

TOWN OF FLORENCE

General Conditions of Contract

(Effective Date July 1, 2023)

These terms will be the "General Conditions of Contract" 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 Terms and 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 (CMAR), 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) - The number of days or the dates related to the applicable phase, Substantial Completion, and/or Final Completion as stated in the 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 CMAR 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 the 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 (RFI) - 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. 1st Avenue, Suite 300, Phoenix, Arizona, 85003. They may also be downloaded at their Website: <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.

4.1.4 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, 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. 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 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 fifteen (15%) percent 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 reasonable 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 OSHA 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 Drawings 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 three (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. With 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.

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

4.8.4 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.

4.8.5 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 manufacturer's 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.

4.9.7 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 4.9.7.

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. 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).

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.

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 of 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, compete 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 thirty (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 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 Specification 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 Contract 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 (3) 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 or 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 Contractor's 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 stated 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.

11.1.3 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.

The Contractor shall provide certificates and endorsements for all policies, except Worker's Compensation, that Town of Florence and its officials, employees, and agents are named as Additional Insureds.

- A. 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.
- B. 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.
- C. Coverage Amounts: Contractor shall provide general liability and excess general liability coverage in the following amounts, at a minimum:
 - 1. Employer's Liability \$500,000-\$1,000,000
 - 2. Contractors General Liability
 - a. General Aggregate \$5,000,000
 - b. Products – Completed Operations Aggregate \$2,000,000
 - c. Personal and Advertising Injury \$2,000,000
 - d. Each Occurrence (Bodily Injury and Property Damage) \$5,000,000
 - e. Excess or Umbrella Liability
 - i. General Aggregate per job \$3,000,000
 - I. Per policy year \$5,000,000
 - ii. Each Occurrence per job \$3,000,000
 - I. Per policy year \$5,000,000
 - 3. Automobile Liability
 - a. Bodily Injury:
 - i. Each Person \$1,000,000
 - ii. Each Accident \$1,000,000
 - b. Property Damage
 - i. Each Accident \$1,000,000
 - c. Combined Single Limit \$1,000,000
 - 4. Contractual Liability

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- a. Bodily Injury:
 - i. Each Accident \$2,000,000
 - ii. Annual Aggregate \$2,000,000
 - b. Property Damage:
 - i. Each Accident \$2,000,000
 - ii. Annual Aggregate \$2,000,000
 - 5. Worker'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

D. Builder's Risk Property Insurance. Builder's Risk Property Insurance as follows:

- 1. Builder's risk insurance must take effect no later than the time covered property comes under Contractor's control or responsibility.
- 2. Builder's risk insurance must continue in effect without interruption until all the following have occurred, whether or not the covered property is occupied: (i) All work is completed and accepted by Contractor and Town of Florence. (ii) Final payment for the construction work and materials has been made. (iii) No person or entity other than Contractor and Town of Florence has an insurable interest in the Project, including real and personal property.
- 3. The amount of builder's risk insurance shall be the amount of the entire cost of the Project as well as subsequent modifications thereto.
- 4. Builder's risk insurance is required for all construction and similar work.
- 5. Builder's risk insurance shall cover at least the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft, vehicles, riot, civil commotion, theft, vandalism, malicious mischief, collapse and flood.
- 6. Builder's risk insurance shall cover false work and temporary buildings. Builder's risk insurance must cover covered property that is being transported to the construction site or on the construction site awaiting installation.
- 7. Builder's risk insurance shall be on a special causes of loss (all-risk) policy form.
- 8. Builder's risk insurance shall be primary and not contributory.
- 9. Builder's risk insurance shall insure the interests of the Town of Florence, Contractor and all subcontractors and sub-subcontractors involved in any portion of the Project, including, but not limited to improvements or other construction work at or related to the Project during the course of any construction.

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10. As between Contractor and the Town of Florence, Contractor bears full responsibility for loss or damage to all work being performed and to works under construction.
11. Builder's risk insurance shall cover reasonable compensation for architect's services and expenses required as a result of an insured loss and other "soft costs". Builder's risk insurance shall insure against risks of direct physical loss or damage from external causes including debris removal and demolition occasioned by enforcement of any applicable legal requirements.

E. 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: Contractor's 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 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.

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- 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 subcontractor

containing the same Indemnification Clause and Insurance Requirements set forth herein protecting the Town of Florence and the Contractor.

- I. 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 conditions, and limits of coverage and that such coverage and provisions are in full force and effect.

Insurance to be Provided by Others. Contractor shall cause its contractors or other persons working on the Project pursuant to this Agreement to obtain and maintain substantially the same coverage as required of the Contractor.

Other Insurance. Any other insurance Contractor may reasonably require for the protection of Contractor and the Town of Florence's employees, officials, representatives, and officers (all of whom, including Town of Florence, are collectively "Additional Insureds"), the Project, surrounding property, Contractor, or the activities carried out for the Project. Likewise, not more often than once in any twenty-four (24) month period, the Town of Florence may elect by not less than thirty (30) calendar days' prior notice, to review and acceptance by the Town to increase the amount or type of any insurance to account for inflation, changes in risk, or any other factor that the Town reasonably determines to affect the prudent amount of insurance to be provided.

Form of All Insurance. All insurance provided by Contractor whether required by this Agreement or not, and all insurance provided by third parties under this Agreement, shall meet the following requirements:

- A. "Occurrence" coverage is required. "Claims made" insurance is not permitted.
- B. Contractor's insurance required by this Agreement shall be primary insurance as to the risks it covers.

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- C. All policies, including workers' compensation, shall waive transfer of rights of recovery (subrogation) against the Town of Florence and the other Additional Insureds.
 - D. All deductibles, retentions or "self-insured" amounts shall be subject to the following: (i) Contractor shall be responsible for all such amounts; and (ii) No deductible shall be applicable to coverage provided to the Town of Florence.
 - E. All general liability and automobile policies must include the Town of Florence and the other Additional Insureds as additional insureds as their interest may appear under this Agreement.
 - F. All applicable property policies must include the Town of Florence as a loss payee regarding proceeds relating to the work areas.
 - G. Upon receipt of notice from its insurer(s) Contractor shall provide the Town of Florence with thirty (30) calendar days' prior notice of any cancellation of any coverage required by this Agreement.
 - H. Contractor may elect to use excess insurance to meet the insurance requirements of this Agreement, but such excess insurance shall be "follow form" equal to or broader in coverage than the underlying insurance.

Evidence of Insurance. Contractor shall provide evidence of insurance as follows:

- A. Certificates must be acceptable to the Town of Florence.
- B. Contractor shall provide to the Town of Florence certificates of insurance annually. Contractor shall provide certificates at other times at Town's request.
- C. Certificates must evidence that the policy described by the certificate is in full force and effect and that the policy satisfies each requirement of this Agreement applicable to the policy. For example, certificates must evidence that the Town of Florence and the other Additional Insureds are additional insureds.
- D. Each insurance certificate provided to the Town of Florence constitutes a warranty and representation by Contractor to the Town of Florence that policies, coverages, and other matters are actually in effect as described in the certificate.

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. Contractor's 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, worker's 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 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 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 above, or after the DRR is terminated pursuant to 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 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 fifty percent (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 three (3) depositions and one (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 attorney's 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. § 35-393.01, 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.

14.7 No Forced Labor. Pursuant to A.R.S. § 35-394, Contractor by execution of this Contract, certifies that it is not currently engaged in the use of forced labor, using any goods produced by forced labor or contractors or subcontractors that utilize the forced labor of Ethnic Uyghurs in the People's Republic of China.

14.8 Town Revisions to MAG Specifications

14.8.1 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.

14.8.2 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 Conditions of 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.

14.8.3 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.