



## **TOWN OF FLORENCE, ARIZONA**

**INVITATION TO BID, PROJECT SPECIFICATIONS,**

**AND CONTRACT DOCUMENTS**

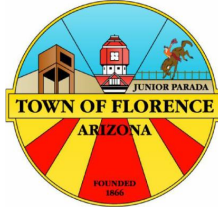
**DATED: November 1, 2017**

**FOR:**

**TOWN OF FLORENCE**

**Florence Gardens Phase IV and V Paving and  
Improvements**

**PROJECT #: T-08/T-09**



## TOWN OF FLORENCE, AZ

### INVITATION TO BID

TOWN OF FLORENCE Florence Gardens Phase IV and V Paving and Improvements, PROJECT # T-08/T-09

**SUBMITTAL DUE DATE AND TIME:** December 19, 2017, 2:00pm LOCAL ARIZONA TIME

**SUBMITTAL LOCATION:** Town of Florence  
Town Clerk  
775 N Main St.  
Florence, AZ 85132

**MANDATORY PRE-BID MEETING DATE:** December 4, 2017  
**TIME:** 1P.M. LOCAL ARIZONA TIME  
**LOCATION:** 750 E. Gila Blvd. Florence AZ 85132 (Florence Gardens Sales parking lot)

**ISSUING OFFICE :** Town of Florence  
c/o Town Clerk  
775 N. Main Street  
Florence, AZ 85132  
Telephone: (520) 868-7551  
Website: <http://www.florenceaz.gov/rfp>

**BIDDING DOCUMENTS:** Bidding Documents, including plans and specifications along with any addenda or supplemental information, may be viewed and ordered online by registering with the Issuing Office via phone or email. Following registration, complete sets of Bidding Documents may be downloaded from the Issuing Office's website as "zipped" portable document format (PDF) files. The date that the Bidding Documents are transmitted by the Issuing Office will be considered the Bidder's date of receipt of the Bidding Documents. Partial sets of the Bidding Documents will not be available from the Issuing Office.

**COMPLETION OF WORK:** **Period of Performance: 240 (Two Hundred Forty) Calendar Days. All work must be completed and ready for final payment 240 (Two Hundred Forty) Calendar Days after the Notice To Proceed (NTP) has been issued.**

**GENERAL OR BID PROCESS QUESTIONS:** Susan Jonas, Development Services Administrative Assistant, (520) 868-7614, [susan.jonas@florenceaz.gov](mailto:susan.jonas@florenceaz.gov)

**TECHNICAL QUESTIONS:** Susan Jonas, Development Services Administrative Assistant, (520) 868-7614, [susan.jonas@florenceaz.gov](mailto:susan.jonas@florenceaz.gov)

All questions must be submitted via email only by **5:00 PM, December 7, 2017**. Answers to questions and other clarifications will be in the final Addenda issued through the Issuing Office on **December 11, 2017**.

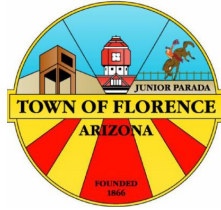


## PROJECT DESCRIPTION

This Project takes place in the Florence Gardens community of Florence Arizona. Removal of approximately 48,000 sy of existing asphalt pavement, approximately 6,600 sf of concrete sidewalks, driveways, curb and gutter, valley gutter. New construction of approximately 37,000 square yards of 2.5" and 3" asphalt pavement over potentially varying depths (between 6" to 8") of ABC base course, approximately 100,000 sf of concrete valley gutter (to include driveways, sidewalks and sidewalk transitions as well as curb and gutter). Scarification and recompaction of subgrade may be required, based on the Geotechnical Report provided as part of this ITB. Provide sidewalks, driveways, curb and gutter, valley gutter, and other drainage features per plans. Adjust manholes and valve boxes/covers to grade per plans. Install survey markers per plans. Relocate traffic control signage per plans. Relocate street lights per plans. Refer to Quantities listed on the cover sheet of the plans and the Bid Tab for projected design quantities/items not specifically listed here.

**Caveats:** The Geotechnical Report for this particular project was part of a multi-project Task Order. As such, the provided Geotechnical Report refers to roads and highways that are **not a part** of this particular project; those roads and highways being "Florence Heights Drive" and "Hunt Highway". The Bidder is advised to disregard any design specifications, material specifications etc., that refer to either Florence Heights Drive or Hunt Highway in the Geotechnical Report for this project.

Additionally, where the Geotechnical Report refers to "Florence Gardens Phase 3 and 4", this reference has changed to the current reference of Florence Gardens Phase IV and V; where the old Phase 3 now refers to the new Phase IV and the old Phase 4 now refers to Phase V.



## TABLE OF CONTENTS OF BIDDING DOCUMENTS

<u>DOCUMENT</u>	<u>PAGE NO.</u>
Invitation to Bid	2
Project Description	3
Table of Contents of Bidding Documents (this sheet)	4
Bid Submittal Checklist	5
Instructions To Bidders	6
Contract	15
General Conditions of Contract	21
Town Revisions to MAG Specifications	41
Insurance Requirements	43
Special Provisions List	46
Bid Schedule	47
Bid Tab	48
Acknowledgement of Addenda	49
List of Subcontractors	50
Statutory Bid Bond	51
Resolution of Board of Directors	52
Non-Collusive Bidding Certification	53
W-9 Form	54
Demonstrating Lawful Presence Form	55
Compliance Deviation Form	56
Attachment 1: Special Provisions (Plans, Details & Specifications)	57

## BID SUBMITTAL CHECKLIST

It is the Bidder's responsibility to be thoroughly familiar with all requirements and specifications. The following checklist is provided as a courtesy only, and is not binding upon the Town nor does it modify, in any way, the terms or requirements of this ITB, any applicable statutes, rules, regulations, or the Town's purchasing policies.

- 1. The Bid Schedule has been signed by an authorized representative of the firm. Unsigned bids will not be considered.
- 2. The Bid Schedule has been fully completed, including prices offered (including any alternatives) have been fully filled in and reviewed for accuracy.
- 3. Any addenda have been reviewed and acknowledged on the form included in the ITB. It is the Bidder's responsibility to obtain all addenda relevant to this solicitation via the Issuing Office or other means.
- 4. The List of Subcontractors has been fully completed and executed by Bidder and reviewed for accuracy.
- 5. Bidder has reviewed all instructions, terms and conditions, and specifications to ensure your response fully complies.
- 6. Any required samples, descriptive literature, or enclosures have been included, if applicable. (Identify samples with Bidder's name and solicitation number.)
- 7. The bid package and/or envelope have been identified with Bidder's name, ITB number and ITB title.
- 8. The specified number of copies of Bidder's response has been included if more than one (1) copy is required.
- 9. Insurance requirements have been reviewed and can be fully complied with.
- 10. Bid Bond has been fully executed by Bidder and appropriate Surety and is included.
- 11. The Resolution of Board of Directors for corporate Bidder has been fully executed and included, or other proof of authorization required under this ITB has been included.
- 12. The Non-Collusive Bidding Certification has been executed and included.
- 13. The W-9 Form is complete and included.
- 14. Demonstrating Lawful Presence Form is complete and included.
- 15. Compliance Deviation Form is complete and included.

## INSTRUCTIONS TO BIDDERS

### INSTRUCTION 1:           **DEFINED TERMS**

- 1.01    Terms used in these Instructions to Bidders have the meanings indicated in the Contract and General Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:
- A.    *Engineer* - The Engineer set forth in the Invitation to Bid or as otherwise designated in writing by the Town. If no other Engineer is designated, the Engineer shall be the Issuing Office.
  - B.    *ITB* – The Invitation to Bid, all supporting documents included herewith, all Bidding Documents, and all properly issued Addenda.
  - C.    *Issuing Office* – The office from which the Bidding Documents are to be issued. The Issuing Office is set forth in the Invitation to Bid above.
  - D.    *Owner or Town* – The Town of Florence, Arizona.
  - E.    *Project* - The Project set forth in the Project Description above.

### INSTRUCTION 2:           **COPIES OF BIDDING DOCUMENTS**

- 2.01    Complete sets of the Bidding Documents may be obtained from the Issuing Office in the number and format stated in the Invitation to Bid above.
- 2.02    Complete sets of Bidding Documents shall be used in preparing Bids. Neither Owner, Engineer, nor the Issuing Office assumes any responsibility for errors or misinterpretations resulting from the use of incomplete, modified or unofficial sets of Bidding Documents.
- 2.03    Owner, the Issuing Office and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license for any other use.

### INSTRUCTION 3:           **QUALIFICATIONS OF BIDDERS**

- 3.01    To demonstrate Bidder's qualifications to perform the Work, after submitting its Bid and within 10 days of Owner's request, Bidder shall submit: (a) written evidence establishing its qualifications such as financial data, previous experience and years performing this work, any present commitments; and (b) the following additional information:
- A.    Evidence of Bidder's authority to do business in the state where the Project is located.
  - B.    Bidder's state or other contractor license number and good standing.
  - C.    Evidence that each natural person submitting a Bid, including the officers, partners, members, and/or principals of the Bidder, to submit documentation of their lawful presence in the United States, pursuant to A.R.S. §§ 1-501 and 1-502.
- 3.02    A Bidder's failure to submit required qualification information within the times indicated may disqualify Bidder from receiving an award of the Contract.
- 3.03    No requirement in this Instruction 3 to submit information will prejudice the right of Owner to seek additional information, as requested in the Town's sole discretion, regarding Bidder's qualifications.
- 3.04    Bidder is advised to carefully review those portions of the Bid Form requiring Bidder's representations and certifications.

**INSTRUCTION 4: BIDDER'S PRE-BID OBLIGATIONS AND REPRESENTATIONS**

- 4.01 It is the responsibility of each Bidder before submitting a Bid to:
- A. Examine and carefully study the Bidding Documents, and any data and reference items identified in the Bidding Documents;
  - B. Visit the Site, conduct a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfy itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;
  - C. Become familiar with and satisfy itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work;
  - D. Carefully study all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the General Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the General Conditions, especially with respect to Technical Data in such reports and drawings;
  - E. Consider the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs;
  - F. Become aware of the general nature of the work to be performed by the Town and others at the Site that relates to the Work as indicated in the Bidding Documents;
  - G. Promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder; and
  - H. Determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- 4.02 Bidder represents and agrees that:
- A. The submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Instruction, that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents; and
  - B. Based on the information and observations referred to in the preceding 4.01, that at the time of submitting its Bid no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.

**INSTRUCTION 5: PRE-BID CONFERENCE**

- 5.01 A Pre-Bid conference will be held at the time and location stated in the above Invitation to Bid. Representatives of Owner and Engineer will be present to discuss the Project. If the Invitation to Bid provides that the Pre-Bid Conference is mandatory, it is mandatory and failure to attend the

Pre-Bid Conference may be a basis for disqualifying a Bidder and/or rejecting the Bidder's Bid. If the Pre-Bid Conference is not mandatory, Bidders are encouraged to attend and participate in the conference. Engineer will transmit to all prospective Bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements may not be relied upon and will not be binding or legally effective.

**INSTRUCTION 6: INTERPRETATIONS AND ADDENDA**

- 6.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to in writing as set forth in the Invitation to Bid above. Any interpretations, clarifications, or other/additional information considered necessary by Engineer and/or the Town in response to such questions, or otherwise, will be issued by Addenda delivered to all parties recorded as having received the Bidding Documents.
- 6.02 Questions received after the Questions Due Date and Time set forth on the Invitation to Bid above may be answered at the sole discretion of the Town. Inquiries regarding this ITB directed to persons other than the Town's designated representative may not be answered, and any answers received other than as set forth in this ITB will not be binding upon the Town for any purpose.
- 6.03 Only answers provided by written Addenda may be binding upon the Town. Oral and other interpretations or clarifications will be without legal effect. The Town shall not be held responsible if a Bidder fails to receive any Addenda issued. The Town shall not be responsible for any oral representations or statements relating to the solicitation specifications made by any employee, agent or officer of the Town.
- 6.04 Addenda may be issued to clarify, correct, supplement, or change the Bidding Documents.
- 6.05 Receipt of Addenda shall be acknowledged by signing and returning the form included herein with the ITB with the Bid by the specified Bid due date and time. Potential Bidders are responsible for obtaining all addenda relevant to this ITB via the Issuing Office or other means.

**INSTRUCTION 7: BID SECURITY**

- 7.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of ten percent of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a certified check, bank money order, or a Bid Bond in statutory form (on the form included in the Bidding Documents) issued by a surety meeting the requirements of the General Conditions and applicable law.
- 7.02 The Bid security of the apparent Successful Bidder will be retained until Owner awards the contract to such Bidder, and such Bidder has executed the Contract Documents, furnished the required contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be released. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within ten (10) days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited. Forfeiture will not preclude the Town from seeking any or all other remedies provided by law to recover losses sustained as a result of the Bidder's failure to enter into the Contract or to furnish the contract securities or insurance certificates and endorsements.
- 7.03 The Bid security of other Bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven (7) days after the Effective Date of the Contract or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be released.
- 7.04 Bid security of other Bidders that Owner believes do not have a reasonable chance of receiving the award will be released within seven (7) days after the Bid Opening.



**INSTRUCTION 8:           SUBSTITUTE AND “OR-EQUAL” ITEMS**

- 8.01    The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration during the bidding and Contract award process of possible substitute or “or-equal” items. In cases in which the Contract allows the Contractor to request that Engineer authorize the use of a substitute or “or-equal” item of material or equipment, application for such acceptance may not be made to and will not be considered by Engineer until after the Effective Date of the Contract.
- 8.02    All prices that Bidder sets forth in its Bid shall be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of “or-equal” or substitution requests are made at Bidder’s sole risk.

**INSTRUCTION 9:           SUBCONTRACTORS, SUPPLIERS, AND OTHERS**

- 9.01    A Bidder shall be prepared to retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of the Work if required by the Bidding Documents to do so. If a prospective Bidder objects to retaining any such Subcontractor, Supplier, or other individual or entity, and the concern is not relieved by an Addendum, then the prospective Bidder should refrain from submitting a Bid.
- 9.02    The Bidders shall submit to the Town with its response to this ITB a complete listing of all Subcontractors the Bidder intends to use in the performance of the work specified in the ITB providing the information required in the Subcontractor List included in the ITB. No bid for work involving these classifications will be valid without the complete listing of both subcontractors and major material suppliers as listed in the ITB and the included form List of Subcontractors.

**INSTRUCTION 10:         PREPARATION OF BID**

- 10.01   The Bid Schedule is included with the Bidding Documents.
  - A.    All blanks on the Bid Schedule shall be completed in ink and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each section, Bid item, alternate, adjustment unit price item, and unit price item listed therein.
  - B.    If the Bid Schedule expressly indicates that submitting pricing on a specific alternate item is optional, and Bidder elects to not furnish pricing for such optional alternate item, then Bidder may enter the words “No Bid” or “Not Applicable.”
- 10.02   A Bid by a corporation shall be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation shall be shown.
- 10.03   A Bid by a partnership shall be executed in the partnership name and signed by a partner (whose title must appear under the signature), accompanied by evidence of authority to sign. The partnership’s address for receiving notices shall be shown.
- 10.04   A Bid by a limited liability company shall be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the firm’s address for receiving notices shall be shown.
- 10.05   A Bid by an individual shall show the Bidder’s name and address for receiving notices.

- 10.06 A Bid by a joint venture shall be executed by an authorized representative of each joint venturer in the manner indicated on the Bid Form. The joint venture's address for receiving notices shall be shown.
- 10.07 All names shall be typed or printed in ink below the signatures.
- 10.08 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.
- 10.09 Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.
- 10.10 The Bid shall contain evidence of Bidder's authority and qualification to do business in Arizona and the Town Bidder's Arizona contractor license number and classification, and any other required business and/or tax licenses required by the Town shall also be shown on the Bid Form.
- 10.11 If price is a consideration and in case of error of prices in the Bid, the unit price shall govern. If there is a conflict between values or prices written-out in text and values or prices expressed in numbers, the text values or prices shall control.
- 10.12 No Bid shall be altered, amended, or withdrawn after the specified due date and time.
- 10.13 Periods of time, stated as a number of days, shall be calendar days.
- 10.14 It is the responsibility of all Bidders to examine the entire ITB package and seek clarification of any item or requirement and to check all responses for accuracy before submitting a Bid. Negligence in preparing a Bid confers no right of withdrawal after Bid due date and time.
- 10.15 The Town shall not reimburse the cost of developing or providing any response to this ITB and development and provision of any offer shall be at the respective Bidder's sole cost. Offers submitted for consideration should be prepared simply and economically, providing adequate information in a straightforward and concise manner.

**INSTRUCTION 11: BASIS OF BID**

- 11.01 The Basis upon which Bids shall be calculated and submitted (Lump Sum/Fixed Price, Unit Price, and/or Allowances for specific items) are set forth in the ITB, including the Bid Schedule.
- 11.02 Lump Sum/Fixed Price
  - A. Bidders shall submit a Bid on a lump sum basis as set forth in the Bid Form.
- 11.03 Unit Price
  - A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Form.
  - B. The "Bid Price" (sometimes referred to as the extended price) for each unit price Bid item will be the product of the "Estimated Quantity" provided in the ITB (usually the Bid Schedule) for the item and the corresponding "Bid Unit Price" offered by the Bidder. The total of all unit price Bid items will be the sum of these "Bid Prices"; such total will be used by Owner for Bid comparison purposes. The final quantities and Contract Price will be determined in accordance with the General Conditions.
  - C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

11.04 Allowances

- A. For cash allowances the Bid price shall include such amounts as the Bidder deems proper for Contractor's overhead, costs, profit, and other expenses on account of cash allowances, if any, named in the Contract Documents, in accordance with the General Conditions.

**INSTRUCTION 12: SUBMITTAL OF BID**

- 12.01 With each copy of the Bidding Documents, a Bidder is furnished one separate unbound copy of the Bid Form, and, if required, the Bid Bond Form. One (1) unbound original (to include wet ink signatures) and three (3) unbound copies of the Bid Form are to be completed and submitted with the Bid security and the other documents required to be submitted under the terms of Instruction 7.
- 12.02 A Bid shall be received no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid and shall be enclosed in a plainly marked package with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside with the notation "BID ENCLOSED." A mailed Bid shall be addressed to **Town of Florence, AZ, Town Clerk, 775 N. Main St., Florence, AZ 85132.**
- 12.03 Bids received after the date and time prescribed for the opening of bids, or not submitted at the correct location or in the designated manner, will not be accepted, opened, or considered.
- 12.04 By signature on the Bid Form, the Bidder certifies that:
  - A. The submission of the offer did not involve collusion or other anti-competitive practices.
  - B. The Bidder shall not discriminate against any employee or applicant for employment in violation of the Federal Executive Order 11246.
  - C. The Bidder has not given or offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip favor, or service to a public servant in connection with the submitted offer.
  - D. Failure to sign the offer, or the falsity of a statement in a signed offer, shall void the submitted offer or any resulting contracts, and the Bidder may be debarred.

**INSTRUCTION 13: MODIFICATION AND WITHDRAWAL OF BID**

- 13.01 A Bid may be withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids. Upon receipt of such notice, the unopened Bid will be returned to the Bidder.
- 13.02 If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the manner specified in Paragraph 13.01 and submit a new Bid prior to the date and time for the opening of Bids.
- 13.03 If within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned. Thereafter, if the Work is rebid, that Bidder may, in the Town's sole discretion, be disqualified from further bidding on the Work.

**INSTRUCTION 14:            OPENING OF BIDS**

- 14.01 Bids will be opened at the time and place indicated in the Invitation to Bid above and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids
- 14.02 All Bids will remain subject to acceptance for the period of time stated in the Bid Form and each Bidder agrees that it will hold open its offer for such period, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period. Unless otherwise specified in the ITB, all Bidders and their Subcontractors shall hold their bids valid for a period of 90 days from the proposal due date stated on the Advertisement for Bids.

**INSTRUCTION 15:            EVALUATION OF BIDS**

- 15.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner will reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, to not be responsible. If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, then the Owner may reject the Bid as nonresponsive.
- 15.02 If Owner awards the contract for the Work, such award shall be to the responsible Bidder submitting the lowest responsive and technically acceptable Bid.
- 15.03 Evaluation of Bids:
  - A. In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Tab or prior to the Notice of Award.
  - B. In the comparison of Bids, alternates will be applied in the same order of priority as listed in the Bid Tab. To determine the Bid prices for purposes of comparison, Owner shall announce to all bidders a “Base Bid plus alternates” budget after receiving all Bids, but prior to opening them. For comparison purposes alternates will be accepted, following the order of priority established in the Bid Tab, until doing so would cause the budget to be exceeded. After determination of the Successful Bidder based on this comparative process and on the responsiveness, technical acceptability, responsibility, and other factors set forth in these Instructions, the award may be made to said Successful Bidder on its base Bid and any combination of its additive alternate Bids for which Owner determines funds will be available at the time of award.
  - C. Bid prices will be compared after adjusting for differences in time of Substantial Completion (total number of calendar days to substantially complete the Work) designated by Bidders. The adjusting amount will be determined at the rate set forth in the Contract for liquidated damages for failing to achieve Substantial Completion, or such other amount that Owner has designated in the Bid Tab.
    - 1. The method for calculating the lowest bid for comparison will be the summation of the Bid price shown in the Bid Form plus the product of the Bidder-specified time of Substantial Completion (in calendar days) times the rate for liquidated damages (in dollars per day).
    - 2. This procedure is only used to determine the lowest bid for comparison and contractor selection purposes. The Contract Price for compensation and payment purposes remains the Bid price shown in the Bid Tab.

- 15.04 In evaluating whether a Bidder is responsible, Owner will consider the qualifications of the Bidder and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.
- 15.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed Subcontractors or Suppliers.
- 15.06 Any terms of the Bidder's submittal that conflict with the language and requirements of the Town's solicitation or that take exception to the terms, conditions, specifications and/or other requirements stated within this ITB, may cause the Bidder's submittal to be considered nonresponsive and rejected. Exceptions may be evaluated by the Town on an individual basis to determine compliance with the purpose and intent of the terms and conditions stated within this solicitation

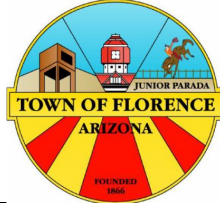
**INSTRUCTION 16: AWARD AND SIGNING OF CONTRACT**

- 16.01 Notwithstanding any other provision of this ITB, the Town expressly reserves the right, when determining whether to award a contract to the lowest responsive and responsible Bidder who has neither been disqualified nor rejected pursuant to the terms and conditions of the ITB, to:
  - A. Waive any immaterial defect or informality; and/or
  - B. Reject any or all Bids, or portions thereof; and/or
  - C. Reissue an Invitation to Bid; and/or
  - D. Exercise any other rights available to the Town under the terms of the ITB, the Town Code, law, or equity.
- 16.02 When Owner issues a Notice of Award to the Successful Bidder, it shall be accompanied by the unexecuted counterparts of the Contract along with the other Contract Documents as identified in the Contract. Within 10 days thereafter, Successful Bidder shall execute and deliver the required number of counterparts of the Contract (and any bonds and insurance documentation required to be delivered by the Contract Documents) to Owner. Within ten days thereafter, Owner shall deliver one fully executed counterpart of the Contract to Successful Bidder.

**INSTRUCTION 17: ADDITIONAL PROVISIONS**

- 17.01 Contract Applicability: The Bidder shall substantially conform to the terms, conditions, specifications, and other requirements found within the text of this specific ITB. All previous agreements, contracts, or other documents, which have been executed between the Bidder and the Town, are not applicable to this ITB or any resultant contract.
- 17.02 Gratuities: The Town may, by written notice to the Bidder, cancel the resultant contract if it is found by the Town that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Bidder or any agent or representative of the Bidder, to any officer or employee of the Town with a view toward securing an order, securing favorable treatment with respect to the awarding, amending, or the making of any determinations with respect to the performing of such order. In the event the Town pursuant to this provision cancels the resultant contract, the Town shall be entitled, in addition to any other rights and remedies, to recover or withhold from Contractor the amount of gratuity. Paying the expense of normal business meals, which are generally made available to all eligible Town government customers, shall not be prohibited by this paragraph.
- 17.03 Public Record: All offers submitted in response to this ITB, whether or not accepted by the Town, shall become a matter of public record available for public inspection, subsequent to the award notification, in accordance with the Town's Procurement Policy and Arizona's Public Records laws.

- 17.04 Confidential Information: If a person believes that a bid, ITB, offer, specification, or protest contains information that should be withheld, a statement advising the Town of this fact shall accompany the submission and the information shall be identified. The information identified by the person as confidential shall not be disclosed until the Town makes a written determination.
- 17.05 Lobbying Prohibition: Any communication regarding this solicitation for the purpose of influencing the process or the award, between any person or affiliates seeking an award from this solicitation and the Town, including but not limited to the Town Council, employees, and contractors engaged to assist in the solicitation, is prohibited.
- A. This prohibition is imposed from the time of the first public notice of the solicitation until the Town cancels the solicitation, rejects all responses, awards a Contractor, and otherwise takes action which ends the solicitation process. This section shall not prohibit public comment at any Town Council meeting, study session or Town committee meeting.
  - B. This prohibition shall not apply to communication with the official contact(s) specifically identified in the solicitation or Town-initiated communications for the purposes of conducting the procurement, and in the manner prescribed in the solicitation, including but not limited to pre-bid conferences, clarification of responses, presentations if provided for in the solicitation, requests for Best and Final Proposals, contract negotiations, interviews, protest/appeal resolution, or surveying non-responsive vendors.
  - C. Violations of this provision shall be reported to Town's Finance Department / Issuing Office and may be a basis for rejecting a response or disbarment of the violator by the Town. Persons and/or entities violating this prohibition may be subject to a warning letter, rejection of their response, or disbarment by the Town, in the Town's discretion, depending on the nature of the violation.



## CONTRACT

**CONTRACT FOR : Town of Florence Florence Gardens Phase IV and V Paving and Improvements  
PROJECT #: T-08/T-09**

**THIS CONTRACT** is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (the "Effective Date") by and between Town of Florence, an Arizona municipal corporation, hereinafter called "**Town**" and the "**Contractor**" designated below:

Town and Contractor agree as follows:

### ARTICLE 1 – PARTICIPANTS AND PROJECT

**TOWN:** Town of Florence, Arizona  
Project Manager: Christian Collins  
Telephone: (520) 868-7695  
E-mail: christian.collins@florenceaz.gov

**CONTRACTOR:** {Name}  
{Address}  
Arizona ROC No.:  
Federal Tax ID No:  
Representative:  
Telephone:  
E-mail:

**ENGINEER/DESIGNER:** EPS Group  
2045 S. Vineyard Ave. Ste 101  
Mesa AZ 85210  
Representative: Jonathan Lassuy  
Telephone: (480)-503-2250  
E-mail: jonathon.lassuy@epsgroupinc.com

**PROJECT DESCRIPTION:** Removal of approximately 48,000 sy of existing asphalt pavement, approximately 6,600 sf of concrete sidewalks, driveways, curb and gutter, valley gutter. New construction of approximately 37,000 square yards of 2.5" and 3" asphalt pavement over potentially varying depths (between 6" to 8") of ABC base course, approximately 100,000 sf of concrete valley gutter (to include driveway and sidewalk transitions as well as curb and gutter). Scarification and recompaction of subgrade may be required, based on the Pavement Engineering (Geotechnical) Report provided as part of this ITB. Provide sidewalks, driveways, curb and gutter, valley gutter, and other drainage features per plans. Adjust manholes and valve boxes/covers to grade per plans. Install survey markers per plans. Relocate traffic control signage per plans. Relocate street lights per plans. Refer to Quantities listed on the cover sheet of the plans and the Bid Tab for projected design quantities/items not specifically listed here.

**PROJECT LOCATION:** Florence Gardens Community in Florence, Arizona 85132.

**ARTICLE 2 – CONTRACT DOCUMENTS**

2.1 Contract Documents. The Contract between Town and Contractor shall consist of the following Contract Documents:

Invitation to Bid	MAG Details
Construction Plans	MAG Specifications
Drainage Report	List of Subcontractors
Instructions to Bidders	Demonstrating Lawful Presence Form
General Conditions of Contract	Contract Change Order Form
Special Provisions	Non-Collusive Bidding Certification
Statutory Bid Bond	Affidavit Regarding Settlement of Claims
Statutory Payment Bond	Bid Terms
Statutory Performance Bond	Bidding Form
Insurance Requirements	Acknowledgement of Addenda Received
Compliance Deviation Form	Specification Book
Bidder’s Qualification Statement	Town Modifications to MAG Specifications

In the event of a conflict of language between the documents, the provisions of the ITB shall govern. The ITB shall govern in all other matters not otherwise specified by the Contract between the parties. All previous contracts between the Bidder and Town are not applicable to this Contract or other resultant contracts

2.2 Definitions. The definitions in Section 1 of the General Conditions apply to all the Contract Documents, including this Contract. Additional definitions or defined terms applicable to all the Contract Documents for this Project, if any, include the following: NA

2.3 Project Specific Conditions. If there are any additional conditions that apply to this Project, they are set forth in the Special Provisions included in the ITB. (This project does not have any additional special provisions)

2.4 Project Plans and Specifications. A detailed list of the plans and specifications for this Project are included in the ITB.

**ARTICLE 3 – DESIGN PHASE SERVICES**

Contractor is not providing any Design Phase Services to the Town in relation to this Project.

**ARTICLE 4 – CONSTRUCTION SERVICES**

4.1 General.

4.1.1 Contractor agrees at its own cost and expense, to do all work necessary and required to fully, timely and properly complete the construction of the Project in strict accordance with the Contract Documents in a good and workmanlike manner, free and clear of all claims, liens, and charges whatsoever, in the manner and under the conditions specified, within the Project Schedule.

4.1.2 Contractor shall provide all of the labor and materials, and perform the Work in accordance with Section 4 of the General Conditions. Some but not all of the major components of the Construction Services and the corresponding subsections of Section 4 of the General Conditions are set forth below.

4.1.3 At all times relevant to this Contract and performance of the Work, the Contractor shall fully comply with all Laws, Regulations, or Legal Requirements applicable to Town, the Project and the Contract, including, without limitation, those set forth in the General Conditions.



4.1.4 Contractor shall perform the Work under this Contract using only those firms, team members and individuals designated by Contractor consistent with Contractor's accepted Bid, or otherwise, approved by Town pursuant to the General Conditions. No other entities or individuals may be used without the prior written approval of the Project Manager.

4.1.5 Contractor will comply with all terms and conditions of the General Conditions.

4.1.6 In the event of a conflict between this Contract and the General Conditions or any exhibit hereto or appendix thereto, the terms of this Contract shall control.

4.1.7 Ownership of Work Product. Notwithstanding anything to the contrary in this Contract, all Work Product prepared or otherwise created in connection with the performance of this Contract, including the Work, are to be and remain the property of Town. For purposes of this provision, "Work Product" shall include all designs, drawings, plans, specifications, ideas, renderings and other information or matter, in whatever form created (e.g., electronic or printed) and in all media now known or hereinafter created. All Work Product shall be considered Work Made for Hire as defined in the United States Copyright Act 17 U.S.C. § 101 (Copyright Act). If for any reason any such Work is found not to be a work for hire, Contractor hereby transfers and assigns ownership of the copyright in such Work to Town. The rights in this Section are exclusive to Town in perpetuity.

4.2 Contractor's Pre-Contract and Pre-Work Deliverables.

4.2.1 The Contractor will provide the Deliverables in accordance with Section 4.2 of the General Conditions.

4.2.2 Any additional items which Contractor must deliver to Town prior to commencing the Work on this Project, if any, include the following: NA

4.3 Pre-Construction Conference. Contractor shall attend the Pre-Construction Conference in accordance with Section 4.3 of the General Conditions.

4.4 Performance of the Work (Including Field Measurements, Subcontractors, and Suppliers). Contractor shall perform the Work in accordance with Section 4.4 of the General Conditions.

4.5 Control of the Project Site. Contractor shall control and maintain the Project Site in accordance with Section 4.5 of the General Conditions.

4.6 Project Safety. Contractor shall implement and enforce Project safety in accordance with Section 4.6 of the General Conditions.

4.7 Materials Quality, Substitutions and Shop Drawings. All materials necessary for construction of this project shall be provided by the Contractor as part of this Contract. All materials shall be new and unused, and otherwise designed for the intended use. Contractor shall submit any substitute materials and shop drawings in accordance with Section 4.7 of the General Conditions.

4.8 Project Record Documents. Contractor shall maintain and make available the Project Record Documents in accordance with Section 4.8 of the General Conditions.

4.9 Warranty and Correction of Defective Work. Contractor shall provide warranties and correct defective Work in accordance with Section 4.9 of the General Conditions.

## ARTICLE 5 – TOWN RESPONSIBILITIES

5.1 Town shall have the responsibilities, and provide the information specified in, and subject to the conditions set forth in, Section 5 of the General Conditions.

5.2 Additional services to be provided or responsibilities assumed, by Town, if any, are listed below:

5.2.1 Materials Testing.

5.2.2 Residential Notifications and Property Access (to be coordinated with Contractor).

5.2.3 Emergency Services Coordination (Police/Fire ingress/egress).

5.3 Additional Information to be provided by Town, if any, is listed below: NA

## ARTICLE 6 - CONTRACT TIME (AKA Period of Performance or P.O.P.)

6.1 Contract Time.

6.1.1 The Contract Time shall start with the Notice to Proceed (NTP) and end with Final Acceptance, as set forth Section 6.4 below. The Notice to Proceed cannot be issued prior to the approval and acceptance by Town of the Bid.

6.1.2 The Contract Time shall be as set forth. Contractor agrees that it will commence performance of the Work and complete the Project through both Substantial Completion and Final Completion within the Contract Time.

6.1.3 Time is of the essence of this Contract, for the Project, and for each phase and/or designated Milestone thereof.

6.1.4 Failure on the part of Contractor to adhere to the approved Project Schedule will be deemed a material breach and sufficient grounds for termination of this Contract by Town.

6.2 Project Schedule. The Project Schedule as set forth in the ITB and/or an Exhibit to this Contract shall be updated and maintained throughout Contractor's performance under this Contract in accordance with Section 6.2 of the General Conditions.

6.3 Substantial Completion. Substantial Completion shall be achieved not later than the Substantial Completion Date set forth in the Project Schedule, which is: See Section 6.4. Substantial Completion shall be determined in accordance with Section 6.3 of the General Conditions.

6.4 Final Completion and Final Acceptance.

6.4.1 Final Completion will be obtained within the time period set forth in the Project Schedule, which is: **All work must be completed and ready for final payment on the 241<sup>st</sup> (Two Hundred Forty First) day after issuance of the NTP.**

6.4.2 Final Completion will be determined and Final Acceptance will be issued pursuant to Section 6.4 of the General Conditions.

6.5 Liquidated Damages.

6.5.1 Substantial Completion Liquidated Damages. Contractor acknowledges and agrees that if Contractor fails to obtain Substantial Completion of the Work within the Contract Time, Town will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be extremely difficult to ascertain. Therefore, Town and Contractor agree that if Contractor fails to achieve Substantial Completion of the Work within the Contract Time, Town shall be entitled to retain or recover from Contractor, as liquidated damages and not as a penalty, the following per diem amounts commencing from the Substantial Completion Date required under the Contract until the actual date of Substantial Completion:

\$1,070.00 per calendar day.

6.5.2 Final Completion Liquidated Damages. For the same reasons set forth in Section 6.5.1 above, Town and Contractor further agree that if Contractor fails to achieve Final Completion of the Work within the Contract Time, Town shall be entitled to retain or recover from Contractor, as liquidated damages and not as a penalty, the following per diem amounts commencing from the actual date of Substantial Completion or the Final Completion Date as required under the Contract, whichever is later, until the actual date of Final Completion:

\$1,070.00 per calendar day.

6.5.3 MAG Liquidated Damages. If no liquidated damages are specified in Sections 6.5.1 and/or 6.5.2 above, then the liquidated damages provisions in MAG § 108.9 shall apply.

6.5.4 Town may deduct liquidated damages described in this Section 6.5 above from any unpaid amounts then or thereafter due Contractor under this Contract. Any liquidated damages not so deducted from any unpaid amounts due Contractor shall be payable to Town at the demand of Town, together with interest from the date of the demand at the highest lawful rate of interest payable by Contractor.

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

**ARTICLE 7 - CONTRACT PRICE**

7.1 Contact Price.

7.1.1 In exchange for Contractor's full, timely, and acceptable performance and construction of the Work under this Contract, and subject to all of the terms of this Contract, Town will pay Contractor the "Contract Price", which is \$\_\_\_\_\_.

7.1.2 The Contract Price is all inclusive and specifically includes all fees, costs, insurance and bond premiums, and taxes of any type necessary to fully, properly and timely perform and construct the Work.

7.2 Costs. For any portion of the Work which, either through this Contract, Change Order or otherwise, is performed and paid for on a cost, or time and materials, basis, the costs which may be reimbursed to Contractor and/or chargeable against the Contract Price shall be determined as set forth in Section 7.3 of the General Conditions.

**ARTICLE 8 – PAYMENT**

Payments shall be made to Contractor in accordance with Section 8 of the General Conditions.

**ARTICLE 9 – CHANGES TO THE CONTRACT**

Changes to the Contract may be made in strict accordance with Section 9 of the General Conditions.

**ARTICLE 10 – SUSPENSION AND TERMINATION**

This Contract may be suspended and/or terminated in accordance with Section 10 of the General Conditions.

**ARTICLE 11 – INSURANCE AND BONDS**

11.1 Contractor shall provide Insurance as provided in the Insurance Requirement included in the ITB, and in accordance with Section 11.1 of the General Conditions. Contractor shall provide proof of such insurance and all required endorsements in forms acceptable to Town prior to commencing any Work under this Contract.

11.2 Contractor shall provide performance and payment bonds to Town in accordance with Section 11.2 of the General Conditions and A.R.S. § 34-610(A).

11.3 Failure to provide proof of insurance and the required endorsements, or the required bonds, in forms acceptable to Town, will be a material breach and grounds for termination for cause of this Contract.

**ARTICLE 12 – INDEMNIFICATION**

Contractor shall have and assume the indemnity obligations set forth in Section 12 of the General Conditions.

**ARTICLE 13 - DISPUTE RESOLUTION**

Any claims or disputes relating to this Contract shall be resolved according to the dispute resolution process set forth in Section 13 of the General Conditions.

**ARTICLE 14 – MISCELLANEOUS PROVISIONS**

The miscellaneous provisions set forth in Section 14 of the General Conditions shall apply to this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this Contract through their duly authorized representatives and bind their respective entities as of the effective date.

**TOWN OF FLORENCE:**

**CONTRACTOR:**

By: \_\_\_\_\_  
TARA WALTER, MAYOR

By: \_\_\_\_\_

**ATTEST:**

Its: \_\_\_\_\_

\_\_\_\_\_  
Lisa Garcia, Town Clerk

**REVIEWED AS TO FORM:**

\_\_\_\_\_  
Clifford Mattice, Town Attorney



## GENERAL CONDITIONS OF CONTRACT

**These terms will be the General Conditions for any Contract entered into as a result of the ITB and are incorporated therein and shall be fully binding upon the Bidder/Contractor**

### SECTION 1 — SCOPE OF THESE GENERAL CONDITIONS

These General Conditions encompass provisions that apply, and are incorporated into all construction contracts entered into by the Town of Florence, unless otherwise specifically excluded in the executed Contract. Sections 2 through 14 of these General Conditions apply to all construction contracts, in whatever form, including without limitation, Fixed Price, Construction Manager at Risk (CM@Risk), Guaranteed Maximum Price (GMP) Cost-Based, and Job Order Contracts (JOC).

### SECTION 2 — GENERAL DEFINITIONS

2.1. The Definitions in the Invitation to Bid (ITB), the Request for Proposals (RFP), Request for Qualifications (RFQ) and/or the JOC Solicitation (JOC) giving rise to the Contract shall apply to these General Conditions and the Contract for the Project.

2.2. Change Order – A written instrument issued after execution of the Contract Documents signed by Town and Contractor, stating their agreement upon all of the following: the addition, deletion or revision in the scope of services or deliverables; the amount of the adjustment to the Contract Price, the extent of the adjustment to the Contract Time, or modifications of other contract terms. The Contract Price and the Contract Time may be changed only by Change Order.

2.3. Town (Owner or OWNER) – Town of Florence, Arizona a municipal corporation, with whom Contractor has entered into the Contract and for whom the Services and/or Work are to be provided pursuant to the Contract(s).

2.4. Contract – The written agreement executed between Town and Contractor, including all of the Contract Documents.

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

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

2.7. Contract Time(s) (aka Period of Performance or P.O.P.)– The number of days or the dates related to the applicable phase, Substantial Completion, and/or Final Completion as stated in Contract Documents. The Contract Time is set forth in the Contract, and is based upon the Project Schedule agreed to by Town in writing.

2.8. Contractor – The person or corporation with whom Town has entered into an agreement for construction related work or services in relation to the Project at issue. As used in these General Conditions, the term Contractor includes CM@Risk and JOC under contract with Town to provide pre-construction and/or construction services.

2.9. Contractor Payment Request – The form that is accepted by Town and used by Contractor in requesting progress payments or final payment and which shall include such supporting documentation as is required by the Contract Documents and/or Town. The AIA Document G702 is an acceptable example of such a form.

2.10. Construction Documents – The plans, specifications, and drawings, Geotechnical Report, Drainage Report, prepared and issued by the Design Professional and approved by Town for construction, meaning the documents are sealed by the Contractor (as required), acceptable for permitting and incorporated into the Contract by reference. All amendments and modifications to the Construction Documents must be approved in writing by Town prior to incorporation into the Contract.

2.11. Critical Path – Critical path is the sequence of project network activities which add up to the longest overall duration. Once established in the Project Schedule, the Critical Path for the Project shall not be changed without prior written approval of Town.

2.12. Day - Calendar day(s) unless otherwise specifically stated in the Contract Documents.

2.13. Float – The number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Contract Time. Unless otherwise expressly agreed in writing, all Float belongs to Town.

2.14. MAG Specifications – The latest revision of the latest edition (or the latest edition adopted by the Town) of the Uniform Standard Specifications for Public Works Construction published by MAG.

2.15. MAG Standard Details – The latest revision of the latest edition (or the latest edition adopted by the Town) of Uniform Standard Details as published by MAG.

2.16. Notice to Proceed (NTP) – A written notice given by Town to Contractor fixing the date on which Contractor will start to perform Contractor's obligations under the Contract. The Notice to Proceed shall not be issued until the Contract Price is approved and accepted by Town.

2.17. Project – The Project specified in the Contract (including a Job Order).

2.18. Project Manager – The Project Manager designated in Article 1 of the Contract, or any successor thereto designated by Town. The Project Manager has the authority to act on behalf of Town, as delineated and limited by the Contract Documents and applicable law. Town shall communicate with Contractor through the Project Manager. However, the Project Manager has no authority to bind Town or Town Council in contravention of any Town code, State or Federal statute or regulation, or these General Conditions.

2.19. Project Schedule – The schedule for the completion of the Project agreed to and/or required by Town and incorporated into the Contract.

2.20. Project Specific Conditions – Additional conditions which apply to the specific Project and/or Scope of Work which are set forth in the ITB.

2.21. Proposal – A Proposal submitted to the Town by a Contractor in response to an Invitation to Bid (ITB), Request for Qualifications (RFQ), a Request for Proposals (RFP) or other solicitation or request by the Town. Proposals may be Fixed Price, Guaranteed Maximum Price (GMP), Unit Price, or other form as required or requested by the Town.

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

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

2.24. Scope of Work (SOW) – The scope of work agreed to and/or required by Town and incorporated into the Contract as set forth in the ITB and/or an Exhibit to the Contract.

2.25. Subconsultant – A person, firm or corporation having a Contract with Consultant/Contractor to furnish services required as its independent professional associate or consultant with respect to the Project.

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

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

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

### **SECTION 3 — STANDARD SPECIFICATIONS AND DETAILS**

3.1 Town operates under the latest revision of the MAG Specifications as amended by Town.

3.2 Town also operates under the MAG Standard Details, as amended by Town.

3.3 Copies of the MAG Specifications and MAG Standard Details are available at the Maricopa Association of Governments office, 302 N. 1<sup>st</sup> Avenue, Suite 300, Phoenix, Arizona 85003. They may also be downloaded at their Web site: <http://www.azmag.gov> under "Publications."

3.4 The MAG Specifications and Standard Details and Town's amendments thereto are incorporated into the Contract.

## **SECTION 4 — CONTRACTOR'S RESPONSIBILITIES FOR CONSTRUCTION SERVICES**

### **4.1 General**

4.1.1 Contractor shall construct the Work in accordance with the Contract Documents and as outlined in the Contract Documents to the satisfaction of Town, exercising the degree of professional care, skill, diligence, quality and judgment that a professional Contractor engaged, experienced and specializing in the construction of construction and/or facilities of similar scope, function, size, quality, complexity and detail in urban areas throughout the United States comparable to the Town would exercise at such time, under similar conditions. Contractor shall, at all times, perform the Work in conformance with sound and generally accepted engineering principles and construction management and construction contracting practices.

4.1.2 Contractor shall comply with, and require all Subcontractors to comply with, the Arizona Contractors' license laws, including all requirements with respect to being duly registered and licensed.

4.1.3 Immigration Laws: Pursuant to A.R.S. § 41-4401, Contractor warrants to Town that Contractor and all its subcontractors are in compliance and will comply with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. § 23-214(A). Contractor acknowledges that a breach of this warranty by Contractor or any of its subcontractors is a material breach of this Agreement subject to penalties up to and including termination of the Contract or any subcontract. The Town retains the legal right to inspect the papers of any employee of or any subcontractor who works on this Contract to ensure compliance with this warranty, and may conduct random verification of the employment records of Contractor and any of its subcontractors to ensure compliance with this warranty. Town will not consider Contractor or any of its subcontractors in material breach of the foregoing warranty if Contractor and its subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA § 1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A). The provisions of this Section must be included in any agreement Contractor enters into with its subcontractors who provide services under this Agreement or any subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a contractor or subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property. Breach of this warranty shall constitute a material breach of the contract and shall subject the Contractor to penalties including termination of the Agreement at the sole discretion of the Town.

4.5.4 Contractor further understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. The Contractor understands and Acknowledges that it must also comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited", and A.R.S. § 34-302, as amended, "Residence Requirements for Employees," and A.R.S. §§ 1-501 and 502.

### **4.2 Contractor's Pre-Contract and Pre-Work Deliverables**

4.2.1 Before beginning any Work under the Contract, Contractor shall execute the Contract and deliver to Town the items listed in Sections 4.2.3 and 4.2.4 below, and the Contract must be executed by Town. Failure to do so will be a material breach of the Contract entitling Town to terminate the Contract for Cause.

4.2.2 When Contractor delivers the executed Contract to Town, Contractor shall also deliver to Town such bonds and certificates of insurance with endorsements in such amounts (and other evidence of insurance requested by Town) required under Section 11 of these General Conditions, and as the Contract requires.

4.2.3 Government Approvals and Permits. Contractor shall obtain all necessary permits for the Work and pay all applicable fees, unless otherwise noted on the plans and in the specifications. Contractor is specifically notified of the need to obtain the necessary environmental permits or file the necessary environmental



and regulatory permit notices. Copies of all permits and the associated notices must be provided to Town prior to starting the permitted activity.

4.2.4 Contractor shall provide a proposed Project Schedule, in Gantt Chart format and created with a bona-fide scheduling software product such as MS Project, as part of their Bid Submittal package. Failure to submit this document shall serve as grounds for disqualification from bidding. MS Excel-type spreadsheet chart submittals are not acceptable and will be rejected. The Gantt Chart shall include a CPM (Critical Path Method) element. This Gantt Chart shall be maintained and updated weekly by Contractor during construction and presented/submitted to the Project Manager at a weekly regularly-scheduled progress meeting to be held at a mutually agreeable location.

#### **4.3 Pre-Construction Conference**

4.3.1 Prior to the commencement of any Work, Town may schedule a Pre-Construction Conference.

4.3.2 Prior to the Pre-construction Conference, Contractor shall provide the Project Team with a Schedule of Values in a form specified by Town reflecting the subcontracts and other categories that will be used to submit Pay Applications for the Work. The total amount of the Schedule of Values shall not be greater than the Contract Price and shall identify Contractor's Contingency, if applicable. The Schedule of Values shall be reviewed at the Pre-Construction Conference and revised in response to comments and questions from Town. Once accepted by Town in writing, the Schedule of Values for the Project will not be changed without the prior written approval of Town.

#### **4.4 Performance of the Work (including Field Measurements, Subcontractors, and Suppliers)**

4.4.1 Unless otherwise provided in the Contract Documents to be the responsibility of Town or a separate Contractor, Contractor shall provide through itself or Subcontractors the necessary supervision, labor, inspection, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Contractor to complete the Work consistent with the Contract Documents.

4.4.2 Contractor's Superintendent shall be present at the Site at all times that material Work under this Contract is taking place. Contractor's Superintendent or designee shall be present at the Site at all times any other Work under this Contract is taking place. 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.

4.4.3 Before ordering materials or doing work, Contractor and each Subcontractor shall verify measurements at the Site and shall be responsible for the correctness of such measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the Contract Documents, including the drawings.

4.4.4 If Contractor observes error, discrepancies or omissions in the Contract Documents, it shall promptly notify the Contractor and Town and request clarification. Contractor shall be liable to Town for damages resulting from error, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions in the Contract Documents. If Contractor, with the exercise of reasonable care, should have recognized such error, inconsistency, omission or difference and fails to report it to Town, and if Contractor proceeds with the Work affected by such observed errors, discrepancies or omissions, without receiving such clarifications, it does so at its own risk.

4.4.5 In all cases of interconnection of its Work with existing or other work, Contractor shall verify at the Site all dimensions relating to such existing or other work. Any errors due to Contractor's failure to so verify all such grades, elevations, locations or dimensions shall be promptly rectified by Contractor without any

increase in the Contract Price. Any design errors or omissions noted by Contractor during this review shall be reported promptly to Town.

4.4.6 Contractor shall be responsible for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Town and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

4.4.7 Contractor will not substitute or change any Subcontractor or Supplier without the prior written approval of Town. Any substitute or replacement Subcontractor or Supplier shall be required to meet the same qualifications and selection criteria and process as the original Subcontractor or Supplier. If a Subcontract/Supplier selection plan has been approved by Town, Contractor will follow that plan unless otherwise approved by Town in writing.

4.4.8 Contractor shall not change or replace any members of its Project team, including Contractor's Representative, Project Manager, or Superintendent, without an explanation for the change being given to Town, and receiving prior written approval of the change from Town, which approval will not be unreasonably withheld.

4.4.9 Subcontractors whose scope of work has a value greater than 15% of the total Contract Price may be required to furnish performance and payment bonds to Contractor if directed in writing by Town.

#### **4.5 Control of the Project Site**

4.5.1 Throughout all phases of construction, including suspension of Work, Contractor shall keep the Site reasonably free from debris, trash and construction wastes to permit Contractor to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Prior to Final Acceptance of the Work, or a portion of the Work, Contractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Town to occupy the Project or a portion of the Project for its intended use

4.5.2 Contractor shall take whatever steps, procedures or means necessary to prevent dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of Town and in accordance with the requirements of the Pinal County Bureau of Air Pollution Control Rules and Regulations.

4.5.3 Contractor shall be responsible to Town for the acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and any other person performing any of the Work under a Contract with Contractor, or claiming by, through or under Contractor, for all damages, losses, costs and expenses resulting from such acts or omissions.

#### **4.6 Project Safety**

4.6.1 Contractor is responsible for safety of the job site for employees of Contractor as well as for members of the general public and others who may drive or walk through or be at the site.

4.6.2 Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.

4.6.3 Contractor shall provide a "competent person" as required by O.S.H.A regulations. The "competent person" shall be identified at the Pre-Construction Conference with Town advised in writing of any changes.

4.6.4 Contractor and Subcontractors shall comply with all legal and regulatory requirements relating to safety, as well as any Town specific safety requirements set forth in the Contract Documents, provided that such Town-specific requirements do not violate any applicable legal and regulatory requirements.

4.6.5 As between Town and Contractor, Contractor is responsible to Town for any and all the safety issues relating to the Work on the Project. Contractor shall administer and manage the safety program. This will include, but not necessarily be limited to review of the safety programs of each Subcontractor. Contractor shall monitor the establishment and execution of compliance with all applicable regulatory and advisory agency construction safety standards.

4.6.6 Contractor shall maintain and have sole responsibility for safety on the job site.

#### **4.7 Materials Quality, Substitutions and Shop Drawings**

4.7.1 Quality Control and Quality Assurance Testing. All construction materials to be used or incorporated in the Project are subject to inspection, Quality Control & Quality Assurance Testing, and approval or rejection by Town. Any material rejected by Town shall be removed immediately and replaced in an acceptable manner to Town at no additional cost to Town. When QC/QA tests indicate noncompliance with the Contract Documents, retesting shall be performed by the same testing laboratory that performed the tests that indicated noncompliance.

##### 4.7.2 Shop Drawings (Where applicable)

4.7.2.1 Contractor shall prepare and submit Shop Drawings which show details of all work to insure proper installation of the Work using those materials and equipment specified under the Approved Plans and Specifications.

4.7.2.2 A schedule of Shop Drawing submissions shall be submitted with the Project Schedule for Town approval that avoids bulk submissions to the extent reasonably possible. Unless otherwise noted, Shop Drawings will not be required for items specified or detailed in the Uniform Standard Specifications and Details or the Technical Specifications. The schedule of Shop Drawing submissions shall include all of the items for which Shop Drawings are required by the Contract Documents, including the Specifications.

4.7.2.3 Shop Drawings shall be numbered consecutively for each specification section and shall accurately and distinctly present the following:

- (a) All working and erection dimensions.
- (b) Arrangements and sectional views.
- (c) Necessary details, including complete information for making connections between work under this Contract and work under other Contracts.
- (d) Kinds of materials and finishes.
- (e) Parts list and description thereof.

4.7.2.4 Contractor shall schedule, prepare and submit all shop drawings in accordance with a time-table that will allow its suppliers and manufacturers sufficient time to fabricate, manufacture, inspect, test and deliver their respective products to the project site in a timely manner so as to not delay the complete performance of the work.

4.7.2.5 The review of Shop Drawings will be general and shall not relieve Contractor of responsibility for the accuracy of such drawings, nor for the proper fitting and construction of the Work, nor for the furnishing of materials or Work required by the Contract. No construction called for by Shop Drawings shall be initiated until such drawings have been reviewed and approved by Town.

4.7.3 Long Lead Time Items. Contractor shall submit Shop Drawings, as required by the Engineer, on all long lead items to be furnished and installed as part of the project within ten (10) days after execution of the Contract. In addition, Contractor shall order all long lead items to be furnished and installed as part of this Project within (3) days after receiving approved Shop Drawings. For all long lead times for which shop drawings are not required, Contractor shall order said long lead items within fifteen (15) days after execution of the Contract. Within two (2) days after ordering long lead items, Contractor shall supply copies of all purchase orders, along with an accurate delivery schedule from the supplier.

#### **4.8 Project Record Documents**

4.8.1 During the construction period, Contractor shall maintain at the jobsite a full-size set of prints of the Construction Document Drawings and Shop Drawings (if applicable) for Project Record Document purposes.

4.8.2 Contractor shall mark these drawings to indicate the actual installation where the installation varies from the original Construction Documents. Contractor shall give particular attention to information on elements that will be concealed, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:

- (a) Dimensional changes to the Drawings.
- (b) Revisions to details shown on Drawings.
- (c) Locations and depths of underground utilities.
- (d) Revisions to routing of piping and conduits.
- (e) Actual equipment locations.
- (f) Changes made by Change Order or Addendum.
- (g) Details not on original Contract Drawings.

4.8.6 Contractor shall submit Project Record Drawing sets and Shop Drawings (if applicable) to Town or its representative for review and comment.

4.8.7 Upon receipt of the reviewed Project Record Drawings from Town, Contractor shall correct any deficiencies and/or omissions to the drawings and submit the final "As-Built" original of the Project Record Drawings to Town in both electronic PDF format as well as Architectural "D" sized paper plans, prior to Final Acceptance and as a condition of Final Acceptance.

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

#### **4.9 Warranty and Correction of Defective Work**

4.9.1 Contractor warrants to Town that the construction of the Work shall be of good and workmanlike quality and completed in strict conformance with all applicable laws, rules and regulations and the plans and specifications and all other terms and conditions of the Contract Documents, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.

4.9.2 The date of Substantial Completion shall be the beginning of the Warranty period, irrespective of early completion by some Subcontractors of their work. Contractor shall furnish extended warranties for facilities placed in service before Substantial Completion and that expire no earlier than one year beyond Substantial Completion, except as otherwise required in the Contract Documents.

4.9.3 Contractor's warranty obligation shall be in accordance with MAG Specifications.

4.9.4 In addition, unless otherwise specified in the Contract Documents, Contractor and Subcontractors shall provide to Town all of the following written warranties that apply to the Work, in a form acceptable to Town.

- (a) General Warranty — One (1) year.
- (b) Mechanical Contractor — Two (2) years.
- (c) Plumbing Contractor — Two (2) years.
- (d) Electrical Contractor — Two (2) years.
- (e) Roofing Contractor — Two (2) years.
- (f) Roofing Manufacturer — Ten (10) years.
- (g) Caulking — One (1) year.
- (h) Steel Joists, Certificate of Manufacture.
- (i) Exterior Metal Wall System — Five (5) years.
- (j) Painting — One (1) year.
- (k) Termite — Five (5) years.
- (l) Sheet Metal: Zinc coating thickness on hot-dipped galvanized.
- (m) Metals- One (1) year.
- (n) Acoustical Tile — Five (5) years.
- (o) Resilient Floor Covering — One (1) year.

4.9.5 Nothing in the warranties contained in the Contract Documents are intended to limit any manufacturer's warranty which provides Town with greater warranty rights than set forth in this Section or the Contract Documents. Contractor will provide Town with all manufacturers' warranties prior to Final Acceptance.

4.9.6 A progress payment, or partial or entire use or occupancy of the Project by Town, shall not constitute acceptance of Work not in accordance with the Contract Documents.

4.9.9 Without limiting the foregoing or anything in these General Conditions or the Contract to the contrary, Contractor shall obtain and provide to Town all warranties for any portion of the Project offered by the manufacturer, installer or provider thereof. Town and the user of the facility shall have the right to the full value and benefit of all such warranties. Contractor will ensure all such warranties are fully transferrable to facilitate the full value of this Section 4.9.9.

## **SECTION 5 — TOWN'S RESPONSIBILITIES**

**5.1 Town Project Manager.** Project Manager is responsible for providing Town-supplied information and approvals in a timely manner to assist Contractor to fulfill its obligations under the Contract Documents.

**5.2 Contractor Services.** Town may contract separately with one or more Contractors to provide construction administration of the Project. The Contractor's Contract, as well as other firms hired by Town shall be furnished to Contractor. Contractor shall not have the right to limit or restrict or reject any Contract modifications that are mutually acceptable to Town and Contractor.

**5.3 Materials Testing.** Town shall be responsible for all materials testing and associated costs. The Project Manager, or their designated representative, shall be the sole authority for authorizing and requesting testing or other observation services.

**5.4 Residential Notifications and Private Property Access.** Town shall be responsible for notification to local residents affected by access issues to their property during construction. The Contractor agrees to communicate and coordinate with Town in these efforts, and to make a best effort to minimize property ingress/egress issues during the course of construction.

**5.5 Emergency Services Access Coordination.** Town shall be responsible for notifying and coordinating access restrictions and other service-limiting issues for Police, Fire and EMS services. This item is of particular importance due to the Town Fire Department having its primary ingress/egress on Gila Blvd. The Contractor agrees to schedule and coordinate any and all construction activities and access restrictions with Town as it may impact or affect Police, Fire and EMS services.

## **SECTION 6 — CONTRACT TIME**

### **6.1 Contract Time (aka Period of Performance or P.O.P.).**

6.1.1 The Contract Time shall start with the Notice to Proceed (“NTP”) and end with Final Acceptance, as set forth in Section 6.4 below.

6.1.2 The Notice to proceed shall be issued in accordance with MAG Specifications § 108.

6.1.3 The Contract Time shall be as set forth in the Project Schedule. Contractor agrees that it will commence performance of the Work and complete the Project through both Substantial Completion and Final Completion within the Contract Time.

6.1.4 Time is of the essence of this Contract, for the Project, for the Work, and for each phase and/or designated Milestone thereof.

### **6.2 Project Schedule.**

6.2.1 The Project Schedule shall be updated and maintained throughout the Contract Time (aka Period of Performance).

6.2.2 The Project Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Contractor of its obligations to complete the Work within the Contract Time, as adjusted in accordance with the Contract Documents. No modification to the Contract Documents or the Contract Time shall be effective unless approved in advance by Town.

6.2.3 An updated Project Schedule shall be submitted monthly to Town as part of the Payment Request. This requirement shall be independent of any other Project Schedule submittal requirements.

6.2.4 Contractor shall provide Town with a monthly status report with each Project Schedule detailing the progress of the Work, including: (i) if the Work is proceeding according to schedule, (ii) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (iii) other information detailing items that require resolution so as not to jeopardize the ability to complete the Work in the Contract Time.

6.2.5 Acceptance of a submitted schedule by Town should in no way be construed as an affirmation or admission that the schedule is reasonable or workable by Contractor. The responsibility for completing the Work on the Project within the Contract Time remains the obligation of Contractor. Town’s review shall not relieve Contractor from compliance with the requirements of the Contract Documents or be construed as relieving Contractor of its complete and exclusive control over the means, methods, sequences and techniques for executing the work.

## 6.2.6 Critical Path Method (CPM)

6.2.6.1 Unless otherwise specified in the Contract, the Project Schedule shall include a Critical Path Method (CPM) diagram schedule showing the sequence of activities, the interdependence of each activity and identifies the Critical Path.

6.2.6.2 The CPM diagram schedule shall be in calendar Days and indicate duration, earliest and latest start and finish dates for all activities, and total Float Times for all activities except critical activities. The CPM diagram shall be presented in a time scaled graphical format such as a Gantt Chart for the Project as a whole. MS Excel spreadsheets shall not be an acceptable format or medium for conveying graphical schedule information.

## 6.2.7 Float Time

6.2.7.1 The total Float Time within the overall schedule is for the exclusive use of Town, but Town may approve Contractor's use of Float as needed to meet contract Milestones and the Project completion date.

6.2.7.2 Contractor shall not be allowed to sequence, hide, or reallocate Float Time through such strategies, as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. No time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Contract Time.

6.2.7.3 Rain-Related Delays. Contractor is required, in preparing the Project Schedule to take into account all relevant weather conditions, including normal rainfall and distribution. No additional Compensation shall be given for any rain-related delays or impacts on the Work or the Project Schedule. The burden of documenting normal rainfall, the excessive rainfall and the impact on Critical Path activities is on Contractor.

## 6.3 Substantial Completion.

6.3.1 When Contractor considers that the Work, phase or a portion thereof, which Town agrees to accept separately, is substantially complete, Contractor, in conjunction with the Inspector, shall prepare and submit to the Project Manager a comprehensive Punch List of items to be completed or corrected prior to Final Acceptance and Final Payment

6.3.2 Upon receipt Contractor's Punch List, Project Manager will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the inspection by the Project Manager discloses any item, whether or not included on Contractor's Punch List, which is not sufficiently completed in accordance with the Contract Documents so that Town can occupy or utilize the Work, phase or designated portion thereof for its intended use, Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by Project Manager.

6.3.3 Certificate of Substantial Completion. The Project Manager shall not issue a Certificate of Substantial Completion unless and until the Work (or separable units or Phases as provided in the Contract Documents) is essentially and satisfactorily complete in accordance with the Contract Documents, such that the Project is ready for use by Town for its intended purpose, opening to the general public, full occupancy or use by Town (including, without limitation, streets, sidewalks, driveways, curb and gutter, drainage channels, fencing, pavement striping, and/or all areas serving the general public, as applicable, shall be ready for full operation without material inconvenience or discomfort), including, to the extent applicable to the Work, the following: all materials, equipment, systems, controls, features, facilities, accessories and similar elements are installed in the proper manner and in operating condition, inspected and approved; surfaces have been painted; masonry and concrete cleaned with any sealer or other finish applied; site work complete; paving completed, signage installed, and/or other work as applicable, has been performed to a similar state of essential and satisfactory completion. In no event

shall Substantial Completion be deemed to have occurred unless and until: (i) a temporary certificate of occupancy has been issued by the appropriate Governmental Authorities (as applicable) and (ii) all terms and Work required under this Agreement have been fulfilled by Contractor and same shall have also been approved and accepted by Town, subject only to the Punch List Items.

#### **6.4 Final Acceptance and Final Completion.**

6.4.1 Unless otherwise expressly agreed to in writing by Town, Final Completion must be obtained by no later than 30 calendar days after the date of Substantial Completion. Failure to timely obtain Final Completion will be a material breach of the Contract.

6.4.2 Upon receipt of written notice that the Work is ready for final inspection and acceptance, Town and Contractor will jointly inspect to verify that the remaining items of Work have been completed. There shall be no partial acceptance. Final Acceptance shall not be issued and Final Completion shall not occur until all items of work, including Punch List Items, have been completed to Town's satisfaction as reflected in the written Final Acceptance.

6.4.3 Final Payment under Section 8.4 below shall not be due, owing, or paid by Town until Final Completion is obtained.

### **SECTION 7 — CONTRACT PRICE**

**7.1 Fixed Price Contracts.** The Contract Price for all Fixed Price Contracts shall be the amount set forth in the Contract.

**7.2 Town Sales Tax.** Contractor is required to pay Town Sales Tax on any contracting activity done for the Town, and this cost shall be included in all Contract Prices.

### **SECTION 8 — PAYMENT**

#### **8.1 Payment for Construction Services.**

8.1.1 Subject to the terms of the Contract Documents, including this Section 8, payment for the Work will be made in accordance with MAG Specifications § 109 as amended below.

8.1.2 In MAG Specifications § 109.7 (A), replace the first paragraph of the subsection with the following:

Town will make monthly progress payments during the course of the contract. The payments (estimates of work completed) will be prepared by Contractor on form provided by Town, and approved by Project Manager. The monthly payment cycle will start with the date of the Notice to Proceed. Town may process payments more frequently if requested by Contractor and agreed to in writing by Town.

8.1.3 Payments shall be made pursuant to A.R.S. § 34-221 and/or § 34-609, as applicable.

8.1.4 When construction of the Project is fifty percent (50%) completed, Contractor may request payment of one-half of the retention pursuant to A.R.S. § 34-221(C)(3) and/or §34-609(B)(3), subject to all of Town's rights to withhold or offset payments, and/or other rights of Town, under the Contract.

8.1.5 Town reserves the right under A.R.S. § 34-221(C)(3) and/or § 34-609(B)(3) to reinstate the ten percent (10%) retention if Town determines that satisfactory progress is not being made.



**8.2 Final Payment.** Subject to all of Town’s rights to withhold or offset payment, and other rights under the Contract, Final Payment including remaining retainage shall be paid only after: (i) the Work has been fully completed (including completion of all incorrect or incomplete work items) and the written Final Acceptance has been issued by Town; (ii) necessary operating manuals, any excess materials and supplies necessary for matching materials and supplies incorporated into the Work, and complete “as-built” drawings (including the Building Information Model, if required by the Contact Documents), plans and specifications have been delivered to Town; (iii) full and unconditional lien waivers and releases by Contractor and any person performing labor or supplying material, machinery, fixtures, or tools for the Work have been delivered to Contractor; (iv) all conditions and requirements imposed by Town or any financing entity for the corresponding disbursement have been met; (v) Contractor supplied Statement of Warranty; and (vi) Contractor delivers to Town a Contractor Payment Request Form requesting Final Payment.

**8.3 Town’s Right to Withhold Payment.** Town may withhold payment to such extent as may be necessary in Town’s opinion to protect Town from loss for which Contractor is responsible, including, without limitation:

- i. Defective Work not remedied;
- ii. Third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Town is provided by Contractor;
- iii. Failure of Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- iv. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- v. Damage to the Town or another Contractor;
- vi. Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- vii. Persistent failure to carry out the Work in accordance with the Contract Documents.

**8.4 Joint/Direct Checks.** Payments to Contractor shall be made by checks payable directly to Contractor or their Surety Bond Company only.

**8.5 Payment Not A Waiver.** No payment (nor use or occupancy of the Project by the Town) shall be deemed acceptance or approval of the Work or as a waiver of any claims, rights, or remedies of Town.

**8.6 Liens and Bond Claims.** Contractor shall make all payments, in the time required, of all labor and materials furnished to Contractor in the course of the Work and shall promptly furnish evidence of such payments as Town may require. Contractor shall pay when due all claims arising out of performance of the Work covered by this Contract for which a lien may be filed either against the real estate or leasehold interest of Town, or against payments due from Town to Contractor, or for which a claim may be made against any payment or performance bond or both. To the fullest extent permitted by law, Contractor agrees that no liens or other claims in the nature of a lien against the real estate, leasehold, or other interest of Town, against payment due from Town to Contractor, or against any payment or performance bond, shall be filed or made in connection with the Work by any party who has supplied professional services, labor, materials, machinery, fixtures, tools, or equipment used in or in connection with the performance of this Contract, and Contractor agrees to remove or to cause to be removed any such liens or claims in the nature of a lien or bond claim within ten (10) days upon receiving notice or obtaining actual knowledge of the existence of such liens or claim. In addition, Contractor agrees to defend, indemnify, and hold harmless Town from and against any and all such liens and claims. This paragraph does not apply to claims and liens of Contractor due to non-payment for work performed.

**8.7 Financial Record Keeping and Town’s Audit Right.**

8.7.1 Records for all Contracts between Town and Contractor shall, upon reasonable notice, be open to inspection and subject to audit, scanning, and/or reproduction during normal business working hours. Town or its designee may conduct such audits or inspections throughout the term of this Contract and for a period of three years after Final Payment or longer if required by law.

8.7.2 Town, its authorized representative, and/or the appropriate agency, reserve the right to audit Contractor’s records in compliance with local, state or federal policies, statutes or at Town’s discretion, within three (3) years of Final Acceptance of the Work.

**SECTION 9 — CHANGES TO THE CONTRACT**

**9.1 Extra Work/Changes in the Work.**

9.1.1 Town reserves the right to make such changes in the plans and specifications for the Work, as it may deem appropriate and any such change as set forth in a written Change Order or Extra Work Order shall be deemed a part of this Contract as if originally incorporated herein.

9.1.2 Contractor shall not be entitled to payment for additional work unless a written Change Order or Extra Work Order, in form and content prescribed by Town, has been executed by Town prior to starting the additional work.

9.1.3 Any agreement which modifies the terms of the Contract (including Change Orders) shall be approved in writing by the Project Manager. Once properly executed by both parties, these modifications to the Contract shall have the same effect as if they had been included in the original Contract.

**9.2 Accuracy of Change Order Pricing Information.** Signature by the contracting parties shall constitute full accord and satisfaction between Town and Contractor for all costs, damages, and expenses of whatever kind of nature, including delay, impact or acceleration damages, which may be occasioned by a Change Order of other modification of the Contract agreed to in writing.

**SECTION 10 — SUSPENSION AND TERMINATION**

**10.1 Suspension.** Town may suspend the Contract and/or Contractor’s performance in accordance with MAG Specifications § 105.1.

**10.2 Termination by the Town for Cause.**

10.2.1 MAG Specifications § 108.11 applies to the Contract.

10.2.2 Town may also terminate the Contract if Town determines, in its sole discretion, that Contractor has:

- (a) Refused or failed to supply enough properly skilled workers or proper materials;
- (b) Failed to make payment to Subcontractors for materials or labor in accordance with the respective agreements between Contractor and the Subcontractors;
- (c) Disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

- (d) Otherwise breached a provision of the Contract Documents or any other contract between Town and Contractor.

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

**10.3 Termination by Town for Convenience.** Town may also terminate the Contract at any time for its convenience upon seven (7) days written notice to Contractor specifying the termination date. In the event of termination which is not the fault, in whole or in part, of Contractor, Town shall pay to Contractor only such compensation, including reimbursable expenses, due for Work properly performed on the Project prior to the termination date. Upon any termination of the Contract, no further payments shall be due from Town to Contractor.

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

**10.5 Non-Appropriation.** Town is a government agency which relies upon the appropriation of funds by its governing body to satisfy its obligations. If Town determines that it does not have funds to meet its obligations under the Contract, Town shall have the right to terminate the Contract without penalty on the last day of the fiscal period for which funds were legally available for the Project.

10.6 Under no circumstances shall Town have any liability for any costs, expenses, overhead, or profits in relation to any work not actually performed, or for any future or anticipated profits, recovery, damages, expenses, or losses.

## **SECTION 11 — INSURANCE AND BONDS**

### **11.1 Insurance Requirements.**

11.1.1 Contractor shall obtain, maintain, and provide verification of insurance coverage set forth in the Town's Insurance Requirements, as modified by any applicable Special Provisions, of the Contract.

11.1.2 Town may, in the Contract Documents, designate additional insured(s) along with Town (and their respective employees, members, representatives, agents and affiliates) on all required insurance policies, and all coverage applicable to Town under this Section 11.1 and the Insurance Requirements in the Town's Insurance Requirements shall apply to such designated additional insured(s) as well.

11.2.3 Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of this Contract.

11.1.4 Subcontractors. Contractor's certificate(s) shall include all Subcontractors as additional insureds under its policies or Contractor shall furnish to Town separate certificates and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to the minimum requirements set forth in the Contract Documents, including the Town Insurance Requirements.

## **11.2 Bonds and Other Performance Security.**

11.2.1 Prior to execution of the Contract, Contractor shall provide a Performance Bond and a Payment Bond, each in an amount equal to the full amount of the Contract Price.

11.2.2 Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the State of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds.

11.2.3 The bonds shall be made payable and be acceptable to Town. The bond forms for the performance and payment bonds shall be in the forms required under A.R.S. § 34-221, *et seq.*

11.2.4 All bonds submitted for this project shall be provided by a company which has been rated AM Best rating of A or better for the prior four quarters by the latest edition of the 'Results Best's Key Rating Guide (Property/Casualty)' published by the A.M. Best Company.

11.2.5 Personal or individual bonds are not acceptable.

## **SECTION 12 - INDEMNIFICATION**

12.1 To the fullest extent permitted by law, Contractor, its successors and assigns shall defend, indemnify and hold harmless the Town and its agents, representatives, officers, directors, officials and employees from all demands, proceedings, suits, actions, claims, damages, or losses relating to, arising out of, resulting from or alleged to have resulted from the performance of the Work or failure to comply with Contractor's obligations under the Contract Documents or any laws, regulations, or legal requirements. Contractors' duty to defend, indemnify and hold harmless Town and its agents, representatives, officers, directors, officials and employees shall arise in connection with all demands, proceedings, suits, actions, claims, workers' compensation claims, unemployment claims, damages, losses or expenses (including but not limited to attorney's fees, court costs, and the cost of appellate proceedings) that are attributable to personal or bodily injury, sickness, disease, death or injury to, impairment or destruction of property including loss of use resulting therefrom, caused by any act or omission of Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

12.2 Contractor shall also defend, indemnify and hold harmless Town, the Contractor, any jurisdiction or agency issuing permits for any work involved in the project and their consultants and each of their directors, officers, employees and agents from and against all losses, expenses, damages (including damages to the work itself), attorney's fees and other costs including costs of defense, which any of them may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the Work and all of the Work and all of Contractor's obligations under the Contract. Such costs, expenses, and damages shall include all costs, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.

12.3 The indemnified party shall have the right to approve the legal counsel selected by Contractor or the insurer of the liability, which approval shall not be unreasonably withheld.

12.4 The defense, indemnification, hold harmless provisions and Town's Liability Insurance set forth herein shall survive any termination of the Contract.

## **SECTION 13 — DISPUTE RESOLUTION**

**13.1 Informal Dispute Resolution.** The parties to the Contract agree that time is of the essence in relation to performance of the Contract and completion of the Project, therefore any and all disputes in relation to the Contract will initially be referred to the Project Manager, the Design Professional Representative and/or the Contractor Representative as applicable to the dispute, for immediate resolution. If, after good faith efforts to reach

a resolution, none is reached, any party to the dispute may submit the dispute to the Dispute Resolution Representative (“DRR”) process set forth below, which is intended to be an expedited process.

### **13.2 Dispute Resolution Representative (DRR) Process.**

13.2.1 The Parties under the Contract agree that all claims and disputes in relation to the Project which are not resolved in the ordinary course of the Project (Claim or Claims) shall, as a prerequisite to any mediation, or litigation of the Claim, first be submitted for resolution between the designated Dispute Resolution Representatives of the Parties as set forth herein (the “DRR Process”).

13.2.2 The DRR Process shall be initiated through service of a DRR Notice as set forth below:

(a) for claims by the Contractor or the Design Professional, the DRR Process shall be initiated by the party asserting the claim serving written notice on the Town setting forth in detail: (i) the basis for the claim; (ii) the effect of the Claim upon the construction of, and/or Project Schedule for, the Project; (iii) the specific relief requested, the amount thereof, and how such was calculated; (iv) the parties involved in the Claim, and how they are involved; (v) the specific contract provisions in the Contract Documents (including, if applicable, drawings and specifications) which apply; and (vi) efforts made to date to resolve the Claim.

(b) For claims by the Town, the DRR process will be initiated by the Town providing written notice to the other parties of the basis and amount of its claim, the parties involved in the Claim, and how they are involved, the provisions in the Contract Documents that apply, and the relief requested.

(c) The DRR Notice shall be hand-delivered and e-mailed to the other parties’ designated Dispute Resolution Representatives.

13.2.3 The other parties shall respond in writing to the DRR Notice (DRR Response) within ten (10) calendar days of receipt of the DRR Notice, setting forth those items set forth in the DRR Notice that they agree with, dispute, and/or have questions concerning. The DRR Response shall be hand-delivered and e-mailed to the other parties’ Dispute Resolution Representatives.

13.2.4 The designated Dispute Resolution Representatives for the Parties to the claim shall then meet as soon as possible and in any event within twenty (20) calendar days of submission of the DRR Notice (regardless of whether a DRR Response has been submitted by all parties involved in the dispute), at a mutually agreed upon time and place, to attempt to resolve the Claim based upon the DRR Notice and DRR Response.

13.2.5 At any time after the first meeting required above, either party may terminate the DRR Process by written notice to the other party.

13.2.6 The parties may agree, in writing, to extend or modify the time limits or other provisions of the DRR process in relation to a specific pending Claim.

13.2.7 Unless otherwise designated in a written notice to the other parties, the Project Manager and the representatives of the Contractor and of the Design Professional shall act as the parties’ designated Dispute Resolution Representatives.

13.2.8 If a resolution of the Claim is reached, that resolution shall be set forth in writing and shall be signed by the Parties’ designated Dispute Resolution Representative. If the resolution involves a change in any Contract Documents, the Contract Price, the Project Schedule, or any other change requiring a written Change Order or Amendment, the parties shall execute an appropriate written Change Order or Amendment pursuant to the terms of the Contract Documents.

### **13.3 Mediation.**

13.3.1 Unless extended by written agreement of the parties involved in the dispute, any Claim not resolved through the DRR process set forth above within five (5) calendar days after the meeting required under B (4) above, or after the DRR is terminated pursuant to B (5) above, whichever is earlier, shall be submitted to mediation as a condition precedent to litigation by either party.

13.3.2 The mediation shall be commenced by written demand upon the other party for mediation. If the parties cannot agree upon a mediator within ten (10) calendar days of the written demand, either party may make a request to the Civil Presiding Judge of the Pinal County Superior Court to appoint a mediator. The mediation shall occur within forty (40) calendar days of the written demand for mediation, unless the parties agree, in writing, to a longer period of time.

13.3.3 The qualifications for the mediator shall be that they be: (a) an experienced mediator, arbitrator or litigator of construction disputes; and (b) having engaged a significant portion of their time involving and/or resolving construction disputes for at least the past five (5) years.

13.3.4 Each party shall provide to the other party and the mediator all of the information and documentation required under B(1) and (2) above, together with any additional information and documentation which the party believes relevant. In addition, the parties shall exchange, and provide to the mediator such additional memoranda, information and/or documentation, as the mediator may request, and in the form and at such times, as the mediator may direct.

13.3.5 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Florence, Arizona, unless another location is mutually agreed upon. Agreements reached in mediation shall be specifically enforceable in any court having jurisdiction thereof.

### **13.4 Arbitration.**

13.4.1 If the mediation is unsuccessful, the parties shall submit the dispute and/or claim to be resolved through binding arbitration conducted according to the then current Construction Industry Arbitration Rules of the AAA, but not administrated or conducted by the AAA, which arbitration shall be held in Pinal County, Arizona, utilizing a single arbitrator selected by the parties, unless the parties agree, in writing, to an alternative arbitration procedure.

13.4.2 If: (a) the parties cannot agree on a single arbitrator within two (2) weeks of the demand for arbitration; or (b) the parties at any time prior to the arbitrator being appointed and the arbitrator has accepted the appointment, cannot agree upon any significant aspect of the arbitration, not already addressed herein, either party may submit the Claim directly to the AAA to select the Arbitrator, and thereafter the arbitration shall be administered by the AAA.

13.4.3 The arbitrator shall be an attorney with at least fifteen (15) years of experience in construction related practice, and whose practice, for at least the last five (5) years, consists of at least 50% construction law.

13.4.4 At the request of either party, the arbitration may include as parties, through joinder, consolidation or otherwise, additional persons or entities involved in the Project, involving claims and/or disputes with common issues and/or facts. The arbitrator shall promptly rule upon any request for joinder or consolidation.

13.4.5 In relation to claims in which the amount in controversy is less than \$250,000, no discovery other than exchange of documents, designation of witnesses and detailed disclosure of claims and defenses (including specifically a detailed basis for calculating all claims), and no more than 3 depositions and 1

expert per side, shall be allowed, subject to disclosure of such other information as approved by the arbitrator. Otherwise, discovery shall be allowed and/or limited as decided by the arbitrator.

13.4.6 The prevailing party in any arbitration or court proceeding under this Agreement shall be entitled to an award of its attorneys' fees, costs, and expenses (including expert witness fees) incurred.

13.4.7 A demand for arbitration shall be made within the time limits specified in the Contract Documents as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations.

13.4.8 The Parties agree to participate as a party, by joinder and/or consolidation, in any arbitration, litigation, or other dispute resolution involving as an issue, claim, or defense, any action, inaction, or service provided under this Contract or in relation to the Project or the Work, or any defect or deficiency in the Work.

13.4.9 The party filing a notice of demand for arbitration, or a counterclaim, must assert in the demand or counterclaim all Claims then known to that party on which arbitration is permitted to be demanded.

13.4.10 Any award by the arbitrator shall not include any consequential or punitive damages.

13.4.11 The award entered by the arbitrator shall be a reasoned award.

13.4.12 The award entered by the arbitrator shall be final and judgment may be entered thereon in the Arizona Superior Court.

#### **SECTION 14 — MISCELLANEOUS PROVISIONS**

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

**14.2 Governing Law and Venue.** In the performance of the Contract, Contractor shall abide by and conform to any and all laws of the United States, State of Arizona, Pinal County, and the Town, including but not limited to federal and state executive orders providing for equal opportunities, the Federal Occupational Safety and Health Act and any other federal, state, county or local laws applicable to the Contract. This Contract shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Pinal County, Arizona and both parties consent to jurisdiction and venue in such court for such purposes.

**14.3 Survival.** All warranties, representations and indemnifications by Contractor shall survive the completion or termination of this Agreement.

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

**14.5 Project Communications.**

14.5.1 All communications concerning the performance of the Work or the Project shall be provided to the designated Project Manager and Contractor's Representative set forth in Article 1 of the Contract.

14.5.2 Project communications may be exchanged by e-mail upon the written agreement of the Project Manager and Contractor Representative, but e-mail communications are not binding upon Town and cannot change the terms of the Contract or the scope of work, or effectuate any change that requires a written change order. The use of e-mails is for information only, and e-mails will have no legal or binding effect.

**14.6 No Boycott.** Pursuant to A.R.S. 535-393.01, Contractor by execution of this Contract, certifies that it is not currently engaged in and agrees for the duration of this Contract to not engage in, a boycott of Israel.



## TOWN REVISIONS TO MAG SPECIFICATIONS

- 1. Adoption of the MAG Specifications:** The Uniform Standard Specifications and Details for Public Works Construction issued by the Maricopa Association of Governments (“MAG Specifications”) have been adopted by the Town and shall apply to the Work, to the extent applicable. In addition, to the extent the Town has adopted its own Town Specifications, and/or Supplements and/or Modifications to the MAG Specifications (collectively the “Town Specifications”), those Town Specifications shall apply to the Work when and where appropriate and Contractor shall fully comply therewith. Any questions or concerns the applicability of any specific MAG or Town Specification to the Work shall be directed in writing to the Project Manager.
- 2. ITB, Contract, General Provisions, Special Provisions, and/or Specifications for the Project:** To the extent there is any conflict between: (i) the ITB, the Contract, the General Provisions to the Contract, the Special Provisions, and/or the Specifications for the Project; and (ii) the MAG Specifications as amended by the Town, the specific provision applicable to the Project set forth in the Contract Documents enumerated in (i) prevail.
- 3. Specific Revisions to MAG Specifications:** The following special provisions modify the sections of the MAG Specifications.

### **Section 102.3 INTERPRETATION OF QUANTITIES IN PROPOSAL**

Add the following at the end of the section:

Notwithstanding any other provision in the Contract Documents, Contractor shall not be entitled to increase the unit prices on any basis, including increases, decreases or reallocation of any quantities, no matter what the quantum of the increase, decrease or reallocation may be.

### **Section 102.12 DISQUALIFICATION OF BIDDERS**

Add a new paragraph (C), to read as follows:

(C) Submission of any unit prices in the bid proposal which are unbalanced, either above or below the amount of a reasonable bid price as determined by the Town Engineer, to the potential detriment of Town.

### **Section 104.2 ALTERATION OF WORK**

Delete the second paragraph in Section 104.2.1 in total, and replace with the following:

No payment will be made for any changes in the Work, whether initiated by the Town, the Engineer, or Contractor, unless and until a written change order has been fully executed and approved by the Town.

Delete Section 104.2.2 in its entirety.

In Section 104.2.3, delete the following from the first paragraph in Section 104.2.3:

“and payment will be made in accordance with the provisions set forth in Section 109.”

### **Section 105.4 COORDINATION OF PLANS AND SPECIFICATIONS**

Add the following:

For any apparent error or omission in the plans and specifications, such corrections by the Town Engineer may include adjustments in units, quantities and unit prices.

### **Section 108.1 NOTICE TO PROCEED**

Add the following subsection:

(C) Work shall not start until the contract has been executed by both the Contractor and the Town. The Contractor shall begin work as soon as practical after the starting date specified in the Notice to Proceed. All

work under the contract shall be completed within the number of calendar days stated in the proposal, plus extensions, beginning the day following the starting date specified in the Notice to Proceed.

**Section 108.11 TERMINATION OF CONTRACT**

Add the following at the end of the first paragraph:

The Town may also terminate the Contract for its convenience without cause. Contractor shall only be entitled to payment for the actual costs of Work actually completed as of the date of termination, and no payment shall be due or made for any anticipated costs, profits, overhead or other costs not actually incurred, and no payment shall be paid for idle time or labor cost, legal or accounting charges, claim preparation charges, subcontractor costs, lost profits, general conditions or overhead, bidding and/or project investigation costs, acceleration or efficiency claims, or any other additional expense or claim related to the termination.

**Section 109.4 COMPENSATION FOR ALTERATION OF WORK**

Before Section 109.4.1, add the following:

Any deduction or increase in the Contract Price must be supported by a signed, written change order fully executed by the Town, and supported by such backup as the Engineer, Project Manager, and the Town may require. No adjustments in any unit prices will be allowed.

Delete Sections 109.4.1(A) and (B) and 109.4.2(A) in their entirety.

**Section 109.9 DOLLAR AMOUNT OF MAJOR ITEM**

Delete in its entirety.

**Section 110 NOTIFICATION OF CHANGED CONDITIONS AND DISPUTE RESOLUTION**

Delete the entire section and replace with the following:

All claims and disputes shall be resolved pursuant to § 13 of the General Conditions.

## INSURANCE REQUIREMENTS

1. **Contractor's Obligation:** Contractor shall secure and maintain, at his or her own expense, until completion of the contract, general liability and property insurance as shall protect Contractor and the Town from claims for bodily injury, personal injury, and property damage which may arise because of the nature of the work or from operations under this contract. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
2. **General Liability Coverage:** Contractor shall have general liability coverage on a per project basis, per occurrence, and in comprehensive form. General liability coverage shall include Products/Completed Operations, Explosion, Underground and Collapse Hazard, Premises, Operations, Contractual, Independent Contractors, Broad Form Property Damage and Personal Injury.
3. **Coverage Amounts:** Contractor shall provide general liability and excess general liability coverage in the following amounts, at a minimum:

<b>Employer's Liability</b>	\$500,000-\$1,000,000
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**Contractors General Liability**

a. General Aggregate	\$2,000,000
b. Products – Completed Operations Aggregate	\$2,000,000
c. Personal and Advertising Injury	\$2,000,000
d. Each Occurrence (Bodily Injury and Property Damage)	\$2,000,000
e. Excess or Umbrella Liability	
1.) General Aggregate per job	\$3,000,000
Per policy year	\$5,000,000
2.) Each Occurrence per job	\$3,000,000
Per policy year	\$5,000,000

**Automobile Liability**

a. Bodily Injury:	
Each Person	\$1,000,000
Each Accident	\$1,000,000
b. Property Damage	
Each Accident	\$1,000,000
c. Combined Single Limit	\$1,000,000

**Contractual Liability**

a. Bodily Injury:	
Each Accident	\$2,000,000
Annual Aggregate	\$2,000,000
b. Property Damage:	
Each Accident	\$2,000,000
Annual Aggregate	\$2,000,000
Each Accident	\$2,000,000
Annual Aggregate	\$2,000,000

**Workman's Compensation**

a. Bodily Injury by Accident each accident	\$1,000,000
b. Bodily Injury by Disease each employee	\$1,000,000
c. Bodily Injury by Disease policy limit	\$1,000,000

**4. Additional Provisions:**

- A. Additional Insured: Contractor shall name the Town of Florence as an “Additional Insured” on all insurance policies, except Worker's Compensation, and this shall be reflected on the Certificate(s) of Insurance.
- B. Cancellation Notice of Material Change of Coverage: Contractors’ required insurance shall be endorsed to provide that the policy(ies) will not be canceled, reduced, discontinued, or otherwise materially altered during the period of performance without thirty (30) days prior written notice to the Town of Florence.
- C. Certificate(s) of Insurance: Prior to commencing work under each contract or subcontract, Certificates of Insurance shall be submitted and approved by the Town. Contractor is responsible for obtaining Certificates of Insurance establishing that Contractor and all subcontractors have complied with insurance requirements previously stated. Copies of Certificate(s) of Insurance shall be forwarded to the Risk Manager for review and filing. Failure of Town to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Town to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor’s obligation to maintain such insurance. Town shall have the right, but not the obligation, to prohibit Contractor or any of its subcontractors from entering the Project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Town.
- D. Rating of Insurance Company(ies): Any and all insurance company(ies) supplying coverage to Contractor must have no less than an “A” rating in accordance with the A.M. Best rating guide.
- E. Deductible: Contractor shall be responsible to satisfy any deductible or self-insured retention with respect to any of the coverages required by the Contract Documents.
- F. Rental Equipment: In the event that rental of equipment is undertaken to complete and/or perform the Work, Contractor agrees that it shall be solely responsible for such rental equipment. Such responsibility shall include, but not be limited to, theft, fire, vandalism and use by unauthorized persons.
- G. Personal Property: In the event that materials or any other type of personal property (“personal property”) is acquired for the Project or delivered to the Project site, Contractor agrees that it shall be solely responsible for such property until it becomes a fixture on the Project, or otherwise is installed and incorporated as a final part of the Project. Such responsibility shall include, but not be limited to, theft, fire, vandalism and use by unauthorized persons. Contractor shall maintain “all risk” insurance, on a replacement cost basis, covering loss or damage to personal property (for which it has title and/or risk of loss) which is to become a final part of the Project, during any time such personal property is in transit and while stored or worked upon away from the Project site. Town shall be named as additional insured under such insurance.
- H. Waiver of Subrogation: Town and Contractor waive all rights against each other and Architect/Engineer, and separate contractors for damages caused by fire or other perils covered by Builder's Risk or any other property insurance, except such rights as they may have to the proceeds of such insurance.
- I. Right to Require Higher Limits: Town reserves the right, in its sole discretion, to require higher limits of liability coverage if, in Town’s opinion, operations by or on behalf of Contractor create higher than normal hazards and, to require Contractor to name additional parties in interest to be Additional Insureds.

- J. Waiver of Requirements: The Town Manager, in consultation with the Risk Manager and/or Town Attorney, reserves the right to waive or reduce insurance requirements should it be in the best interest of the Town.
- K. If any Work under this Contract is sub-contracted in any way, the Contractor shall execute a written agreement with the sub-contractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting the Town of Florence and the Contractor.
- L. Deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the Town of Florence. The Contractor's coverage shall be primary insurance with respect to all available sources. Coverage provided by Contractor shall not be limited to the liability assumed under the Indemnification provision of this Contract. The Town reserves the right to continue payment of premium for which reimbursement shall be deducted from amounts due or subsequently due the Contractor. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.
- M. Prior to commencing any Work under this Contract, the Contractor shall furnish the Finance Director with Certificate(s) of Insurance, and formal endorsements as required by this Contract, issued by the Contractor's insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide required coverage's conditions, and limits of coverage and that such coverage and provisions are in full force and effect.

## SPECIAL PROVISIONS LIST

The Plans, Details, Specifications and any other Special Provisions applicable to the Project (Special Provisions) are listed below and attached hereto as Attachment 1.

**List of Special Provisions:**

**Plans:** Per Attachment 1 attached hereto.

**Details:** Per Attachment 1 attached hereto.

**Specifications:** Per Attachment 1 attached hereto.

**Other Special Provisions:** Per Attachment 1 attached hereto.

**BID SCHEDULE**

**TOWN OF FLORENCE – Florence Gardens Phase IV and V Paving and Improvements  
PROJECT #: T-08/T-09**

**THIS BID IS SUBMITTED BY:**

\_\_\_\_\_  
a(n) \_\_\_\_\_ (Corporation, Limited Liability Company,  
Partnership, Joint Venture, Sole Proprietorship, Individual), holder of an Arizona Registrar of Contractor’s license:  
ROC# \_\_\_\_\_, classification \_\_\_\_\_

\_\_\_\_\_  
NAME TITLE DATE

(Failure to fill in the information above, regarding the Bidder being a holder of Arizona State Contractor’s License is grounds for rejection of the bid.)

The undersigned Bidder, having examined and determined the scope of the Contract Documents, hereby proposes to perform the work described herein for the following unit prices or lump sum amounts:

**BID TAB**

**Town of Florence  
Florence Gardens Phases IV and V  
Project Nos. T08 & T09**

<b>Item Number</b>	<b>Description</b>	<b>Unit</b>	<b>Quantity</b>	<b>Unit Price</b>	<b>Cost</b>
1	Mobilization & Demobilization	LSUM	1		
2	Storm Water Pollution Prevention Plan	LSUM	1		
3	Construction Staking & As-Builts	LSUM	1		
4	Dust Control	LSUM	1		
5	Traffic Control	LSUM	1		
<b>Subtotal =</b>					
6	3.0" AC Pavement over 8" ABC per Structural Section #1	SY	12668		
7	2.5" AC Pavement over 6" ABC per Structural Section #2	SY	24448		
8	8" Thick Concrete per Structural Section #3	SF	310		
9	1.5" AC Pavement over Compacted Native Material per Structural Section #4	SY	1554		
10	Survey Marker per MAG Detail 120-1 Type A	EA	14		
11	Survey Marker per MAG Detail 120-1 Type B	EA	38		
12	Valley Gutter per MAG Detail 240	SF	95922		
13	Remove and Reset Existing Street Sign	EA	1		
14	Barricades per MAG Detail 130 Type A	LF	28		
15	Thickened Edge of Pavement per MAG Detail 201, Type "A"	LF	22101		
16	4" Roll Curb and Gutter per MAG Detail 220-1 Type C	LF	885		
17	Adjust Manhole to Grade per MAG Detail 422	EA	20		
18	Adjust Valve Box and Cover to Grade per MAG Detail 391-1 Type "C"	EA	34		
19	Dumped Riprap, 18" Thick (D50=6")	CF	378		
20	Sidewalk per MAG Detail 230	SF	321		
21	5" Thick Concrete Driveway per MAG Detail 250	SF	4776		
22	Curb Termination per MAG Detail 222	EA	1		
23	5' Transition: 4" Roll Curb to Ribbon Curb	EA	4		
<b>Subtotal Paving =</b>					
24	18" White Striping	LF	754		
25	4" Yellow Striping	LF	4886		
<b>Subtotal Pavement Markings =</b>					
26	Remove Existing Pavement Section	SY	48304		
27	Sawcut AC Pavement	LF	513		
28	Relocate Existing Streetlight	EA	2		
29	Remove Concrete (Valley Gutter/Sidewalk/Driveway)	SF	6686		
30	Remove Concrete Curb and Gutter	LF	122		
31	Remove Barricade	LF	12		
<b>Subtotal Removals =</b>					
<b>Construction Total =</b>					
32	Electrical work by San Carlos Irrigation Project (for streetlight relocation)	LSUM	1		
<b>Project Total =</b>					







**Statutory Bid Bond**

**STATUTORY BID BOND  
PURSUANT TO TITLE 34, CHAPTER 2, ARTICLE 1 OF THE ARIZONA REVISED STATUTES  
(Penalty of this bond must be 10% of the bid amount)**

**KNOW ALL MEN BY THESE PRESENTS:**

That \_\_\_\_\_ (hereafter "Principal"),  
as Principal, and \_\_\_\_\_, a corporation organized and existing under the  
laws of the State of \_\_\_\_\_, with its principal offices in the City of \_\_\_\_\_,  
(hereafter "Surety"), as Surety, are held and firmly bound unto the  
\_\_\_\_\_ (hereafter "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 submitted a bid for \_\_\_\_\_

NOW, THEREFORE, if the Obligee shall accept the proposal of the Principal and the Principal shall enter into a contract with the Obligee in accordance with the terms of the proposal and give bonds and certificates of insurance as specified in the standard specifications with good and sufficient surety for the faithful performance of the contract and for prompt payment of labor and materials furnished in the prosecution of the contract, or in the event of the failure of the Principal to enter into the contract and give the bonds and certificates of insurance if the Principal pays to the Obligee the difference not to exceed the penalty of the bond between the amount specified in the proposal and such larger amount for which the Obligee may in good faith contract with another party to perform the work covered by the proposal then this obligation is void. Otherwise, it remains in full force and effect provided, however, that this bond is executed pursuant to the provisions of Section 34-201, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of the section to the extent as if it were copied at length herein.

Witness our hands this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
PRINCIPAL

SEAL

BY: \_\_\_\_\_

\_\_\_\_\_  
SURETY

BY: \_\_\_\_\_

\_\_\_\_\_  
AGENCY OF RECORD

**RESOLUTION OF BOARD OF DIRECTORS**

**CERTIFIED COPY OF RESOLUTION OF  
BOARD OF DIRECTORS OF**

\_\_\_\_\_  
(Name of Corporation)

RESOLVED that \_\_\_\_\_ of  
(Person Authorized to Sign) (Title)

\_\_\_\_\_ ("Corporation") is authorized to sign and submit  
the bid or proposal of this corporation for the following project:

**TOWN OF FLORENCE: TOWN OF FLORENCE Florence Gardens Phase IV and V Paving and Improvements – Project  
T-08/T-09**

The foregoing is a true and correct copy of the resolution adopted by the Corporation at the  
meeting of its Board of Directors held on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

By \_\_\_\_\_

Title \_\_\_\_\_

(SEAL)

(THIS FORM MUST BE COMPLETED IF BIDDER IS A CORPORATION)



**Request for Taxpayer  
Identification Number and Certification**

Give form to the requester. Do not send to the IRS.

Print or type  
See specific instructions on page 2.

Name (as shown on your income tax return)	
Business name, if different from above	
Check appropriate box: <input type="checkbox"/> Individual/sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other ▶ ..... <input type="checkbox"/> Exempt from backup withholding	
Address (number, street, and apt. or suite no.)	Requester's name and address (optional)
City, state, and ZIP code	
List account number(s) here (optional)	

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.  
Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number								
OR								
Employer identification number								

**Part II Certification**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

**Certification Instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

<b>Sign Here</b>	Signature of U.S. person ▶	Date ▶
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**Purpose of Form**

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

**U.S. person.** Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

In 3 above, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

**Note.** If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes, you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

**Town of Florence**  
**P.O. Box 2670 Florence, AZ 85132**  
**(520) 868-7500**  
**Demonstrating Lawful Presence**

Bids, Proposals or Qualifications

Arizona Revised Statutes 1-501 and 1-502 apply to applicants of "federal public benefits" and "state and local public benefits". Grants, contracts and loans are considered public benefits and state law requires each person who applies for such benefits to submit at least one of the following documents demonstrating "lawful presence" in the United States.

The Principal of each group, consultant, or organization will complete this form.

**Check the box next to the document indicating lawful presence.**

	An Arizona driver license issued after 1996 or an Arizona non-operating identification license
	A driver license issued by a state that verifies lawful presence in the United States. (See Overview of State's Driver's License Requirements)
	A birth certificate or delayed birth certificate issued in any state, territory or possession of the United States.
	A United States certificate of birth abroad.
	A United States passport.
	A foreign passport with a United States visa.
	An I-94 form with a photograph.
	A United States citizenship and immigration services employment authorization document or refugee travel document.
	A United States certificate of naturalization.
	A United States certificate of citizenship.
	A tribal certificate of Indian blood.
	A tribal or Bureau of Indian affairs affidavit of birth.

**\*\*Attach copy of document to this sheet.**

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Municipal Employee

\_\_\_\_\_  
Date

DEVIATION/COMPLIANCE

CERTIFICATION

If the undersigned Bidder intends to deviate from the Requirements for Proposers, Special Conditions, or any other Contract Document made a part of this solicitation, all such deviations shall be listed on this certification form, with complete detailed conditions and information included or attached. The Town may consider any deviations in its review, scoring and award decisions, and the Town reserves the right to accept or reject any proposal, offer, or bid based upon any deviations indicated herein or in any attachments hereto.

In the absence of any deviation entry on this form, the Bidder agrees, certifies, and warrants the Town of their full compliance with the Requirements for Proposers, Special Conditions, or any other Contract Document, and all other information contained in this solicitation.

Please list any deviations from the solicitation document below (attach additional sheets as needed):

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By signing below, I agree, certify, and warrant that the offer/proposal I am submitting \_\_\_does \_\_\_does not (check one line) deviate from the Requirements for Proposers, Special Conditions, or any other Contract Document listed in this document. If deviating from the specifications of the solicitation, all such deviations are listed on this form, with complete detailed conditions and information included or attached. Any attachments to this form are identified as a continuation of the deviations to this solicitation.

Printed Name:

Signature:

Date:

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**THIS PAGE MUST BE RETURNED WITH THE OFFER/PROPOSAL**



**ATTACHMENT #1**

**PLANS AND TECHNICAL SPECIFICATIONS**

File "Construction Plans – FloGar IV and V.pdf" supplied as separate attachment.

File "Geo Tech Report – FloGar IV and V.pdf" supplied as separate attachment.

File "Special Provisions – FloGar IV and V.pdf" supplied as separate attachment.