or sub-agreement, that receives Federal funds under this program.

XII. Executive Order 2009-09

It is mutually agreed that AGENCY will comply with the terms and conditions of Executive Order 2009-09, *Non-Discrimination in Employment by Government Contractors and Subcontractors*. Executive Order 2009-09 is located in Part II of the Project Director's Manual.

XIII. Application of Hatch Act

The AGENCY will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

XIV. Minority Business Enterprises (MBE) Policy and Obligation

- A. Policy: It is the policy of the USDOT that minority business enterprises as defined in 49 CFR Part 23, will have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this Contract. Consequently, the minority business enterprises requirements of 49 CFR Part 23 apply to this Contract.
- B. Obligation: The recipient or its contractor agrees to ensure that minority business enterprises, as defined in 49 CFR Part 23, have the subcontracts financed in whole or in part with Federal funds provided under this Contract. In this regard, all recipients or contractors will take all necessary and reasonable steps in accordance with 49 CFR, Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors will not discriminate on the basis of race, color, creed, sex, or national origin in the award and performance of USDOT-assigned contracts.

XV. Arbitration Clause, ARS §12-1518

Pursuant to ARS §12-1518, the parties agree to use arbitration, after exhausting applicable administrative reviews, to resolve disputes arising out of this Contract where the provisions of mandatory arbitration apply.

XVI. Inspection and Audit, ARS §35-214

Pursuant to ARS §35-214, all books, accounts, reports, files, and other records relating to this Contract will be subject at all reasonable times to inspection and audit by STATE for five (5) years after completion of this Contract. The records will be produced at the Governor's Office of Highway Safety.

XVII. Appropriation of Funds by U.S. Congress

It is agreed that in no event will this Contract be binding on any party hereto unless and until such time as funds are appropriated and authorized by the U.S. Congress and specifically allocated to the project submitted herein and then only for the fiscal year for which such allocation is made. In the event no funds are appropriated by the U.S. Congress or no funds are allocated for the project proposed herein for subsequent fiscal years, this Contract will be null and void, except as to that portion for which funds have then been appropriated or allocated to this project, and no right of action or damages will accrue to the benefit of the parties hereto as to that portion of the Contract or project that may so become null and void.

XVIII. Continuation of Highway Safety Program

It is the intention of AGENCY to continue the Highway Safety Program identified in this Contract once Federal funding is completed. This intended continuation will be based upon cost effectiveness and an evaluation by AGENCY of the program's impact on highway safety.

XIX. E-Verify

Both parties acknowledge that immigration laws require them to register and participate with the E-Verify Program (employment verification program administered by the United States Department of Homeland Security and the Social Security Administration or any successor program) as they both employ one or more employees in this State. Both parties warrant that they have registered with and participate with E-Verify. If either party later determines that the other non-compliant party has not complied with E-Verify, it will notify the non-compliant party by certified mail of the determination and of the right to appeal the determination.

XX. Termination and Abandonment

- A. The STATE and AGENCY hereby agree to the full performance of the covenants contained herein, except that STATE reserves the right, at its discretion, to terminate or abandon any portion of the project for which services have not been already performed by AGENCY.
- B. In the event STATE abandons the services or any part of the services as herein provided, STATE will notify AGENCY in writing and within twenty-four (24) hours after receiving such notice, AGENCY will discontinue advancing the work under this Contract and proceed to close said operations under the Contract.

- C. The appraisal value of work performed by AGENCY to the date of such termination or abandonment shall be made by STATE on a basis equitable to STATE and AGENCY and a final reimbursement made to AGENCY on the basis of costs incurred. Upon termination or abandonment, AGENCY will deliver to STATE all documents, completely or partially completed, together with all unused materials supplied by STATE.
- D. AGENCY may terminate or abandon this Contract upon thirty (30) days written notice to STATE, provided there is subsequent concurrence by STATE. Termination or abandonment by AGENCY will provide that costs can be incurred against the project up to and including sixty (60) days after notice is given to STATE.
- E. Any equipment or commodities which have been purchased as a part of this Contract and which have not been consumed or reached the end of its useful life will be returned to STATE upon its written request.

XXI. Cancellation Statute

All parties are hereby put on notice that this Contract is subject to cancellation pursuant to ARS §38-511, the provisions of which are stated below.

In accordance with ARS §38-511, this Contract may be cancelled without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Contract on behalf of the STATE, its political subdivisions or any department or agency of either, is at any time while the Contract or any extension of the Contract is in effect, an employee of any other party to the Contract in any capacity or a consultant to any other party of the Contract with respect to the subject matter or the Contract.

The cancellation shall be effective when written notice from the Governor or Chief Executive Officer or governing body of the political subdivision is received by all other parties to the Contract unless the notice specifies a later time.

AGREEMENT OF UNDERSTANDING AND CERTIFICATION OF COMPLIANCE

Acceptance of Condition

It is understood and agreed by the undersigned that a grant received as a result of this Contract is subject to the Highway Safety Act of 1966, as amended (23 U.S.C.A. §§401-404), ARS §28-602, and all administrative regulations governing grants established by the USDOT and STATE. It is expressly agreed that this Highway Safety Project constitutes an official part of the STATE's Highway Safety Program and that AGENCY will meet the requirements as set forth in the accompanying Project Director's Manual, which are incorporated herein and made a part of this Contract. All State and Federal Statutes, Rules, Regulations, and Circulars referenced in this Contract are a part of this document as if fully set forth herein. It is also agreed that no work will be performed nor any obligation incurred until AGENCY is notified in writing that this project has been approved by the Governor's Highway Safety Representative.

Certificate of Compliance

This is to certify that AGENCY will comply with all of the State and Federal Statutes, Rules and Regulations identified in this Contract.

Certification of Non-Duplication of Grant Funds Expenditure

This is to certify that AGENCY has no ongoing nor completed projects under contract with other Federal fund sources which duplicate or overlap any work contemplated or described in this Contract. It is further certified that any pending or proposed request for other Federal grant funds which would duplicate or overlap work described in the Contract will be revised to exclude any such duplication of grant fund expenditures. It is understood that any such duplication of Federal funds expenditures subsequently determined by audit will be subject to recovery by STATE.

Single Audit Act

If your political subdivision has had an independent audit meeting the requirements of the Single Audit Act of 1984, (31 U.S.C.A. §7501 et. seq.), please forward a copy to GOHS, Attention: Fiscal Services Officer, within thirty (30) days of the effective date of this Contract. If such audit has not been performed, please advise when it is being scheduled.

Buy America Act

The State and each subrecipient will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or subrecipient, to purchase with Federal funds only steel, iron, and manufactured products produced in the United States, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactory quality, or that inclusion of domestic materials will increase the cost of the overall project contract by more than twenty-five (25) percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification to and approved by the Secretary of Transportation.

Prohibition on Using Grant Funds to Check for Helmet Usage

The State and each subrecipient will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

Certification Regarding Debarment and Suspension

- A. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.
- B. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective primary tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary tier participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
- C. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary tier participant knowingly rendered an erroneous certification, in

addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default or may pursue suspension or debarment.

- D. The prospective primary tier participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary tier participant learns its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- E. The terms *covered transaction, civil judgment, debarment, suspension, ineligible, participant, person, principal, and voluntarily excluded, as used* in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
- F. The prospective primary tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- G. The prospective primary tier participant further agrees by submitting this proposal that it will include the clause titled Instructions for Lower Tier Certification including the Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction, provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.
- H. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions website (<https://www.sam.gov>).
- I. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- J. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency may terminate the transaction for cause of default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matter

- A. The prospective primary tier participant certifies to the best of its knowledge and belief, that it and its principal:
1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;
 2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of record, making false statements, or receiving stolen property;
 3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 4. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
- B. Where the prospective primary tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Instructions for Lower Tier Certification

- A. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below and agrees to comply with the requirements of 2 CFR parts 180 and 1200.
- B. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.
- C. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- D. The terms covered transaction, debarment, suspension, ineligible, lower tier, participant, person, primary tier, principal, and voluntarily excluded, as used in this clause, are defined in 2 CFR parts 180 and 1200. You may contact the person to whom this proposal is submitted for assistance in obtaining a copy of those regulations.
- E. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4,

debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

- F. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Instructions for Lower Tier Participant Certification" including the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion- Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions and will require lower tier participants to comply with 2 CFR parts 180 and 1200.
- G. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any prospective lower tier participants, each participant may, but is not required to, check the System for Award Management Exclusions Website (<https://www.sam.gov>).
- H. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
- I. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

- A. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
- B. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

REIMBURSEMENT INSTRUCTIONS**1. Agency Official preparing the Report of Costs Incurred:**

Name: Gregory Luethje
Title: Senior Accountant
Telephone Number: 623-333-2044 Fax Number: 623-333-0200
E-mail Address: gluethje@avondaleaz.gov

2. Agency's Fiscal Contact:

Name: Gregory Luethje
Title: Senior Accountant
Telephone Number: 623-333-2044 Fax Number: 623-333-0200
E-mail Address: gluethje@avondaleaz.gov
Federal Identification Number: 86-6000233

3. REIMBURSEMENT INFORMATION:

Warrant/Check to be made payable to:
City of Avondale

Warrant/Check to be mailed to:
City of Avondale

(Agency)
11465 W Civic Center Drive, Suite 250

(Address)
Avondale, AZ 85323

(City, State, Zip Code)

4. DUNS Number:

00-248-6884

(DUNS #)
11465 W Civic Center Drive, Avondale, AZ 85323

(Registered Address & Zip Code)

Restriction on State Lobbying

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any State or local legislative body. Such activities include both direct and indirect (e.g., "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct communications with State or local legislative officials, in accordance with customary State practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

Certification for Contracts, Grant, Loans, and Cooperative Agreements (Federal Lobbying)

The undersigned certifies, to the best of his or her knowledge and belief, that:

- A. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients will certify and disclose accordingly.
- D. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature of Project Director:

Jeff Case, Fire Chief
Avondale Fire and Medical

Date

Telephone

***Signature of Authorized Official of
Governmental Unit:***

Charles A. Montoya, City Manager
City of Avondale

Date

Telephone

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