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SECTION 00700 -- GENERAL CONDITIONS

ARTICLE I -- DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

- 1.1. Addenda - Written or graphic instruments issued prior to the opening of Bids which clarify, correct or change the Bidding Requirements or the Contract Documents.
- 1.2. Agreement - The written contract between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.
- 1.3. Application for Payment - The form accepted by OWNER and ENGINEER which is to be used by CONTRACTOR in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
- 1.4. Asbestos - Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
- 1.5. BID - The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
- 1.6. Bidder - One who submits a Proposal directly to OWNER, as distinct from a sub-bidder who submits a Proposal directly to a Bidder.
- 1.7. Bidding Documents - The advertisement or invitation to Bid, instructions to bidders, the Bid form, and the proposed Contract Documents (including all Addenda issued prior to receipt of Bids).
- 1.8. Bidding Requirements - The advertisement or invitation to Bid, instructions to bidders, and the Bid form.
- 1.9. Bonds - Performance and Payment bonds and other instruments of security.
- 1.10. Business Day - Any day except Saturdays, Sundays and holidays observed by the OWNER.
- 1.11. Calendar Day - Every day shown on the calendar including Saturdays, Sundays and holidays.
- 1.12. Change Order - A document recommended by ENGINEER, which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract times, issued on or after the Effective Date of the Agreement.
- 1.13. Contract Documents - The Agreement, Addenda (which pertains to the Contract Documents), CONTRACTOR's Bid (including documentation accompanying the Bid and any post Bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Notice to Proceed, the Bonds, these General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in

the Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders and ENGINEER's written interpretations and clarifications issued pursuant to paragraphs 3.5, 3.6.1, and 3.6.3 on or after the Effective Date of the Agreement. Shop Drawing submittals approved pursuant to paragraphs 6.26 and 6.27 and the reports and drawings referred to in paragraphs 4.2.1.1 and 4.2.2.2 are not Contract Documents.

- 1.14. Contract Float - If the schedule anticipates early completion of all or any part of the Work, Contract Float is the number of calendar days between CONTRACTOR's anticipated date for early completion of all or any such part of the Work and the corresponding specified Contract Time.
- 1.15. Contract Price - The moneys payable by OWNER to CONTRACTOR for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of paragraph 11.9.1 in the case of Unit Price Work).
- 1.16. Contract Times - The number of days or the dates stated in the Agreement: (i) to achieve Substantial Completion, and (ii) to complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment in accordance with paragraph 14.13.
- 1.17. CONTRACTOR - The person, firm or corporation with whom OWNER has entered into the Agreement.
- 1.18. Day - Same as calendar day.
- 1.19. Defective - An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER at Substantial Completion in accordance with paragraph 14.8 or 14.10).
- 1.20. Drawings - The drawings which show the scope, extent and character of the Work to be furnished and performed by CONTRACTOR and which have been prepared or approved by ENGINEER and are referred to in the Contract Documents. Shop drawings are not Drawings as so defined.
- 1.21. Effective Date of the Agreement - The date indicated in the Agreement on which it becomes effective, but if no such date is indicated it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
- 1.22. ENGINEER - The person, firm or corporation named as such in the Agreement.
- 1.23. ENGINEER's Consultant - A person, firm or corporation having a contract with ENGINEER to furnish services as ENGINEER's independent professional associate or consultant with respect to the Project and who is identified as such in the Supplementary Conditions.
- 1.24. Field Order - A written order issued by ENGINEER which orders minor changes in the Work in accordance with paragraph 9.5 but which does not involve a change in the Contract Price or the Contract Times.

- 1.25. Final Completion - When all work as specified in the contract documents is 100% complete including the completion of punch list items and certified as completed by the OWNER.
- 1.26. General Requirements - Sections of Division 1 of the Specifications.
- 1.27. Hazardous Waste - The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
- 1.28. Laws and Regulations; Laws or Regulations - Any and all applicable laws, rules, regulations, ordinances, codes and orders of any and all governmental bodies, agencies, authorities and courts having jurisdiction.
- 1.29. Liens - Liens, charges, security interests or encumbrances upon real property or personal property.
- 1.30. Milestone - A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
- 1.31. Notice of Award - The written notice by OWNER to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, OWNER will sign and deliver the Agreement.
- 1.32. Notice to Proceed - A written notice given by OWNER to CONTRACTOR (with a copy to ENGINEER) fixing the date on which the Contract Times will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR's obligations under the Contract Documents.
- 1.33. OWNER - The public body or authority, corporation, association, firm or person with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be provided.
- 1.34. Partial Utilization - Use by OWNER of a substantially completed part of the Work for the purpose for which it is intended (or a related purpose) prior to Substantial Completion of all the Work.
- 1.35. PCBs - Polychlorinated biphenyls.
- 1.36. Petroleum - Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Wastes and crude oils.
- 1.37. Project - The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.
- 1.38. Radioactive Material - Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
- 1.39. Resident Project Representative - The authorized representative of ENGINEER who may be assigned to the site or any part thereof.

- 1.40. Samples - Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
- 1.41. Shop Drawings - All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for CONTRACTOR and submitted by CONTRACTOR to illustrate some portion of the Work.
- 1.42. Specifications - Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.
- 1.43. Subcontractor - An individual, firm or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the site.
- 1.44. Substantial Completion - The Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER as evidenced by ENGINEER's definitive certificate of Substantial Completion, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purposes for which it is intended; or if no such certificate is issued, when the Work is complete and ready for final payment as evidenced by ENGINEER's written recommendation of final payment in accordance with paragraph 14.13. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
- 1.45. Successful Bidder - The lowest, qualified, responsible, and responsive Bidder to whom OWNER (on the basis of OWNER's evaluation as hereinafter provided) makes an award.
- 1.46. Supplementary Conditions - The part of the Contract Documents which amends or supplements these General Conditions.
- 1.47. Supplier - A manufacturer, fabricator, supplier, distributor, materialman or vendor having a direct contract with CONTRACTOR or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by CONTRACTOR or any Subcontractor.
- 1.48. Total Float - Number of calendar days by which the Work or any part of the Work may be delayed without necessarily extending a pertinent Contract Time. Total Float is by definition at least equal to Contract Float.
- 1.49. Underground Facilities - All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.
- 1.50. Unit Price Work - Work to be paid for on the basis of unit prices.
- 1.51. Work - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into

the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Documents.

- 1.52. Work Change Directive - A written directive to CONTRACTOR, issued on or after the Effective Date of the Agreement and signed by OWNER and recommended by ENGINEER, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed as provided in paragraph 4.2 or 4.3 or to emergencies under paragraph 6.23. A Work Change Directive will not change the Contract Price or the Contract Times, but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times as provided in paragraph 10.2.
- 1.53. Written Amendment - A written amendment of the Contract Documents, signed by OWNER and CONTRACTOR on or after the Effective Date of the Agreement and normally dealing with the non-engineering or nontechnical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 2 -- PRELIMINARY MATTERS

Delivery of Bonds:

- 2.1. When CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER such Bonds as CONTRACTOR may be required to furnish in accordance with paragraph 5.1.

Copies of Documents:

- 2.2. OWNER shall furnish to CONTRACTOR up to ten (10) copies (unless otherwise specified in the Supplementary Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

Commencement of Contract Times; Notice to Proceed:

- 2.3. The Contract Times will commence to run on the day indicated in the Notice-To-Proceed. A Notice-To-Proceed may be given at any time within sixty (60) days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the seventy-fifth (75) day after the day of Bid opening or the sixtieth (60) day after the Effective Date of the Agreement, whichever date is earlier.

Starting the Work:

- 2.4. CONTRACTOR shall start to perform the Work on the date when the Contract Times commence to run, but no Work shall be done at the site prior to the date on which the Contract Times commence to run.

Before Starting Construction:

- 2.5. CONTRACTOR shall carefully study and compare the Contract Documents with each other with information furnished by OWNER and with manufacturers recommendations and shall at once report to ENGINEER, with a copy to OWNER, errors, inconsistencies or omissions discovered. CONTRACTOR shall not be liable to OWNER or ENGINEER for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless CONTRACTOR recognized such error, inconsistency or omission and knowingly failed to report it to ENGINEER. If CONTRACTOR performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to ENGINEER and OWNER, CONTRACTOR shall assume responsibility for such performance and shall bear the amount of the attributable costs for correction.
- 2.6. Within ten (10) days after the Effective Date of the Agreement or at the Pre-construction Conference whichever comes first, (unless otherwise specified in the General Requirements), CONTRACTOR shall submit to OWNER and ENGINEER for review:
- 2.6.1. a preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
- 2.6.2. a preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing and processing such submittal;
- 2.6.3. a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.
- 2.6.4 All Progress Schedules (both original and revisions) submitted shall be in accordance with paragraph 6.36.
- 2.7. Before any Work at the site is started, CONTRACTOR and OWNER shall each deliver to the other, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which CONTRACTOR and OWNER respectively are required to purchase and maintain in accordance with paragraphs 5.4, 5.6 and 5.7.

Preconstruction Conference:

- 2.8. Within twenty (20) days of commencement of Contract Times, a conference attended by CONTRACTOR, ENGINEER, OWNER and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in paragraph 2.6, procedures for handling Shop Drawings and other submittals, processing Applications for Payment and maintaining required records.

Initially Acceptable Schedules:

- 2.9 CONTRACTOR shall have ten (10) days to make corrections and adjustments and to complete and resubmit the schedule of Shop Drawing and Sample submittals and schedule of values.

No progress payment shall be made to CONTRACTOR until these schedules are submitted to and acceptable to OWNER and ENGINEER. CONTRACTOR's schedule of Shop Drawing and Sample submissions will be acceptable as providing a workable arrangement for reviewing and processing the required submittals. CONTRACTOR's schedule of values will be acceptable as to form and substance.

ARTICLE 3 -- CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

Intent:

- 3.1. The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.
- 3.2. It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for. When words or phrases which have a well-known technical or construction industry or trade meaning are used to describe Work, materials or equipment, such words or phrases shall be interpreted in accordance with that meaning. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER, as approved by OWNER, as provided in paragraph 9.4.
- 3.3. **Reference to Standards and Specifications of Technical Societies; Reporting and Resolving Discrepancies:**
 - 3.3.1. Reference to standards, specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard, specification, manual, code or Laws or Regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 - 3.3.2. If during the performance of the Work, CONTRACTOR discovers any conflict, error, ambiguity or discrepancy within the Contract Documents or between the Contract Documents and any provision of any such Law or Regulation applicable to the performance of the Work or of any such standard, specification, manual or code or of any instruction of any Supplier referred to in paragraph 6.5, CONTRACTOR shall report it to ENGINEER, with a copy to OWNER, in writing at once, and, CONTRACTOR shall not proceed with the Work affected thereby (except in an emergency as authorized by paragraph 6.27) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in paragraph 3.5 or 3.6; provided, however, that CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any such conflict, error, ambiguity or discrepancy unless CONTRACTOR knew or reasonably should have known thereof.
 - 3.3.3. Except as otherwise specifically stated in the Contract Documents or as may be provided by amendment or supplement thereto issued by one of the methods indicated in

paragraph 3.5 or 3.6, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity or discrepancy between the provisions of the Contract Documents and:

3.3.3.1. the provisions of any such standard, specification, manual, code or instruction (whether or not specifically incorporated by reference in the Contract Documents): or

3.3.3.2. the provisions of any such Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.3.4 The Contract Documents are complementary, and anything mentioned or shown in a part of the Contract Documents shall be of like effect as if mentioned or shown in all parts of the Contract Documents. In resolving conflicts, the Contract Documents shall be given the priority determined by OWNER which results in Work consistent with and reasonably inferable from their intent. Except when in contradiction with this priority rule, the Contract Documents shall be given priority in the following order, as supplemented, if appropriate, by paragraph 3.3.5.

1. The Agreement, fully executed by OWNER and CONTRACTOR (pages 00500-1 to 00500-7, inclusive.)
2. Addenda numbers ___ to ___, inclusive.
3. Performance Bond (pages 00610-1 to 00610-4, inclusive) and Payment Bond (pages 00620-1 to 00620-3, inclusive).
4. Notice to Proceed.
5. Change Orders.
6. Supplementary Conditions (pages 00800-1 to 00800-23, inclusive).
7. General Conditions (pages 00700-1 to 00700-49, inclusive).
8. Technical Specifications bearing the following general title and consisting of Divisions 00020 through 00900 and pages listed in table of contents therein:
 - i. City of Maricopa, Traffic Signal Construction – Honeycutt Road at Glennwilde Drive/Province Parkway Specifications and Contract Documents
9. Drawings bearing the following general title(s) and consisting of a cover sheet and sheets listed in the Index of Drawings therein:
 - i. Honeycutt Road at Glennwilde Drive/Province Parkway Traffic Signal
10. CONTRACTOR's Bid Form (pages 00300-1 to 00300-7, inclusive).

11. CONTRACTOR's List of Subcontractors (page 00330-1).
 12. CONTRACTOR's Schedule of Manufacturers and Suppliers of Major Equipment and Material Items (page 00340-1).
 13. Documentation submitted by CONTRACTOR after Bid Opening and prior to Notice of Award (Bidder's Questionnaire, pages 00320-1 to 00320-7, inclusive).
 14. The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:
 15. All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraphs 3.5 and 3.6 of the General Conditions.
- 3.3.5 If the issue of priority involves the Specifications and Drawings, figured dimensions shall govern over scaled dimensions. Work not dimensioned shall be subject to interpretation. Work not expressly shown, identified, sized or located shall be the same as similar Work shown or specified. Detail drawings shall govern over general Drawings, larger scale Drawings take precedence over smaller scale Drawings and Contract Drawings govern over Shop Drawings. Whenever notes, specifications, dimensions, details or schedules in the Specifications or Drawings, or between the Specifications and Drawings conflict, CONTRACTOR shall furnish the higher performance requirement.

No provision of any such standard, specification, manual, code or instruction shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR or ENGINEER, or any of their subcontractors, consultants, agents, or employees from those set forth in the Contract Documents, nor shall it be effective to assign to OWNER or ENGINEER any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of paragraph 9.13 or any other provision of the Contract Documents.

- 3.4. Whenever in the Contract Documents the terms "as ordered," "as directed," "as required," "as allowed," "as approved" or terms of like effect or import are used, or the adjectives "reasonable," "suitable," "acceptable," "proper," or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of ENGINEER as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate, in general, the completed Work for compliance with the requirements of and information in the Contract Documents and conformance with the design concept of the completed Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to OWNER or ENGINEER any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 9.13 or any other provision of the Contract Documents.

Amending and Supplementing Contract Documents:

- 3.5. The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- 3.5.1. a formal Written Amendment, signed by OWNER, ENGINEER and CONTRACTOR, as the subject relates to Agreement terms and conditions only
 - 3.5.2. a Change Order (pursuant to paragraph 10.4), or
 - 3.5.3. a Work Change Directive (pursuant to paragraph 10.1).
- 3.6. In addition, the requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, in one or more of the following ways:
- 3.6.1. a Field Order (pursuant to paragraph 9.5),
 - 3.6.2. ENGINEER's approval of a Shop Drawing or Sample (pursuant to paragraphs 6.26 and 6.27), or
 - 3.6.3. ENGINEER's written interpretation or clarification as approved by OWNER (pursuant to paragraph 9.4).

Reuse of Documents:

- 3.7. CONTRACTOR, and any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER (i) shall not have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER or ENGINEER's Consultant, and (ii) shall not reuse any of such Drawings, Specifications, other documents or copies on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaption by ENGINEER.

**ARTICLE 4 -- AVAILABILITY OF LANDS: SUBSURFACE AND PHYSICAL CONDITIONS;
REFERENCE POINTS**

Availability of Lands:

- 4.1. The Contract Documents indicate the lands upon which the Work is to be performed and those rights-of-way and access easements furnished by OWNER. Easements for permanent structures or for permanent changes in existing facilities will be obtained by OWNER, unless otherwise stated.
- 4.1.1. CONTRACTOR shall obtain, at no increase in Contract Price or Contract Time, any additional lands, rights-of-way and easements that CONTRACTOR, in its sole discretion, requires for temporary facilities, ingress and egress, storage, disposal of spoil or waste material or any other purpose. CONTRACTOR shall obtain (a) all required permits from the U.S. Government, the State and any Political Subdivision or public utility with jurisdiction, and (b) permission by written agreement if private property. CONTRACTOR shall submit copies of all permits and written agreements to OWNER.

4.2. Subsurface and Physical Conditions:

- 4.2.1. Reports and Drawings: Reference is made to the Supplementary Conditions for identification of:

- 4.2.1.1. Subsurface Conditions: Those reports of explorations and tests of subsurface conditions at or contiguous to the sites that have been utilized by ENGINEER in preparing the Contract Documents; and
- 4.2.1.2. Physical Conditions: Those drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) that have been utilized by ENGINEER in preparing the Contract Documents.
- 4.2.1.3 SUBSURFACE CONDITIONS
- 4.2.1.3.1 Those reports of explorations and tests of subsurface conditions itemized below have been used by ENGINEER in the preparation of the Bid Documents. They may be obtained from OWNER, as provided in the Call for Bids.
- 4.2.1.4 PHYSICAL CONDITIONS
- 4.2.1.4.1 The Drawings and Specifications and those drawings and specifications itemized below contain information or data of physical conditions about existing surface or subsurface facilities or contiguous to the site that have been used by ENGINEER in the preparation of the Bid Documents.
- 4.2.2. Limited Reliance by CONTRACTOR Authorized; Technical Data: CONTRACTOR may rely upon the general accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," CONTRACTOR may not rely upon or make any claim against OWNER or ENGINEER with respect to:
- 4.2.2.1. the completeness of such reports and drawings for CONTRACTOR's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto, or
- 4.2.2.2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings, or
- 4.2.2.3. any CONTRACTOR interpretation of or conclusion drawn from any "technical data" or any such data, interpretations, opinions or information.
- 4.2.3. Notice of Differing Subsurface or Physical Conditions: If CONTRACTOR believes that any subsurface or physical condition at or contiguous to the site that is uncovered or revealed either:
- 4.2.3.1. is of such a nature as to establish that any "technical data" on which CONTRACTOR is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is materially inaccurate, or
- 4.2.3.2. is of such a nature as to require a change in the Contract Documents, or

- 4.2.3.3. differs materially from that shown or indicated in the Contract Documents, or
- 4.2.3.4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as permitted by paragraph 6.23), notify OWNER and ENGINEER in writing about such condition. CONTRACTOR shall not further disturb such conditions or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.
- 4.2.4. ENGINEER's Review: ENGINEER will promptly review the pertinent conditions, determine the necessity of OWNER's obtaining additional exploration or tests with respect thereto and advise OWNER in writing (with a copy to CONTRACTOR) of ENGINEER's findings and conclusions.
- 4.2.5. Possible Contract Documents Change: If OWNER or ENGINEER concludes that a change in the Contract Documents is required as a result of a condition that meets one or more of the categories in paragraph 4.2.3., a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of such change.
- 4.2.6. Possible Price and Times Adjustments: In accordance with Articles 11 and 12 of the General Conditions, an adjustment in the Contract Price or in the Contract Times, or both, will be allowed to the extent that the existence of such uncovered or revealed condition causes an increase or decrease in CONTRACTOR's cost of, or time required for performance of, the Work subject, however, to the following:
 - 4.2.6.1. such condition must meet any one or more of the categories described in paragraphs 4.2.3. 1 through 4.2.3.4, inclusive:
 - 4.2.6.2. a change in the Contract Documents pursuant to paragraph 4.2.5 will not be an automatic authorization of nor a condition precedent to entitlement to any such adjustment;
 - 4.2.6.3. with respect to Work that is paid for on a Unit Price Basis, any adjustment in Contract Price will be subject to the provisions of paragraphs 9.10 and 11.9; and
 - 4.2.6.4. CONTRACTOR shall not be entitled to any adjustment in the Contract Price or Times if:
 - 4.2.6.4.1. CONTRACTOR knew of existence of such conditions at the time CONTRACTOR made a final commitment to OWNER in respect of Contract Price and Contract Times by the submission of a bid or becoming bound under a negotiated contract; or
 - 4.2.6.4.2. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test or study of the site and contiguous areas required

by the Bidding Requirements or Contract Documents to be conducted by or for CONTRACTOR prior to CONTRACTOR's making such final commitment; or

4.2.6.4.3. CONTRACTOR failed to give the written notice within the time and as required by paragraph 4.2.3; or

4.2.6.4.4. CONTRACTOR caused such condition.

4.2.7. **ARCHAEOLOGICAL DEPOSITS:** Pursuant to Arizona Revised Statutes (A.R.S.) Section 41-844 as amended, if CONTRACTOR discovers archaeological sites or objects, CONTRACTOR shall promptly report them to the Director of the Arizona State Museum and OWNER. CONTRACTOR shall conform with A.R.S. Section 41-844 in all respects. CONTRACTOR may be allowed an adjustment of Contract Time(s) pursuant to Article 12. If OWNER, with the advice of ENGINEER, concludes that the Contract Documents require changes due archaeological features, OWNER shall, pursuant to Article 10 of the General Conditions, order any changes in the Work and corresponding adjustments in Contract Price required solely because of the archaeological features encountered.

If OWNER and CONTRACTOR are unable to agree on entitlement to or as to the amount or length of any such equitable adjustment in the Contract Price or Contract Times, a claim may be made therefore as provided in Articles 11 and 12. However, OWNER and ENGINEER shall not be liable to CONTRACTOR for any claims, costs, losses or damages sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.3. Physical Conditions - Underground Facilities:

4.3.1. **Shown or Indicated:** The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to OWNER or ENGINEER by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

4.3.1.1. OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and

4.3.1.2. The cost of all of the following will be included in the Contract Price and CONTRACTOR shall have full responsibility for: (i) reviewing and checking all such information and data, (ii) locating all Underground Facilities shown or indicated in the Contract Documents, (iii) coordination of the Work with the owners of such Underground Facilities during construction, and (iv) the safety and protection of all such Underground Facilities as provided in paragraph 6.20 and repairing any damage thereto resulting from the Work.

4.3.2. **Not Shown or Indicated:** If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by paragraph 6.23), identify the owner of such Underground Facility and give written notice to that owner and to OWNER and

ENGINEER. ENGINEER will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence of the Underground Facility. If OWNER or ENGINEER concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued as provided in Article 10 to reflect and document such consequences. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility as provided in paragraph 6.20. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and that CONTRACTOR did not know of and could not reasonably have been expected to be aware of or to have anticipated. If OWNER and CONTRACTOR are unable to agree on entitlement to or the amount or length of any such adjustment in Contract Price or Contract Times, CONTRACTOR may make a claim therefore as provided in Articles 11 and 12. However, OWNER and ENGINEER shall not be liable to CONTRACTOR for any claims, costs, losses or damages incurred or sustained by CONTRACTOR on or in connection with any other project or anticipated project.

4.3.3 OWNER shall comply in all respects with A.R.S. 40-360.21 et seq. as amended.

Reference Points:

4.4. OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work, shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.

4.5. Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Material:

4.5.1 CONTRACTOR, all Subcontractors, Manufacturers and Suppliers shall use, store, process, transfer, transport, dispose of and otherwise handle hazardous substances in accordance with all Laws and Regulations. For all purposes under the Contract Documents, the term "hazardous substance" shall mean any substance the manufacture, distribution, sale, use, treatment, storage, transportation, disposal or other handling of which is regulated by Laws or Regulations.

4.5.2 Except as otherwise provided in the Technical Specifications, if CONTRACTOR encounters hazardous substances at the site (including, but not limited to, asbestos, PCB, petroleum products, radioactive products or materials used in the normal course of construction as paint thinners, solvents, gasoline, oil, etc.) which were neither shown in nor inferable from the Contract Documents (or otherwise identified as part of the Work) and which may present substantial danger, CONTRACTOR shall immediately (a) stop all affected Work, (b) give written notice to OWNER of the conditions, and (c) take appropriate health and safety precautions. Upon receipt of the notice, OWNER will investigate the conditions. If the material is a hazardous substance which may present substantial danger, OWNER shall stop the affected Work in writing. Except as otherwise

provided in paragraph 4.5.4, OWNER shall arrange for removal or other appropriate handling of the hazardous substance by negotiating a change in the Work with CONTRACTOR, by separate contract with other contractors, or as OWNER may otherwise deem expedient; in the alternative, OWNER may terminate the Agreement or affected Work for OWNER's convenience.

4-5.3 Once the hazardous substance has been removed or rendered harmless in accordance with paragraph 4.5.2, the affected Work may be resumed as directed by OWNER. Pursuant to A.R.S. Section 32.1129.01 (effective October 2, 1991), and subject to CONTRACTOR'S compliance with that Section and paragraphs 11.10 and 11.10.1, CONTRACTOR may be entitled to damages and time for delay attributable to the discovery of hazardous substances which interrupt the Work.

4-5.4 If the existence of the hazardous substance results from (a) CONTRACTOR's violation(s) of Laws or Regulations covering the use, storage, processing, transfer, transport, disposal or otherwise handling of any hazardous substance, or (b) any other cause within the control or attributable to the fault or negligence of CONTRACTOR, CONTRACTOR shall be responsible for all costs and time required to clean up the site and remove or render harmless the hazardous substance to the satisfaction of OWNER, the State and any political subdivision with jurisdiction. If CONTRACTOR fails to proceed with due diligence or act appropriately, OWNER, in its sole discretion, shall have the right to act, and if it does so CONTRACTOR shall defend, indemnify and hold OWNER harmless from and against all claims, as provided in paragraph 6.31, arising out of or in any way resulting from OWNER's action under this provision.

ARTICLE 5 -- BONDS AND INSURANCE

Performance, Payment and Other Bonds:

5.1. CONTRACTOR shall furnish Performance and Payment Bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all CONTRACTOR'S obligations under the Contract Documents. The Payment Bond shall remain in effect at least until one (1) year after the date when final payment becomes due, except as provided otherwise by Laws and Regulations or by the Contract Documents. The Performance Bond shall remain in effect as long as CONTRACTOR is liable for (a) defective Work appearing after final inspection, (b) failure to comply with the Contract Documents or the terms or any special guaranties specified therein, or (c) CONTRACTOR's continuing obligations under the Contract Documents.

5.1.1 Bonds shall be issued by surety company or companies holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of insurance pursuant to Title 20, Chapter 2, Article 1. The Bond shall not be executed by an individual surety or sureties. Bonds signed by an agent must be accompanied by a certified copy of such agent's authority to act.

5.1.2 The surety company or companies shall be rated A- or better per current A.M. Best Company ratings.

5.2. If the surety on any Bond furnished by CONTRACTOR is declared a bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is

located or it ceases to meet the requirements of paragraph 5.1, CONTRACTOR shall within ten (10) days thereafter substitute another Bond and surety, both of which must be acceptable to OWNER.

5.3. Licensed Sureties and Insurers; Certificates of Insurance:

5.3.1. All Bonds and insurance required by the Contract Documents to be purchased and maintained by OWNER or CONTRACTOR shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue Bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.3.2. CONTRACTOR shall deliver to OWNER, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by OWNER or any other additional insured) which CONTRACTOR is required to purchase and maintain in accordance with paragraph 5.4. OWNER shall deliver to CONTRACTOR, with copies to each additional insured identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by CONTRACTOR or any other additional insured) which OWNER is required to purchase and maintain in accordance with paragraphs 5.6 and 5.7 hereof.

CONTRACTOR's Liability Insurance:

5.4. CONTRACTOR shall not start to perform or furnish the Work, in whole or in part, or continue to do so unless CONTRACTOR has in full force and effect all of the policies of insurance and coverage specified in this Article. CONTRACTOR shall purchase and maintain commercial general liability insurance (issued on an occurrence basis) and other insurance appropriate for the Work and which will provide protection from claims itemized below which may arise out of or result from CONTRACTOR's performance and furnishing of the Work and CONTRACTOR's other obligations under the Contract Documents, whether the Work and other obligations be performed or furnished by CONTRACTOR, by any Subcontractor, by any Supplier or by anyone for whose acts any of them may be liable, to wit:

5.4.1 Claims under workers' compensation, disability benefits, and other applicable similar employee benefits acts; claims for damages because of bodily injury, occupational sickness or disease, or death of CONTRACTOR's employees;

5.4.2 Claims for damages because of bodily injury, sickness or disease, or death of any person other than CONTRACTOR's employee; claims for damages insured by personal injury liability coverage sustained (a) by any person as a result of an offense directly or indirectly related to the employment of such person by CONTRACTOR, or (b) by any other person for any other reason; claims for damages because of injury to or destruction of tangible property wherever located, including loss of use resulting from any such injury or destruction;

5.4.3 Claims arising out of operation of Laws for damages because of bodily injury or death of any person or for damage to property; and

- 5.4.4 Claims for damages because of bodily injury or death of any person, or property damage arising out of ownership, maintenance, operation, use or loading and unloading of any owned, hired or non-owned motor vehicle used in the Work, including employee non-ownership use.
- 5.4.5 The policy limits of CONTRACTOR's liability insurance required under this Article shall provide coverage for not less than the following amounts (or greater if required by Law):
- 5.4.5.1 Workers' Compensation under paragraph 5.4.1 shall be not less than statutory limits under the Laws of the State of Arizona. Employer's Liability Insurance shall conform to statutory limits under the Laws of the State of Arizona, unless higher limits are required by the Supplementary Conditions.
- 5.4.5.2 Commercial General Liability Insurance limits under paragraphs 5.4.2 and 5.4.3 shall be not less than \$1,000,000.00 each occurrence, \$2,000,000.00 general aggregate, \$2,000,000.00 products and completed operations aggregate, \$1,000,000.00 personal and advertising injury and \$10,000.00 medical expense. Excess liability coverage shall be provided in an Umbrella Form policy for a separate \$1,000,000.00 each occurrence and \$2,000,000.00 aggregate.
- 5.4.5.3 The terms of the Commercial General Liability coverage and required endorsements (or specific hazardous coverage) shall provide bodily injury and property damage liability coverage for pile driving operations (if risk present); premises/operations; products and completed operations; independent contractors; contractual liability; and underground, explosion and collapse hazard (x, c, u) exposures (if risk present). Coverage for underground hazards shall apply to product and completed operation hazards. Commercial General Liability coverage shall provide broad form contractual liability, personal injury liability and broad form property damage liability.
- 5.4.5.4 Commercial Automobile Liability Insurance coverage limits under paragraph 5.4.1.4 shall be not less than \$1,000,000 combined single limit (primary). Excess liability Umbrella Form coverage shall provide for \$2,000,000 each occurrence, and \$2,000,000 aggregate.
- 5.4.6 CONTRACTOR's liability insurance shall include contractual liability coverage sufficient to support CONTRACTOR's indemnification obligations under the Contract Documents. CONTRACTOR agrees to provide and to pay, on behalf of OWNER, for a defense of all claims covered by CONTRACTOR's obligations under the indemnification provisions.
- 5.4.7 Except for Worker's Compensation and Employer's Liability Insurance CONTRACTOR's liability insurance shall be endorsed to add OWNER as an additional insured, and ENGINEER, OWNER's and ENGINEER's consultants, any of their subsidiaries or affiliates, and each of their respective directors, officers, shareholders, agents or employees as additional insured. The insurance afforded to OWNER and the other parties shall be primary insurance, and neither the coverage nor the amount of insurance provided under CONTRACTOR's policies shall be reduced or prorated by the existence of any other insurance applicable to any loss OWNER or those parties may have sustained. OWNERS shall receive thirty (30) days written notice prior to any such insurance being cancelled, materially changed or refused for renewal.

- 5.4.8 CONTRACTOR's liability insurance shall remain in effect until the end of the Correction Period and at all times after that when CONTRACTOR may be correcting, or removing and replacing, defective Work. The completed operations liability insurance shall be maintained for three (3) years after final payment, and CONTRACTOR shall furnish to the OWNER evidence of the completed operations insurance yearly.
- 5.4.9 These requirements shall not be construed to limit the liability of CONTRACTOR or its insurers. OWNER does not represent that the specified coverage or limits of insurance are sufficient to protect CONTRACTOR's interests or liabilities.
- 5.5 The CONTRACTOR shall purchase, maintain, and deliver to OWNER, OWNER's and CONTRACTOR's Protective (OCP) Liability Insurance, issued on an occurrence basis, naming OWNER as insured, or the CONTRACTOR shall be required to endorse CONTRACTOR's underlying Commercial General Liability insurance to show a clean set of coverage limits for the Work, and a copy of that endorsement shall be provided to OWNER. For all CONTRACTOR furnished OCP insurance, (a) the policy limit shall be not less than \$1,000,000.00 combined single limit, (b) the policy shall not contain any exclusion relative to any functions performed by OWNER which may arise out of or result from operations under the Contract, and (c) those other parties designated in paragraph 5.4.7 shall be endorsed as additional insured.
- 5.6 The CONTRACTOR shall purchase and maintain all risk completed value, "Builder's Risk," (completed and in-progress Work) insurance, including flood and earthquake, for physical loss or damage upon the Work at the site to its full insurable value. This insurance shall include the interests of OWNER, CONTRACTOR, Subcontractors and Suppliers, ENGINEER and OWNER's and ENGINEER's consultants, all of whom shall be listed as additional insured, and shall be endorsed to include damages, losses and expenses arising out of or resulting from any insured loss or incurred in the repair or replacement of any insured property (including but not limited to charges of engineers, architects, attorneys and others). If not covered under the all risk insurance, CONTRACTOR shall purchase and maintain property insurance on work stored on and off site or in transit when that Work is included in an Application for Payment. The property insurance may have a deductible, not exceeding \$25,000.00, which shall be borne by the CONTRACTOR, and shall comply with the Waiver of rights provisions in paragraph 5.11 of the General Conditions. The CONTRACTOR shall deliver to the OWNER a copy of the property insurance policy obtained to comply with these provisions on or before the Effective Date of the Agreement.
- 5.6.1 CONTRACTOR shall purchase and maintain boiler and machinery insurance and additional property insurance, which shall include the interests of OWNER, CONTRACTOR, Subcontractors, ENGINEER and OWNER's and ENGINEER's Consultants, all of whom shall be listed as additional insured.
- 5.6.2 Any partial Use by OWNER shall be subject to the insurers (providing the property insurance) having acknowledged receipt of notice of Partial Use and in writing effected the necessary changes in coverage. Those insurers shall consent by endorsement, but the property insurance shall not be canceled or lapse because of any Partial Use by OWNER.
- 5.7. Waiver of Rights:**

- 5.7.1. OWNER and CONTRACTOR intend that all policies purchased in accordance with paragraphs 5.6 and 5.7 will protect OWNER, CONTRACTOR, Subcontractors, ENGINEER, and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds in such policies and will provide primary coverage for all losses and damages caused by the perils covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder. OWNER and CONTRACTOR waive all rights against each other and their respective officers, directors, employees and agents for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors, ENGINEER, and all other persons or entities identified in the Supplementary Conditions to be listed as insureds or additional insureds under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by OWNER as trustee or otherwise payable under any policy so issued.

Receipt and Application of Insurance Proceeds

- 5.8. Any insured loss under the policies of insurance required by paragraphs 5.6 and 5.7 will be adjusted with OWNER and made payable to OWNER as fiduciary for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause and of paragraph 5.13. OWNER shall deposit in a separate account any money so received, and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof and the Work and the cost thereof covered by an appropriate Change Order or Written Amendment.
- 5.9. OWNER as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within fifteen (15) days after the occurrence of loss to OWNER's exercise of this power. If such objection be made, OWNER as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, OWNER as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, OWNER as fiduciary shall give bond for the proper performance of such duties.

Acceptance of Bonds and Insurance Option to Replace:

- 5.10. If either party (OWNER or CONTRACTOR) has any objection to the coverage afforded by or other provisions of the Bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within ten (10) days after receipt of the certificates for other evidence requested) required by paragraph 2.7. OWNER and CONTRACTOR shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the Bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent Bonds or

insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

Partial Utilization-Property Insurance:

- 5.11. If OWNER finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work, such use or occupancy may be accomplished in accordance with paragraph 14.10; provided that no such use or occupancy shall commence before the insurers providing the property insurance have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 - CONTRACTOR'S RESPONSIBILITIES

Supervision and Superintendence:

- 6.1. CONTRACTOR shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or specification of a specific means, method, technique, sequence or procedure of construction which is shown or indicated in and expressly required by the Contract Documents. CONTRACTOR shall be responsible to see that the completed Work complies accurately with the Contract Documents.
- 6.2. CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR's representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications to the superintendent shall be as binding as if given to CONTRACTOR.

Labor, Materials and Equipment:

- 6.3. CONTRACTOR shall provide competent, suitably qualified personnel to survey, lay out and construct the Work as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except as otherwise required for the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER's written consent given after prior written notice to ENGINEER.
- 6.4. Unless otherwise specified in the General Requirements, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary

facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

- 6.5. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of OWNER. If required by OWNER or ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with instructions of the applicable Supplier, except as otherwise provided in the Contract Documents.

Progress Schedule:

- 6.6. CONTRACTOR shall adhere to the progress schedule established in accordance with paragraph 2.9 as it may be adjusted from time to time as provided below:
- 6.6.1. CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.9) proposed adjustments in the progress schedule that will not change the Contract Times for Milestones. Such adjustments will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the General Requirements applicable thereto.
- 6.6.2. Proposed adjustments in the progress schedule that will change the Contract Times (or Milestones) shall be submitted in accordance with the requirements of paragraph 12.1. Such adjustments may only be made by a Change Order or Written Amendment in accordance with Article 12.

6.7. Substitutes and "Or-Equal" Items:

- 6.7.1. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be accepted by OWNER and ENGINEER under the following circumstances:

6.7.1.1 "Or Equal." If in OWNER and ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered as an "or-equal" item, in which case review and approval of the proposed item may, in OWNER and ENGINEER's sole discretion, be accomplished without compliance with some or all of the requirements for acceptance of proposed substitute items.

6.7.1.2. Substitute Items: If in OWNER and ENGINEER's sole discretion an item of material or equipment proposed by CONTRACTOR does not qualify as an "or-equal" item under subparagraph 6.7.1.1, it will be considered a proposed substitute item. CONTRACTOR shall submit sufficient information as provided below to allow OWNER and ENGINEER to determine that the item of material or

equipment proposed is essentially equivalent to that named and an acceptable substitute therefore. The procedure for review by the OWNER and ENGINEER will include the following as supplemented in the General Requirements and as OWNER and ENGINEER may decide is appropriate under the circumstances. Requests for review of proposed substitute items of material or equipment will not be accepted by OWNER or ENGINEER from anyone other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall first make written application to ENGINEER, with a copy to OWNER, for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar in substance to that specified and be suited to the same use as that specified. The application will state the extent, if any, to which the evaluation and acceptance of the proposed substitute will prejudice CONTRACTOR's achievement of Substantial Completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents or in the provisions of any other direct contract with OWNER for work on the Project to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all costs or credits that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which will be considered in evaluating the proposed substitute. OWNER and ENGINEER may require CONTRACTOR to furnish additional data about the proposed substitute.

- 6.7.1.3. CONTRACTOR's Expense: All data to be provided by CONTRACTOR in support of any proposed "or-equal" or substitute item will be at CONTRACTOR's expense.
- 6.7.2. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence or procedure of construction is shown or indicated in and expressly required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, technique, sequence or procedure of construction acceptable to OWNER and ENGINEER. CONTRACTOR shall submit sufficient information to allow OWNER and ENGINEER, in their sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The procedure for review will be similar to that provided in subparagraph 6.7.1.2.
- 6.7.3. Engineer's Evaluation: OWNER and ENGINEER will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to paragraphs 6.7.1.2 and 6.7.2. OWNER and ENGINEER will be the sole judge of acceptability. No "or-equal" or substitute will be ordered, installed or utilized without prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. OWNER may require CONTRACTOR to furnish at CONTRACTOR's expense a special performance guarantee or other surety with respect to any "or-equal" or substitute. ENGINEER will record time required by ENGINEER in evaluating substitutes proposed or submitted by CONTRACTOR pursuant to paragraphs 6.7.1.2 and 6.7.2 and in making changes in the Contract Documents (or in the provisions of any other direct contract

with OWNER for work on the Project) occasioned thereby. Whether or not OWNER and ENGINEER accepts a substitute item so proposed or submitted by CONTRACTOR, CONTRACTOR shall reimburse OWNER for the charges of ENGINEER for evaluating each such proposed substitute item.

Concerning Subcontractors, Suppliers and Others:

- 6.8.1. CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to OWNER and ENGINEER as indicated in paragraph 6.8.2), whether initially or as a substitute, against whom OWNER or ENGINEER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.
- 6.8.2. The identity of certain Subcontractors, Manufacturers, Suppliers, persons, firms or corporations (including those who are to furnish the principal items of materials or equipment) are required to be submitted as specified in the Bid Documents for acceptance by OWNER and ENGINEER, and if Bidder has submitted a list thereof in accordance with Section 00330 (List of Subcontractors) and Section 00340 (Schedule of Manufacturers and Suppliers of Major Equipment and Material Items), OWNER's or ENGINEER's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bid Documents or the Contract Documents) of any Subcontractor, Manufacturer, Supplier, person, firm or corporation so identified may be revoked on the basis of reasonable objection after due investigation, in which case Bidder shall submit an acceptable substitute, without an increase in Bid price. And as so amended paragraph 6.8.2 remains in effect. No acceptance by OWNER or ENGINEER of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.
- 6.9.1. CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier or other person or organization any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.
- 6.9.2. CONTRACTOR shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR. CONTRACTOR shall require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with the OWNER and ENGINEER through CONTRACTOR.

- 6.10. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- 6.11. All Work performed for CONTRACTOR by a Subcontractor or Supplier will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided in paragraph 5.6 or 5.7, the agreement between the CONTRACTOR and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against OWNER, CONTRACTOR, ENGINEER, and all other additional insureds for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, CONTRACTOR will obtain the same.

Patent Fees and Royalties:

- 6.12. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER or ENGINEER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. To the fullest extent permitted by Laws and Regulations, CONTRACTOR shall indemnify and hold harmless OWNER, ENGINEER, and the officers, directors, employees, agents and other consultants of each and any of them from and against all claims, costs, losses and damages arising out of or resulting from any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents.

Permits:

- 6.13. Unless otherwise provided in the Supplementary Conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

- 6.13.1 OWNER has secured or will secure the following permits, approvals and licenses and has paid or will pay any associated charges and fees:

1. 404 Permit

Laws and Regulations:

- 6.14.1. CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations.
- 6.14.2. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, CONTRACTOR shall bear all claims, costs, losses and damages caused by, arising out of or resulting therefrom: however, it shall not be CONTRACTOR's primary responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve CONTRACTOR of CONTRACTOR's obligations under paragraph 3.3.2.
- 6.14.3 CONTRACTOR shall (a) comply with all Laws and Regulations governing the use of explosives, (b) obtain and pay for any required permits before their use, and (c) furnish a copy of the permits to OWNER and ENGINEER before using explosives. CONTRACTOR shall, under the supervision of competent and suitably trained and qualified personnel, exercise the utmost care not to endanger life or damage property in the transportation, storage, handling, use and disposal of explosives. CONTRACTOR shall be responsible for and shall defend, indemnify and hold harmless OWNER and ENGINEER against all claims for injury, damage and other adverse impacts inside and outside the permit area resulting from the use of explosives, including but not limited to all costs, delay and delay costs.

Taxes:

- 6.15. CONTRACTOR shall be responsible for and shall pay all taxes applicable or in any way relating to the Work.

Use of Premises:

- 6.16. CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any adjacent land or areas, resulting from the performance of the Work. Should any claim be made by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold harmless OWNER, ENGINEER, and anyone directly or indirectly employed by any of them from and against all claims, costs, losses and damages arising out of or resulting from any claim or action, legal or equitable, brought by any such owner or occupant against OWNER, ENGINEER or any other party indemnified hereunder to the extent caused by or based upon CONTRACTOR's performance of the Work.
- 6.17. During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the

completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery and surplus materials. CONTRACTOR shall leave the site clean and ready for occupancy by OWNER at Substantial Completion of the Work. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

- 6.18. CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

Record Documents:

- 6.19. CONTRACTOR shall maintain in a safe place at the site one (1) record copy of all Drawings, Specifications, Addenda, Written Amendments, Change Orders, Work Change Directives, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. A copy of these record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be sent to OWNER and ENGINEER for reference. Upon completion of the Work, the original record documents, Samples and Shop Drawings will be delivered to ENGINEER for OWNER.

Safety and Protection:

- 6.20. CONTRACTOR shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

6.20.1. all persons on the Work site or who may be affected by the Work;

6.20.2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

6.20.3. other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

CONTRACTOR shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. CONTRACTOR shall notify owners of adjacent property and of Underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property referred to in paragraph 6.20.2 or 6.20.3 caused, directly or indirectly, in whole or in part, by CONTRACTOR, any Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable, shall be remedied by CONTRACTOR (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of OWNER or ENGINEER or anyone employed by any of them or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of CONTRACTOR or any Subcontractor, Supplier or other

person or organization directly or indirectly employed by any of them). CONTRACTOR's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed, ENGINEER has issued a notice to OWNER and CONTRACTOR in accordance with paragraph 14.13 that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion) and OWNER has accepted such notice from ENGINEER.

Safety Representative:

- 6.21. CONTRACTOR shall designate a qualified and experienced safety representative at the site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs. A safety representative shall remain on the site at all times during the performance of Work.

Hazard Communication Programs:

- 6.22. CONTRACTOR shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with Laws or Regulations.

Emergencies:

- 6.23. In emergencies, determined as set forth in Article 3.5 of the Maricopa City Code, affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from OWNER or ENGINEER, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give OWNER and ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby. If OWNER and ENGINEER determine that a change in the Contract Documents is required because of the action taken by CONTRACTOR in response to such an emergency, a Work Change Directive or Change Order will be issued to document the consequences of such action. All such emergencies must be independent of the actions of the CONTRACTOR and ENGINEER for the OWNER to be held responsible for the costs associated with the emergency.

6.24 Shop Drawings or Samples:

- 6.24.1. CONTRACTOR shall submit Shop Drawings to ENGINEER for review and approval in accordance with the accepted schedule of Shop Drawings and Sample submittals (see paragraph 2.9). All submittals will be identified as ENGINEER may require and in the number of copies specified in the General Requirements. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to show ENGINEER the materials and equipment CONTRACTOR proposes to provide and to enable ENGINEER to review the information for the limited purposes required by paragraph 6.26.
- 6.24.2. CONTRACTOR shall also submit Samples to ENGINEER for review and approval in accordance with said accepted schedule of Shop Drawings and Sample submittals. Each Sample will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended and otherwise as ENGINEER may require to enable ENGINEER to review the submittal for the limited purposes required by

paragraph 6.26. The numbers of each Sample to be submitted will be as specified in the Specifications.

- 6.24.3 Technical submittal(s) consisting of drawings and specifications involving architecture, professional engineering, land surveying or landscape architecture, as defined in A.R.S. Title 32, shall be prepared by or under the direct supervision of a registrant within the specific category involved.
- 6.24.4 Submittal(s) are not Contract Documents. Technical submittal(s) are intended to demonstrate how CONTRACTOR intends to conform with the design concept of the Project and the information given in the Contract Documents.
- 6.24.5 Progress schedule submittal(s) are intended to show: (a) the priority and sequencing by which CONTRACTOR intends to execute the Work within the Contract Times, those sequences of Work imposed by the Contract Documents and any other scheduling related requirements of the Contract Documents; (b) how CONTRACTOR anticipates foreseeable events, site conditions and all other general, local and prevailing conditions which may in any manner affect cost, progress, schedule, performance and furnishing of the Work; (c) the means and methods chosen by CONTRACTOR; and (d) the actual timing and sequencing of completed Work.

6.25. Submittal Procedures:

- 6.25.1. Before submitting each Shop Drawing or Sample, CONTRACTOR shall have determined and verified:
 - 6.25.1.1. all field measurements, quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar information with respect thereto,
 - 6.25.1.2. all materials with respect to intended use, fabrication, shipping, handling, storage, assembly and installation pertaining to the performance of the Work, and
 - 6.25.1.3. all information relative to CONTRACTOR's sole responsibilities in respect of means, methods, techniques, sequences and procedures of construction and safety precautions and programs incident thereto.

CONTRACTOR shall also have reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents.

- 6.25.2. Each submittal will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR's obligations under the Contract Documents with respect to CONTRACTOR'S review and approval of that submittal.
- 6.25.3. At the time of each submission, CONTRACTOR shall give OWNER and ENGINEER specific written notice of such variations, if any, that the Shop Drawing or Sample submitted may have from the requirements of the Contract Documents, such notice to be in a written communication separate from the submittal; and, in addition, shall cause a

specific notation to be made on each Shop Drawing and Sample submitted to OWNER and ENGINEER for review and approval of each such variation.

- 6.26. ENGINEER will review and approve Shop Drawings and Samples from CONTRACTOR in accordance with the schedule of Shop Drawings and Sample submittals accepted by ENGINEER as required by paragraph 2.9. ENGINEER's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. ENGINEER's review and approval will not extend to means, methods, techniques, sequences or procedures of construction (except where a particular means, method, technique, sequence or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by ENGINEER, and shall return the required number of corrected copies of Shop Drawings and submit as required new Samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.
- 6.27. ENGINEER's review and approval of Shop Drawings or Samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called OWNER and ENGINEER's attention to each such variation at the time of submission as required by paragraph 6.25.3 and ENGINEER has given written approval, accepted by OWNER, of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for complying with the requirements of paragraph 6.25.1.
- 6.28. Where a Shop Drawing or Sample is required by the Contract Documents or the schedule of Shop Drawings and Sample submissions accepted by OWNER and ENGINEER as required by paragraph 2.9, any related Work performed prior to ENGINEER's review and approval of the pertinent submittal will be at the sole expense and responsibility of CONTRACTOR.

Continuing the Work:

- 6.29.1. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by paragraph 15.5 or as OWNER and CONTRACTOR may otherwise agree in writing.

6.30. CONTRACTOR's General Warranty and Guarantee:

- 6.30.1. CONTRACTOR warrants and guarantees to OWNER and ENGINEER that all Work will be in accordance with the Contract Documents and will not be defective. CONTRACTOR's warranty and guarantee hereunder excludes defects or damage caused by:

- 6.30.1.1. abuse, modification or improper maintenance or operation by persons other than CONTRACTOR, Subcontractors or Suppliers; or
- 6.30.1.2. normal wear and tear under normal usage.

6.30.2. CONTRACTOR's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents:

- 6.30.2.1. observations by OWNER or ENGINEER;
- 6.30.2.3. recommendation of any progress or final payment by ENGINEER;
- 6.30.2.3. the issuance of a certificate of Substantial Completion or any payment by OWNER to CONTRACTOR under the Contract Documents;
- 6.30.2.4. use or occupancy of the Work or any part thereof by OWNER;
- 6.30.2.5. any acceptance by OWNER or any failure to do so;
- 6.30.2.6. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by ENGINEER pursuant to paragraph 14.13;
- 6.30.2.7. any inspection, test or approval by others; or
- 6.30.2.8. any correction of defective Work by OWNER.

Indemnification:

6.31 A provision (a) requiring CONTRACTOR to "defend indemnify and hold harmless OWNER and ENGINEER against all claims," or (b) covering claims against or liability of OWNER or ENGINEER, shall include not only OWNER and ENGINEER, but also their respective consultants, agents, directors, officers, shareholders and employees, and any combination of them, and OWNER's instrumentalities issuing permits covering the Work. Use of the expression "against all claims" in any such provision, shall be construed as covering all claims, costs, losses and damages, whether direct, indirect or consequential (including, but not limited to charges of engineers, attorneys and others, and all court and any other dispute resolution costs).

6.31.1 CONTRACTOR shall defend, indemnify and hold harmless OWNER and ENGINEER from and against all claims, as construed in paragraph 6.31, for bodily injury, sickness, disease or death, or injury to or destruction of property, including loss of use, arising out of, relating to, in any way connected with (a) the Work, (b) failure of CONTRACTOR or any Subcontractor to provide a safe workplace, (c) noncompliance with any law by CONTRACTOR, any Subcontractor or Supplier, or (d) failure of CONTRACTOR to obtain or renew the required policies of insurance and coverage. The indemnification obligation under this paragraph shall include even those claims caused in part by the negligence or other liability-creating conduct or omissions of OWNER or ENGINEER: provided, however, that CONTRACTOR shall not be required to indemnify OWNER or ENGINEER against liability for loss or damage resulting from the sole negligence of OWNER or ENGINEER. With respect to all such claims against OWNER or ENGINEER by any employee of CONTRACTOR, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages,

compensation or benefits payable by or for CONTRACTOR, any Subcontractor or Supplier under workers' compensation, disability benefit or other employee benefit acts.

- 6.32 CONTRACTOR's obligations under paragraph 6.31.1 shall not extend to liability of ENGINEER resulting from (a) preparation or approval of designs, drawings, specifications, opinions, reports or surveys, or (b) giving or failure to give directions or instructions by ENGINEER but only if such giving or failure to give is the sole cause of the injury or damage.
- 6.33 CONTRACTOR shall defend, indemnify and hold harmless OWNER and ENGINEER from and against all claims, as provided in paragraph 6.31, arising from failure, neglect or refusal of CONTRACTOR to perform faithfully the Work and other obligations under the Contract Documents.

Survival of Obligations:

- 6.34. All representations, indemnifications, warranties and guarantees made in, required by or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion and acceptance of the Work and termination or completion of the Agreement.

6.35 QUALITY CONTROL

6.35.1 CONTRACTOR shall establish a quality control program: (a) to insure sufficient supervision, examination, inspection and testing of all items of Work at appropriate intervals, including those of Subcontractors and Suppliers; and (b) to control conformance to the applicable Specifications and Drawings with respect to identified products, workmanship, construction, maintenance while idle, finish and functional performance. At minimum CONTRACTOR's quality control program shall include checking, approval and coordination of submittal and oversight of all specified tests; and it shall specifically assign to responsible CONTRACTOR personnel the obligation to verify and inspect when complete all items of Work which cannot be later located or inspected without uncovering Work. CONTRACTOR shall accurately annotate data on the thus obtained record documents.

6.36 PROGRESS SCHEDULE SUBMITTAL

- 6.36.1 CONTRACTOR shall comply with all scheduling requirements in the General Requirements and within the times specified, shall submit to ENGINEER one reproducible Mylar and four (4) copies of the original progress schedule and required revisions. Each progress schedule submittal shall bear CONTRACTOR's stamp or written indication of approval, which shall constitute a representation to OWNER that CONTRACTOR has determined or verified all data in the submittal, and CONTRACTOR, all appropriate Subcontractors and Suppliers have reviewed and coordinated the sequences depicted with the requirements of the Work. All Progress Schedules shall be in accordance with the General Requirements.
- 6.36.2 OWNER's and ENGINEER's review of the initial progress schedule may result in comments relating to: (a) compliance with Contract Times and sequences of Work imposed by the Contract Documents; (b) selection of Milestones and depicting of Milestone Times, as provided in the General Requirements; and (c) conformance with

other provisions of the General Requirements and any other requirements of the Contract Documents which relate to the initial progress schedule and its impact on matters (or disputes) affecting Contract Price or Contract Time. OWNER's and ENGINEER's review of revisions 1, 2, etc. of the progress schedule shall be for the purpose of verifying whether CONTRACTOR's planning and scheduling of remaining Work demonstrate continued compliance with Contract Times and sequences of Work imposed by the Contract Documents, and for the other purposes specified in the General Requirements.

- 6.36.3 Progress schedule review comments or objections may (but need not) extend to such issues as whether items of Work are omitted; activity durations are reasonable; the level of labor, materials and equipment is adequate; CONTRACTOR's chosen means and methods are appropriate; and the sequences and timing of the Work are practical. Whether or not comments or objections made in reviews of progress schedules submittal, no review, comment or objection shall be effective or construed to create or impose on OWNER or ENGINEER any responsibility for timing, planning, scheduling or performance of the Work or for the accuracy of any progress schedule details, which shall remain the sole responsibility of CONTRACTOR (subject to paragraphs 12.5 and 12.6).
- 6.36.4 CONTRACTOR shall submit to ENGINEER preliminary and final schedules of values in accordance with Article 14 of the General Conditions and the General Requirements. In addition, CONTRACTOR shall submit the initial progress schedule with the first Application for Payment, in accordance with the General Requirements, and the schedule of Shop Drawing and sample submittal. It is a goal to limit or minimize the schedule values to \$35,000 per item or five percent (5 %) of the total Contract Price per item, whichever is less.
- 6.36.5 CONTRACTOR shall correct all schedules returned for revisions and resubmission, taking into account comments made by OWNER and ENGINEER, and shall resubmit any schedule if directed by ENGINEER. The final revision of the as-planned schedule shall be the progress schedule from which record schedules shall be developed and used by CONTRACTOR when making proposals or claims for adjustments in Contract Time or Contract Price.
- 6.36.6 CONTRACTOR shall prosecute the Work with the diligence necessary to ensure completion within the Contract Time. CONTRACTOR shall provide sufficient labor, materials and equipment (and shall promptly undertake all other appropriate action) to recover schedule, if necessary, to comply with all Contract Time requirements. Except as otherwise specifically permitted by the Contract Documents, all Work at the site shall be performed during normal working hours, unless CONTRACTOR has obtained OWNER's or ENGINEER's prior written consent. No Work shall be performed in light less than normal daylight unless adequate lighting has been provided by CONTRACTOR after securing all required approvals and permits.
- 6.36.7 Normal working hours, unless specifically disallowed by Laws or Regulations, shall be from 7:00 a.m. to 6:00 p.m., excluding non-Business Days and not exceeding forty (40) hours per week. CONTRACTOR shall reimburse OWNER for all additional costs resulting from Work performed outside normal working hours, which shall include (a) premium time charges of ENGINEER and OWNER, and (b) added costs assessed against

or incurred by OWNER which CONTRACTOR could reasonably foresee.

6.36.7.1 The combined premium time charges of ENGINEER and OWNER shall be defined as \$95.00 per hour per inspector for each hour exceeding an 8 hour work day or a 40 hour work week.

6.36.8 Early dates in the progress schedule shall be based on proceeding with all or part of the Work exactly on the date when the corresponding Contract Time commences to run. Late dates shall be based on completing all or part of the Work exactly on the corresponding Contract Time, regardless of whether CONTRACTOR anticipates early completion. If sequences of Work are imposed by the Contract Documents, the progress schedule shall show in detail CONTRACTOR's approach to conforming with those sequences.

6.36.9 Progress schedule revisions submitted in accordance with the General Requirements shall (a) adequately depict CONTRACTOR's current approach to remaining Work, (b) report on progress of schedule recovery actions, and (c) facilitate evaluation of progress payments.

ARTICLE 7 - OTHER WORK

Related Work at Site:

- 7.1. OWNER may perform other work related to the Project at the site by OWNER's own forces, or let other direct contracts therefore which shall contain General Conditions similar to these, or have other work performed by utility owners. If the fact that such other work is to be performed was not noted in the Contract Documents, then: (i) written notice thereof will be given to CONTRACTOR prior to starting any such other work, and (ii) CONTRACTOR may make a claim therefore as provided in Articles 11 and 12 if CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the amount or extent thereof.
- 7.2. CONTRACTOR shall afford each other contractor who is a party to such a direct contract and each utility owner (and OWNER, if OWNER is performing the additional work with OWNER's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work and shall properly connect and coordinate the Work with theirs. Unless otherwise provided in the Contract Documents, CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of OWNER and ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.
- 7.3. If the proper execution or results of any part of CONTRACTOR's Work depends upon work performed by others under this Article 7, CONTRACTOR shall inspect such other work and promptly report to ENGINEER in writing, with a copy to OWNER, any delays, defects or deficiencies in such other work that render it unavailable or unsuitable for the proper execution

and results of CONTRACTOR's Work. CONTRACTOR's failure to so report will constitute an acceptance of such other work as fit and proper for integration with CONTRACTOR's Work except for latent or non-apparent defects and deficiencies in such other work.

Coordination:

7.4. If OWNER contracts with others for the performance of other work on the Project at the site, the following will be set forth in Supplementary Conditions:

7.4.1. the person, firm or corporation who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified;

7.4.2. the specific matters to be covered by such authority and responsibility will be itemized: and the extent of such authority and responsibilities will be provided.

7.5 **MUTUAL DUTIES AND RESPONSIBILITIES**

7.5.1 If CONTRACTOR causes damage to the work or property of others, CONTRACTOR shall promptly attempt to settle with that party or otherwise resolve the claim. CONTRACTOR shall defend, indemnify and hold harmless OWNER and ENGINEER from and against all claims, as provided in paragraph 6.31, arising out of or resulting from damage by CONTRACTOR to the work or property of others or from CONTRACTOR's performance of the Work.

7.5.2 If another party causes damage to the Work or property of CONTRACTOR, CONTRACTOR shall promptly attempt to settle with that party or otherwise resolve the claim. CONTRACTOR shall not begin any action against OWNER or ENGINEER, their consultants, agents or any of their directors, officers, shareholders, agents or employees, or permit any action against them to be maintained in CONTRACTOR's name or for CONTRACTOR's benefit any court or tribunal, which action seeks to impose liability or recover damages from OWNER or ENGINEER for such claim.

7.5.3 If CONTRACTOR becomes involved in settling or otherwise resolving claims with other persons performing work under the circumstances covered in paragraphs 7.5.1 or 7.5.2, or because of any other similar controversy, including damage to the Work or other work or a dispute about responsibility for clean-up or any other issue, neither OWNER, ENGINEER, nor any of their respective consultants, directors, officers, stockholders, employees or agents will be involved in any way in such actions (unless subpoenaed). If OWNER incurs costs contrary to the provisions of this Article, CONTRACTOR shall reimburse OWNER for those costs.

Unless otherwise provided in the Supplementary Conditions, OWNER shall have sole authority and responsibility in respect of such coordination.

ARTICLE 8 - OWNER'S RESPONSIBILITIES

8.1. In case of termination of the employment of ENGINEER, OWNER shall appoint an engineer against whom CONTRACTOR makes no reasonable objection, whose status under the Contract Documents shall be that of the former ENGINEER.

- 8.2. OWNER shall furnish the data required of OWNER under the Contract Documents promptly and shall make payments to CONTRACTOR promptly when they are due as provided in paragraphs 14.4 and 14.13.
- 8.3. OWNER's duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and 4.4. Paragraph 4.2 refers to OWNER's identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and drawings of physical conditions in existing structures at or contiguous to the site that have been utilized by ENGINEER in preparing the Contract Documents.
- 8.4. OWNER is obligated to execute Change Orders as indicated in paragraph 10.4.
- 8.5. OWNER's responsibility in respect of certain inspections, tests and approvals is set forth in paragraph 13.4.
- 8.6. In connection with OWNER's right to stop Work or suspend Work, see paragraphs 13.10 and 15.1. Paragraph 15.2 deals with OWNER's right to terminate services of CONTRACTOR under certain circumstances.
- 8.7. **LIMITATIONS ON OWNER'S RESPONSIBILITIES**
- 8.7.1. OWNER is not responsible for CONTRACTOR's means and methods, safety precautions and programs related to safety, or CONTRACTOR's failure to perform the Work in accordance with the Contract Documents. OWNER is not responsible for any acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier or anyone for whose acts CONTRACTOR or any Subcontractor or Supplier may be liable.
- 8.7.2. Neither (a) OWNER's authority to review CONTRACTOR's progress schedules (as set forth in Article 6), nor (b) OWNER's decision to raise or not raise objections about progress schedule submittal, shall create or impose any duty or responsibility on OWNER to exercise any such authority or decision for the benefit of CONTRACTOR, any Subcontractor or Supplier or any other person.
- 8.7.3. Neither (a) OWNER's authority to review the required certificates and policies of insurance, nor (b) OWNER's decision to object or not to object to the certificates or policies, shall create or impose any duty or responsibility on OWNER to exercise any such authority or decision for the benefit of CONTRACTOR, any Subcontractor or Supplier or any other person.
- 8.8. OWNER'S responsibility in respect of undisclosed Asbestos, PCBs, Petroleum, Hazardous Waste or Radioactive Materials uncovered or revealed at the site is set forth in paragraph 4.11.

ARTICLE 9 - ENGINEER'S STATUS DURING, CONSTRUCTION

OWNER's Representative:

- 9.1. The duties and responsibilities and the limitations of authority of ENGINEER during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and ENGINEER.

Visits to Site:

9.2. ENGINEER will make visits to the site at intervals appropriate to the various stages of construction as ENGINEER deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of CONTRACTOR's executed Work. Based on information obtained during such visits and observations, ENGINEER will endeavor for the benefit of OWNER to determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. ENGINEER's efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and on-site observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defective Work. ENGINEER's visits and on-site observations are subject to all the limitations on ENGINEER's authority and responsibility set forth in paragraph 9.13, and particularly, but without limitation, during or as a result of ENGINEER's on-site visits or observations of CONTRACTOR's Work ENGINEER will not supervise, direct, control or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work.

9.2.1 If OWNER or ENGINEER reasonably objects to any of CONTRACTOR's personnel because they are unfit, unskilled, disorderly or counter-productive to the Work, CONTRACTOR shall promptly correct the problem and, if required, remove such personnel from the Work. CONTRACTOR shall defend, indemnify and hold OWNER and ENGINEER harmless from and against all claims, losses and expenses (including attorneys' fees and costs of defense and appeal, if any) arising from the enforcement of this clause.

Project Representative:

9.3. If OWNER and ENGINEER agree in writing, ENGINEER will furnish a Resident Project Representative to assist ENGINEER in providing more continuous observation of the Work. The responsibilities and authority and limitations thereon of any such Resident Project Representative and assistants will be as provided in paragraph 9.13. If OWNER designates another representative or agent to represent OWNER at the site who is not ENGINEER's agent or employee, the responsibilities and authority and limitations thereon of such other person will be as provided herein.

Clarifications and Interpretations:

9.4. ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as OWNER and ENGINEER may determine necessary, which shall be consistent with the intent of and reasonably inferable from Contract Documents. Such written clarifications and interpretations will be binding on OWNER and CONTRACTOR. If OWNER or CONTRACTOR believes that a written clarification or interpretation justifies an adjustment in the Contract Price or the Contract Times and the parties are unable to agree to the amount or extent thereof, if any, OWNER or CONTRACTOR may make a written claim therefore as provided in Article 11 or Article 12.

Authorized Variations in Work:

- 9.5. ENGINEER, with OWNER's written consent, may cause delay which is reasonable under the circumstances or authorize minor variations in the Work consistent with the intent of the Contract Documents, if in ENGINEER's judgment the delay or minor variations does not justify an adjustment in Contract Price or Contract Time. Minor variations may be accomplished by Field Order and shall be binding on CONTRACTOR, who shall proceed with the Work involved promptly, subject to the notice requirements in paragraph 9.4 of the General Conditions. The total accumulative delay under this provision shall be limited to ten (10) working days for every 365 days of the Contract Time.

Rejecting Defective Work:

- 9.6. OWNER or ENGINEER will have authority to disapprove or reject Work which they believe to be defective, or that OWNER or ENGINEER believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. OWNER or ENGINEER will also have authority to require special inspection or testing of the Work as provided in paragraph 13.9, whether or not the Work is fabricated, installed or completed.

Shop Drawings, Change Orders and Payments:

- 9.7. In connection with ENGINEER's authority as to Shop Drawings and Samples, see paragraphs 6.24 through 6.28 inclusive.
- 9.8. In connection with ENGINEER's authority as to Change Orders, see Articles 10, 11, and 12.
- 9.9. In connection with ENGINEER's authority as to Applications for Payment, see Article 14.

Determinations for Unit Prices:

- 9.10. ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR. ENGINEER will review with CONTRACTOR and OWNER the ENGINEER's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). ENGINEER's written decision thereon will be final and binding upon OWNER and CONTRACTOR, unless, within ten (10) days after the date of any such decision, either OWNER or CONTRACTOR delivers to the other and to ENGINEER written notice of intention to appeal from ENGINEER's decision and: (i) an appeal from ENGINEER's decision is taken within the time limits and in accordance with the procedures set forth in Exhibit GC-A, "Dispute Resolution Agreement," entered into between OWNER and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a formal proceeding is instituted by the appealing party in a court competent jurisdiction in Pinal County, Arizona to exercise such rights or remedies as the appealing party may have with respect to ENGINEER's decision, unless otherwise agreed in writing by OWNER and CONTRACTOR. Such appeal will not be subject to the procedures of paragraph 9.11.

Decisions on Disputes:

- 9.11. ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and Claims under Articles 11 and 12 in respect of changes in the Contract Price or Contract Times will be referred initially to ENGINEER in writing with a request for a formal decision in accordance with this paragraph. Written notice of each such claim, dispute or other matter will be delivered by the claimant to ENGINEER and the other party to the Agreement promptly (but in no event later than thirty (30) days) after the start of the occurrence or event giving rise thereto, and written supporting data will be submitted to ENGINEER and the other party within sixty (60) days after the start of such occurrence or event unless ENGINEER allows an additional period of time for the submission of additional or more accurate data in support of such claim, dispute or other matter. The opposing party shall submit any response to ENGINEER and the claimant within thirty (30) days after receipt of the claimant's last submittal (unless ENGINEER allows additional time). ENGINEER will render a formal decision in writing within thirty (30) days after receipt of the opposing party's submittal, if any, in accordance with this paragraph. ENGINEER's written decision on such claim, dispute or other matter will be final and binding upon OWNER and CONTRACTOR unless: (i) an appeal from ENGINEER's decision is taken within the time limits and in accordance with the procedures set forth in EXHIBIT GC-A, "Dispute Resolution Agreement," entered into between OWNER and CONTRACTOR pursuant to Article 16, or (ii) if no such Dispute Resolution Agreement has been entered into, a written notice of intention to appeal from ENGINEER's written decision is delivered by OWNER or CONTRACTOR to the other and to ENGINEER within thirty (30) days after the date of such decision and a formal proceeding is instituted by the appealing party in a forum of competent jurisdiction in Pinal County, Arizona to exercise such rights or remedies as the appealing party may have with respect to such claim, dispute or other matter in accordance with applicable Laws and Regulations within sixty (60) days of the date of such decision, unless otherwise agreed in writing by OWNER and CONTRACTOR.
- 9.12. When functioning as interpreter and judge under paragraphs 9.10 and 9.11, ENGINEER will not show partiality to OWNER or CONTRACTOR and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity. The rendering of a decision by ENGINEER pursuant to paragraphs 9.10 or 9.11 with respect to any such claim, dispute or other matter (except any which have been waived by the making or acceptance of final payment as provided in paragraph 14.16) will be a condition precedent to any exercise by OWNER or CONTRACTOR of such rights or remedies as either may otherwise have under the Contract Documents or by Laws or Regulations in respect of any such claim, dispute or other matter pursuant to Article 16.
- 9.13. Limitations on ENGINEER's Authority and Responsibilities:**
- 9.13.1. Neither ENGINEER's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise or performance of any authority or responsibility by ENGINEER shall create, impose or give rise to any duty owed by ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them.

- 9.13.2. ENGINEER will not supervise, direct, control or have authority over or be responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of the Work. ENGINEER will not be responsible for CONTRACTOR's failure to perform or furnish the Work in accordance with the Contract Documents.
- 9.13.3. ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.
- 9.13.4. ENGINEER's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals and Other documentation required to be delivered by paragraph 14.12 will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests and approvals that the results certified indicate compliance with, the Contract Documents.
- 9.13.5. ENGINEER shall be responsible for the design or payment quantities of the traffic signals, designed by the ENGINEER. The ENGINEER will also provide answers to all RFI's regarding the traffic signals.
- 9.13.6. The limitations upon authority and responsibility set forth in this paragraph 9.13 shall also apply to ENGINEER's Consultants, Resident Project Representative and assistants.
- 9.13.7. ENGINEER's authority and responsibilities shall be limited to this Project.

ARTICLE 10 - CHANGES IN THE WORK

- 10.1. Without invalidating the Agreement and without notice to any surety. OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work. Such additions, deletions or revisions will be authorized by a Written Amendment, a Change Order, or a Work Change Directive. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- 10.2. If OWNER and CONTRACTOR are unable to agree as to the extent, if any, of an adjustment in the Contract Price or an adjustment of the Contract Times that should be allowed as a result of a Work Change Directive, a claim may be made therefore as provided in Article 11 or Article 12.
- 10.3. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraphs 3.5 and 3.6 except in the case of an emergency as provided in paragraph 6.23 or in the case of uncovering Work as provided in paragraph 13.9.
- 10.4. OWNER and CONTRACTOR shall execute appropriate Change Orders recommended by ENGINEER covering:

- 10.4.1. changes in the Work which are (i) ordered by OWNER pursuant to paragraph 10.1. (ii) required because of acceptance of defective Work under paragraph 13.13 or correcting defective Work under paragraph 13.14, or (iii) agreed to by the parties:
- 10.4.2. changes in the Contract Times which are agreed to by the parties; and
- 10.4.3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 9.11; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 6.29.
- 10.5. If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.
- 10.6. No proposal or claim by CONTRACTOR based on changes in the Work, differing site conditions, quantity variations or any other matter shall be allowed if made after final payment.
- 10.7. A Change Order duly signed by OWNER and CONTRACTOR, without CONTRACTOR's reservation of the right to claim additional adjustments in Contract Price or Contract Time, constitutes an all inclusive settlement for all related changes and for all related direct, indirect, supplemental, consequential and cumulative costs and delays; CONTRACTOR's signature also constitutes a release and waiver of any and all rights to file a claim based on the changes covered by the Change Order.
- 10.8. A Change Order duly signed by OWNER and CONTRACTOR, with CONTRACTOR's reservation of the right to claim additional adjustments, shall become final and binding on CONTRACTOR, without consideration of the reservation, unless CONTRACTOR delivers to OWNER written notice of claim within thirty (30) days after CONTRACTOR signs that Change Order.
- 10.9. OWNER, reserves the right to decrease adjustments made in any Change Order if, upon audit of CONTRACTOR's records, the audit discloses CONTRACTOR provided false or inaccurate cost and pricing data in negotiating the Change Order. In enforcing this provision, the parties shall follow the procedures provided in FAR clause 52.214-17, found in 48 CFR Part 42.

ARTICLE 11 - CHANGE OF CONTRACT PRICE

- 11.1. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at CONTRACTOR's expense without change in the Contract Price.
- 11.2. The Contract Price may only be changed by a Written Amendment. Any claim for an adjustment in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than thirty (30) days) after the start of the occurrence or event giving rise to the claim and stating the general nature of the

claim. Notice of the amount of the claim with supporting data shall be delivered within sixty (60) days after the start of such occurrence or event (unless ENGINEER allows additional time for claimant to submit additional or more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the adjustment claimed covers all known amounts to which the claimant is entitled as a result of said occurrence or event. All claims for adjustment in the Contract Price shall be determined by ENGINEER in accordance with paragraph 9.11 if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph 11.2, and shall not be allowed as a basis of a claim against the OWNER to be paid to the CONTRACTOR or ENGINEER. Notwithstanding anything to the contrary contained herein, a change in Contract price of Ten Thousand and 00/100 Dollars (\$10,000) or more shall require approval of the Maricopa City Council.

- 11.3. The value of any Work covered by a Change Order or of any claim for an adjustment in the Contract Price will be determined as follows:
- 11.3.1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of paragraphs 11.9.1 through 11.9.3, inclusive);
 - 11.3.2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 11.6.2):
 - 11.3.3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under paragraph 11.3.2, on the basis of the Cost of the Work (determined as provided in paragraphs 11.4 and 11.5) plus a CONTRACTOR's fee for overhead and profit (determined as provided in paragraph 11.6).

Cost of the Work:

- 11.4. The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall include only the following items and shall not include any of the costs itemized in paragraph 11.5:
- 11.4.1. Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Such employees shall include without limitation superintendents, foremen and other personnel employed full-time at the site. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by OWNER.

- 11.4.2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.
- 11.4.3. Payments made by CONTRACTOR to the Subcontractors for Work performed or furnished by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from subcontractors acceptable to OWNER and CONTRACTOR and shall deliver such bids to OWNER who will then determine, with the advice of ENGINEER, which bids, if any, will be accepted. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as CONTRACTOR's Cost of the Work and fee as provided in paragraphs 11.4, 11.5, 11.6 and 11.7. All subcontracts shall be subject to the other provisions of the Contract Documents insofar as applicable.
- 11.4.4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.
- 11.4.5. Supplemental costs including the following:
- 11.4.5.1. The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR's employees incurred in discharge of duties connected with the Work.
 - 11.4.5.2. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.
 - 11.4.5.3. Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof-all in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.
 - 11.4.5.4. Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.
 - 11.4.5.5. Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

- 11.4.5.6. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by CONTRACTOR in connection with the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by OWNER in accordance with paragraph 5.9), provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR's fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid for services a fee proportionate to that stated in paragraph 11.6.2.
 - 11.4.5.7. The cost of utilities, fuel and sanitary facilities at the site.
 - 11.4.5.8. Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.
 - 11.4.5.9. Cost of premiums for additional Bonds and insurance required because of changes in the Work.
- 11.5. The term Cost of the Work shall not include any of the following:
- 11.5.1. Payroll costs and other compensation of CONTRACTOR's officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 11.4.1 or specifically covered by paragraph 11.4.4 - all of which are to be considered administrative costs covered by the CONTRACTOR's fee.
 - 11.5.2. Expenses of CONTRACTOR's principal and branch of offices other than CONTRACTOR's office at the site.
 - 11.5.3. Any part of CONTRACTOR's capital expenses, including interest on CONTRACTOR's capital employed for the Work and charges against CONTRACTOR for delinquent payments.
 - 11.5.4. Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 11.4.5.9 above).
 - 11.5.5. Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable,

including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

- 11.5.6. Acceleration costs to overcome suspension of Work or other delays which warrant extensions in Contract Time but exclude increases in Contract Price; escalation costs for any part of the Work not delayed beyond the late dates in the progress schedule; or delay costs not expressly allowed in this Article.

Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 11.4.

- 11.6. The CONTRACTOR's fee allowed to CONTRACTOR for overhead and profit shall be determined as a mutually acceptable fixed fee prior to the commencement of any Work.
- 11.7. Whenever the cost of any Work is to be determined pursuant to paragraphs 11.4 and 11.5, CONTRACTOR will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in form acceptable to ENGINEER an itemized cost breakdown together with supporting data. CONTRACTOR shall keep maintain all such records and allow OWNER to inspect such records for two (2) years after final payment.

Cash Allowances:

- 11.8. It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be furnished and performed for such sums as may be acceptable to OWNER and ENGINEER, CONTRACTOR agrees that:
- 11.8.1. The allowances include all costs to the CONTRACTOR of materials, equipment, taxes, unloading, handling on the site, labor, installation costs, overhead, profit, and other expenses required to furnish and install the work described by the allowances.

Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.9. Unit Price Work:

- 11.9.1. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER in accordance with paragraph 9.10.
- 11.9.2. Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR's overhead and profit for each separately identified item.

- 11.9.3. OWNER or CONTRACTOR may make a claim for an adjustment in the Contract Price in accordance with Article 11 if:
- 11.9.3.2. the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 - 11.9.3.3. there is no corresponding adjustment with respect to any other item of Work; and
 - 11.9.3.4. if CONTRACTOR believes that CONTRACTOR is entitled to an increase in Contract Price as a result of having incurred additional expense or OWNER believes that OWNER is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.
- 11.10 Notwithstanding anything to the contrary in the Contract Documents, CONTRACTOR assumes all risks of delays, disruptions and hindrances, and CONTRACTOR shall not make any claim for adjustment in Contract Price or for damages (or any other kind of compensation) for any delays, disruptions or hindrances from any cause whatsoever, including acts and omissions of OWNER or ENGINEER, except as provided in paragraphs 11.10.1 and 11.10.2
- 11.10.1 OWNER and CONTRACTOR shall negotiate for the recovery of damages related to expenses incurred by CONTRACTOR for delay if, but only if, (a) OWNER is responsible for the delay; and (b) the delay is unreasonable under the circumstances; and (c) the delay was not within the contemplation of OWNER and CONTRACTOR; and (d) CONTRACTOR gives OWNER notice and submits a claim in the manner and within the times specified in Article GC-12. CONTRACTOR shall make every effort to avoid the consequences and mitigate damages from any delay.
- 11.10.2 No delay resulting from the negotiations or resolution of changes in the Work, differing site conditions or variation in quantities shall be unreasonable under the circumstances unless the delay exceeds two (2) days plus the time required by CONTRACTOR to deliver a related proposal. Such delays are contemplated by CONTRACTOR and OWNER.

ARTICLE 12 - CHANGE OF CONTRACT TIMES

- 12.1. The contract Times (or Milestones) may only be changed by a Change Order or a Written Amendment. Any claim for an adjustment of the Contract Times (or Milestones) shall be based on written notice delivered by the party making the claim to the other party and to ENGINEER promptly (but in no event later than ten (10) days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within thirty (30) days after such occurrence (unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. No claim for an adjustment in the Contract Times (or Milestones) will be valid if not submitted in accordance with the requirements of this paragraph.
- 12.2 All time limits stated in the Contract Documents are of the essence of the Agreement.

- 12.3 An extension in Contract Time will not be justified unless CONTRACTOR, through analysis of the Record Schedule, demonstrates delay in completing all or a specified part of the Work arising from unforeseeable causes beyond the control and without the fault or negligence of CONTRACTOR, and the delay is unreasonable under the circumstances. Examples of events which may justify an extension of Contract Time, subject to the requirements of the Contract Documents, include: acts of God, the public enemy, or OWNER in its sovereign capacity; acts of the U.S. Government, the State or another Political Subdivision; fires, floods, epidemics, quarantine restrictions; strikes, freight embargoes, unusual weather, including storms, tornados, etc. (unusual in the sense of expectation, frequency or severity compared with the prior 5-year average; but ambient air temperature up to 125°F shall not be considered unusual); unusually severe shortages of construction materials, considering all feasible sources of supply; newly discovered Underground Utilities; objection, for OWNER's convenience, to a nominated Subcontractor; an emergency; incidents with archaeological features suspension of Work; changes in the Work, differing site conditions or variation in quantities of Unit Price Work. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of CONTRACTOR.
- 12.4 If CONTRACTOR is prevented from completing any part of the Work within the Contract Times (or Milestones) for unforeseeable causes beyond the control of both OWNER and CONTRACTOR, an extension of the Contract Times (or Milestones) in an amount equal to the time lost due to such delay shall be CONTRACTOR's sole and exclusive remedy for the delay. In no event shall OWNER be liable to CONTRACTOR, any Subcontractor, any Manufacturer, any Supplier, any person, any firm, any corporation, or to any surety for or employee or agent of any of them, for damages arising out of or resulting from (a) delays caused by or within the control of CONTRACTOR, or (b) delays beyond the control of both parties as specified in paragraph 12.3.
- 12.5 No delay in completing the Work, or any specified part of the Work, for which the OWNER is responsible, shall be unreasonable under the circumstances or justify an increase in Contract Time or Contract Price, unless, and then only to the extent that, the delay extends completion of the Work, or specified part of the Work, beyond the corresponding Contract Time. Notwithstanding the first sentence of this paragraph 12.5, if the progress schedule depicts Total Float whether expressly disclosed or implied by the use of float suppression techniques, the Total Float is owned jointly by CONTRACTOR and OWNER with 25% of the Total Float belonging to OWNER and 75% belonging to CONTRACTOR.
- 12.6 CONTRACTOR's use of float suppression techniques (including but not limited to preferential sequencing caused by late starts of follow-up trades, unreasonably small crews, etc., extended durations, imposed dates, or scheduling Work not required for a Contract Time as required Work) is a material breach of the Agreement and bars CONTRACTOR from obtaining changes in either Contract Price or Contract Time.
- 12.7 Notwithstanding anything to the contrary contained herein, any extension in Contract Time of one (1) month or more shall require approval of the Maricopa City Council.

ARTICLE 13 - TESTS AND INSPECTIONS: CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

- 13.1. Notice of Defects: Prompt notice of all defective Work of which OWNER or ENGINEER have actual knowledge will be given to CONTRACTOR. All defective Work may be rejected, corrected or accepted as provided in this Article 13.

Access to Work:

- 13.2. OWNER, ENGINEER, other representatives and personnel of OWNER, independent testing laboratories and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide them proper and safe conditions for such access and advise them of CONTRACTOR's site safety procedures and programs so that they may comply therewith as applicable.

Tests and inspections:

- 13.3. CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests or approvals, and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- 13.4. OWNER shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
- 13.4.1. for inspections, tests or approvals covered by paragraph 13.5 below;
 - 13.4.2. that costs incurred in connection with tests or inspections conducted pursuant to paragraph 13.9 below shall be paid as provided in said paragraph 13.9: and
 - 13.4.3. as otherwise specifically provided in the Contract Documents.
- 13.5. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested or approved by an employee or other representative of such public body, CONTRACTOR shall assume full responsibility for arranging and obtaining such inspections, tests or approvals, pay all costs in connection therewith, and furnish ENGINEER the required certificates of inspection, or approval. CONTRACTOR shall also be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests or approvals required for OWNER's and ENGINEER's acceptance of materials or equipment to be incorporated in the Work, or of materials, mix designs, or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work.
- 13.6. If any Work (or the work of others) that is to be inspected, tested or approved is covered by CONTRACTOR without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation.
- 13.7. Uncovering Work as provided in paragraph 13.6 shall be at CONTRACTOR's expense unless CONTRACTOR has given OWNER and ENGINEER timely notice of CONTRACTOR's intention to cover the same and ENGINEER has not acted with reasonable promptness in response to such notice.

Uncovering Work:

- 13.8. If any Work is covered contrary to the written request of ENGINEER, it must, if requested by ENGINEER, be uncovered for ENGINEER's observation and replaced at CONTRACTOR's expense.
- 13.9. If OWNER or ENGINEER considers it necessary or advisable that covered Work be observed by ENGINEER or inspected or tested by others, CONTRACTOR, at OWNER or ENGINEER's request, shall uncover, expose or otherwise make available for observation, inspection or testing as ENGINEER may require, that portion of the Work in question, furnishing all necessary labor, material and equipment. If it is found that such Work is defective, CONTRACTOR shall pay all claims, costs, losses and damages caused by, arising out of or resulting from such uncovering, exposure, observation, inspection and testing and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others): and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, may make a claim therefore as provided in Article 11. If, however, such Work is not found to be defective, CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Times (or Milestones), or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement and reconstruction; and, if the parties are unable to agree as to the amount or extent thereof, CONTRACTOR may make a claim therefore as provided in Articles 11 and 12.

OWNER May Stop the Work:

- 13.10 If Work is defective, or CONTRACTOR fails to provide sufficient, skilled workers or suitable materials or equipment, or otherwise fails to perform Work in compliance with the Contract Documents, OWNER may order CONTRACTOR to stop all or part of the Work until any problem is corrected. CONTRACTOR shall (a) remain responsible for recovering schedule, (b) not be entitled to any increase in Contract Time or Contract Price, and (c) reimburse OWNER for all direct, indirect or consequential costs incurred by OWNER resulting from any such stop Work order. OWNER's authority to stop all or part of the Work shall not create or impose any duty or responsibility on OWNER to exercise any such authority for the benefit of CONTRACTOR or any other person.

Correction or Removal Defective Work:

- 13.11 If required by OWNER or ENGINEER, CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by ENGINEER, remove it from the site and replace it with Work that is not defective. CONTRACTOR shall pay all claims, costs, losses and damages caused by or resulting from such correction or removal (including but not limited to all costs of repair or replacement of work of others).

13.12 Correction Period:

- 13.12.1. If within one (1) year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions: (i) correct such defective Work, or, if it has been rejected by OWNER, remove it from the site and replace it with Work that is not defective, and (ii)

satisfactorily correct or remove and replace any damage to other Work or the work of others resulting therefrom. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or the rejected Work removed and replaced, and all claims, costs, losses and damages caused by or resulting from such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by CONTRACTOR.

- 13.12.2. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Written Amendment.
- 13.12.3. Where defective Work (and damage to other Work resulting therefrom) has been corrected, removed or replaced under this paragraph 13.12, the correction period hereunder with respect to such Work will be extended for an additional period of one (1) year after such correction or removal and replacement has been satisfactorily completed.
- 13.12.4. The specified warranties and guarantees and CONTRACTOR's obligations for correction of Work specified in this Article are in addition to, and not in limitation of, any other specific remedies provided in the Contract Documents or by Law. Nothing contained in this paragraph or this Article shall be construed as establishing a period of limitations for, or limiting the obligations of, CONTRACTOR under the Contract Documents.

Acceptance of Defective Work:

- 13.13 If, instead of requiring correction or removal and replacement of defective Work, OWNER (and, prior to ENGINEER's recommendation of final payment, also ENGINEER) prefers to accept it, OWNER may do so. CONTRACTOR shall pay all claims, costs, losses and damages attributable to OWNER's evaluation of and determination to accept such defective Work. If any such acceptance occurs prior to ENGINEER's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefore as provided in Article 11. If the acceptance occurs after such recommendation, an appropriate amount will be paid by CONTRACTOR to OWNER.

OWNER May Correct Defective Work:

- 13.14 If CONTRACTOR fails within a reasonable time, 10 working days, after written notice from ENGINEER to correct defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 13.11, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph OWNER shall proceed expeditiously. In connection with such corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto,

take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER's representatives, agents and employees, OWNER's other contractors and ENGINEER access to the site to enable OWNER to exercise the rights and remedies under this paragraph. All claims, costs, losses and damages incurred or sustained by OWNER in exercising such rights and remedies will be charged against CONTRACTOR and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Works and OWNER shall be entitled to an appropriate decrease in the Contract Price, and, if the parties are unable to agree as to the amount thereof, OWNER may make a claim therefore as provided in Article 11. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR's defective Work. CONTRACTOR shall not be allowed an extension of the Contract Times (or Milestones) because of any delay in the performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies hereunder.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

Schedule of Values:

14.1. SCHEDULE OF VALUES

14.1.1. The schedule of values established as provided in paragraph 2.9 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price work will be based on the number of units completed.

14.1.2. Whenever the Bid Schedule on the Bid Form lists an item of Work entitled "Mobilization Pay Item", such mobilization pay item shall be intended to cover, in part at least (a) reasonable costs of establishing those temporary offices specified in the Technical Specifications; (b) reasonable cost of transporting to the site and the unloading and assembly of construction equipment that arrives on site promptly after the Date of Commencement of the Contract Time; (c) fees for permits required to commence the Work; (d) premiums for Performance Bond, Payment Bond and any other performance Bonds required by the Contract Documents; (e) premiums for policies of insurance purchased by the Contractor to comply with the requirements of the Contract Documents; (f) and reasonable costs of demobilization including vacating and clearing the site.

14.1.3. Except when seeking progress payment under the mobilization pay item for payroll or other similar costs, the basis of measurement for payment shall be proof of actual payment, not to exceed twenty percent (20 %) of the CONTRACTOR's Base Bid. If the CONTRACTOR incurs costs (which CONTRACTOR considers to be mobilization costs) in excess of the specified percentage of the Base Bid, the excess costs will not be compensated under the mobilization pay item and will be deemed to have been included in the other components of the Base Bid. Payment shall be based on the requirements of the Contract Documents governing progress payments, subject to the following:

14.1.3.1. Up to forty percent (40%) of the payment earned under this item may be requested for payment with the 1st Application for Payment following receipt by

the OWNER of a sufficiently responsive initial Progress Schedule (meaning sufficiently responsive based on the requirements of the Contract Documents and the Technical Specifications).

14.1.3.2. Up to eighty percent (80%) of the payment earned under this item may be requested for payment after 50% of the work is complete with the Application for Payment following return to the CONTRACTOR of the revision of the initial Progress Schedule Submittal marked "Resubmittal Not Required."

14.1.3.3. The balance of the payment earned under the "Mobilization Pay Item" may be requested for payment with the final Application for Payment. Such payment is intended to cover demobilization costs.

Application for Progress Payment:

14.2. At least twenty (20) days before the date established for each progress payment (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that OWNER has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect OWNER's interest therein, all of which will be satisfactory to OWNER. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

14.2.1. With each Application for Payment, CONTRACTOR shall submit written consent of the SURETY for payment of the amount requested in the Application for Payment.

14.2.2. Prior to reduction in or partial release of retainage, CONTRACTOR shall submit to OWNER AIA Document G707A (Consent of Surety to Reduction in or Partial Release of Retainage) certifying the SURETY agrees that such reduction in or partial release of retainage shall not relieve the SURETY of any of its obligations under the Performance and Payment Bonds.

CONTRACTOR's Warranty of Title:

14.3. CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

Review of Application for Progress Payment:

14.4. ENGINEER will, within seven (7) days after receipt of each Application for Payment, either certify, approve and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. Fourteen (14) days after presentation of the Application for Payment to OWNER,

the amount recommended will, subject to the provisions of paragraph 14.7 of the General Conditions, become due and when due will be paid by the OWNER to the CONTRACTOR. All payments will be available to the CONTRACTOR at the City of Maricopa, 45145 W. Madison Avenue, Maricopa, Arizona 85139, on the fourteenth (14th) day, unless CONTRACTOR arranges with the City of Maricopa to mail payments. Mailed payments shall be deemed paid on the date deposited in the mail as established by the U.S. Postal Service postmark. If payment is not made when due, simple interest, as provided in A.R.S. 34-221(H) as amended, shall be paid by OWNER to CONTRACTOR (excluding any Fee to CONTRACTOR).

14.5. ENGINEER's recommendation of any payment requested in an Application for Payment will constitute a representation by ENGINEER to OWNER, based on ENGINEER's on-site observations of the executed Work as an experienced and qualified design professional and on ENGINEER's review of the Application for Payment and the accompanying data and schedules, that to the best of ENGINEER's knowledge, information and belief:

14.5.1. the Work has progressed to the point indicated,

14.5.2. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, to a final determination of quantities and classifications for Unit Price Work under paragraph 9.10, and to any other qualifications stated in the recommendation), and

14.5.3. the conditions precedent to CONTRACTOR's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the Work.

However, by recommending any such payment ENGINEER will not thereby be deemed to have represented that: (i) exhaustive or continuous on-site inspections have been made to check the quality or the quantity of the Work beyond the responsibilities specifically assigned to ENGINEER in the Contract Documents or (ii) that there may not be other matters or issues between the parties that might entitle CONTRACTOR to be paid additionally by OWNER or entitle OWNER to withhold payment to CONTRACTOR.

14.6. ENGINEER's recommendation of any payment, including final payment, shall not mean that ENGINEER is responsible for CONTRACTOR's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of CONTRACTOR to comply with Laws and Regulations applicable to the furnishing or performance of Work, or for any failure of CONTRACTOR to perform or furnish Work in accordance with the Contract Documents.

14.7. ENGINEER may refuse to recommend the whole or any part of any payment if, in ENGINEER's opinion, it would be incorrect to make the representations to OWNER referred to in paragraph 14.5. ENGINEER may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in ENGINEER's opinion to protect OWNER from loss because:

14.7.1. the Work is defective, or completed Work has been damaged requiring correction or replacement,

- 14.7.2. the Contract Price has been reduced by Written Amendment.
- 14.7.3. OWNER has been required to correct defective Work or complete Work in accordance with paragraph 13.14, or
- 14.7.4. ENGINEER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 15.2.1 through 15.2.4 inclusive.

OWNER may refuse to make payment of the full amount recommended by ENGINEER because:

- 14.7.5. claims have been made against OWNER on account of CONTRACTORS performance or furnishing of the Work,
- 14.7.6. RESERVED
- 14.7.7. there are other items entitling OWNER to a set-off against the amount recommended, or
- 14.7.8. OWNER has actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.7.1 through 14.7.3 or paragraphs 15.2.1 through 15.2.4 inclusive;

but OWNER must give CONTRACTOR immediate written notice (with a copy to ENGINEER) stating the reasons for such action and promptly pay CONTRACTOR the amount so withheld, or any adjustment thereto agreed to by OWNER and CONTRACTOR, when CONTRACTOR corrects to OWNER's satisfaction the reasons for such action.

Substantial Completion:

- 14.8. When CONTRACTOR considers the entire Work ready for its intended use CONTRACTOR shall notify OWNER and ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by CONTRACTOR as incomplete) and request that ENGINEER issue a certificate of Substantial Completion. Within a reasonable time thereafter, OWNER, CONTRACTOR and ENGINEER shall make an inspection of the Work to determine the status of completion. If ENGINEER does not consider the Work substantially complete, ENGINEER will notify CONTRACTOR in writing giving the reasons therefore. If ENGINEER considers the Work substantially complete, ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. OWNER shall have seven (7) days after receipt of the tentative certificate during which to make written objection to ENGINEER as to any provisions of the certificate or attached list. If, after considering such objections, ENGINEER concludes that the Work is not substantially complete, ENGINEER will within fourteen (14) days after submission of the tentative certificate to OWNER notify CONTRACTOR in writing, stating the reasons therefore. If, after consideration of OWNER's objections, ENGINEER considers the Work substantially complete, ENGINEER will within said fourteen (14) days execute and deliver to OWNER and CONTRACTOR a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as ENGINEER believes justified after consideration of any objections from OWNER. At the time of delivery of the tentative certificate of Substantial Completion ENGINEER will deliver to OWNER and CONTRACTOR a written recommendation as to division of responsibilities

pending final payment between OWNER and CONTRACTOR with respect to security, operation, safety, maintenance, heat, utilities, insurance and warranties and guarantees. Unless OWNER and CONTRACTOR agree otherwise in writing and so inform ENGINEER in writing prior to ENGINEER's issuing the definitive certificate of Substantial Completion, ENGINEER's aforesaid recommendation will be binding on OWNER and CONTRACTOR until final payment.

- 14.9. OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

Partial Utilization:

- 14.10 Use by OWNER at OWNER's option of any substantially completed part of the Work which: (i) has specifically been identified in the Contract Documents, or (ii) OWNER, ENGINEER and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER for its intended purpose without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:

14.10.1. OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and substantially complete. If CONTRACTOR agrees that such part of the Work is substantially complete, CONTRACTOR will certify to OWNER and ENGINEER that such part of the Work is substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. CONTRACTOR at any time may notify OWNER and ENGINEER in writing that CONTRACTOR considers any such part of the Work ready for its intended use and substantially complete and request ENGINEER to issue a certificate of Substantial Completion for that part of the Work. Within a reasonable time after either such request, OWNER, CONTRACTOR and ENGINEER shall make an inspection of that part of the Work to determine its status of completion. If ENGINEER does not consider that part of the Work to be substantially complete, ENGINEER will notify OWNER and CONTRACTOR in writing giving the reasons therefore. If ENGINEER considers that part of the Work to be substantially complete, the provisions of paragraphs 14.8 and 14.9 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

14.10.2. No occupancy or separate operation of part of the Work will be accomplished prior to compliance with the requirements of paragraph 5.15 in respect of property insurance.

Final Inspection:

- 14.11 Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will make a final inspection with OWNER and CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

Final Application for Payment:

14.12 FINAL PAYMENT AND ACCEPTANCE

- 14.12.1 Upon written notice from CONTRACTOR that CONTRACTOR considers the entire Work, or a specified part of the Work for which final acceptance is specified in the Contract Documents, complete and ready for final payment, ENGINEER will make a corresponding final inspection with OWNER and CONTRACTOR, and will notify CONTRACTOR in writing of all instances of incomplete or defective Work revealed by the final inspection. CONTRACTOR shall immediately undertake all necessary measures to correct the deficiencies.
- 14.12.2 CONTRACTOR may apply for final payment and acceptance (a) after completing correction of the deficiencies to satisfaction of OWNER and ENGINEER and delivering all maintenance and operation instructions, warranties and guarantees, certificates of inspection, revised record documents (reflecting revisions made after Substantial Completion), required Bonds and all other required documents, and (b) after ENGINEER has consented to review the Work for final acceptance.
- 14.12.3 The final Application for Payment and acceptance shall enclose (a) evidence of insurance (including, but not limited to completed operations insurance) and an affidavit certifying that the insurance coverage will not be canceled, adversely changed or renewal refused except as provided under paragraph 5.5, (b) AIA Document G707 (Consent of Surety Company to Final Payment) certifying the SURETY agrees that final payment shall not relieve the SURETY of any of its obligations under the Performance and Payments Bonds, (c) a "Contractor's Affidavit Regarding Settlement of Claims" (available from OWNER) and complete and legally effective releases or waivers acceptable to OWNER in the full amount of the Contract Price, or if any Subcontractor or Supplier refuses or fails to furnish such release or waiver, a Bond or other security acceptable to OWNER to indemnify OWNER against any payment claim, and (d) a list of all pending property damage and personal injury or death insurance claims arising out of or resulting from the Work, identifying the claimant and the nature of the claim.
- 14.13 If based on ENGINEER's (a) observation of the Work, (b) final inspection, and (c) review of the final Application for Payment and acceptance, ENGINEER is satisfied that the Work, or a part of the Work for which separate final acceptance is specified in the Contract Documents, has been completed and CONTRACTOR's other obligations under the Contract Documents have been fulfilled, ENGINEER will, within thirty (30) days after receipt of the final Application, furnish to OWNER and CONTRACTOR the ENGINEER's recommendation of final payment and acceptance. If ENGINEER is not satisfied, ENGINEER will return that final Application for Payment to CONTRACTOR, indicating in writing the reasons for not recommending final payment and acceptance, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application.
- 14.13.1 If OWNER concurs with ENGINEER's recommendation of final payment and acceptance, OWNER will, within fifteen (15) days, file a written notice of completion and acceptance of the Work, or separable part of the Work for which final acceptance is specified, and notify CONTRACTOR and ENGINEER of OWNER's acceptance. Within sixty (60) days after filing such notice, OWNER shall pay to CONTRACTOR the balance of the Contract Price, subject to any withholdings and those other provisions governing final payment specified in the Agreement

- 14.13.2 If OWNER does not concur with ENGINEER's determination, OWNER will return the Application to CONTRACTOR, through ENGINEER, indicating in writing the reasons for refusing final payment and acceptance. CONTRACTOR shall promptly make the necessary corrections and resubmit the Application to ENGINEER. OWNER's written determination shall bind CONTRACTOR, unless CONTRACTOR delivers to OWNER, through ENGINEER, written notice of a claim within thirty (30) days after receipt of that determination.
- 14.13.3 If recommended by ENGINEER, OWNER may, upon receipt of CONTRACTOR's final Application for Payment and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted, if final completion of the Work is significantly delayed through no fault of CONTRACTOR. If the balance to be held by OWNER for Work not fully completed or corrected is less than the retainage on that Work, the affidavits specified in paragraph 14.12.3 and the release or waiver, or Bonds, shall be furnished as required and submitted by CONTRACTOR. Payment of the balance due shall be made under the provisions for final payment, but shall not constitute a waiver of claims.
- 14.13.4 OWNER shall pay with reasonable promptness any amounts deducted from the final payment, upon resolution of the claims for which the amounts were withheld.

Waiver of Claims

14.14 WAIVER OF CLAIMS:

- 14.14.1 Final payment does not constitute a waiver by OWNER of any rights relating to CONTRACTOR's continuing obligations under the Contract Documents, nor does it constitute a waiver of any claims by OWNER against CONTRACTOR arising from unaudited payments, defective Work appearing after final inspection or failure by CONTRACTOR to comply with the Contract Documents or the terms of any special warranties or guarantees provided by the Contract Documents or by Laws or Regulations.
- 14.14.2 Final payment constitutes a waiver of all claims by CONTRACTOR against OWNER other than those claims previously filed in writing with OWNER on a timely basis and still unsettled.

ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION

OWNER May Suspend Work:

- 15.1. At any time and without cause, OWNER may suspend the Work or any portion thereof for a period of not more than ninety (90) days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if CONTRACTOR makes an approved claim therefore as provided in Articles 11 and 12 of the General Conditions, except that CONTRACTOR shall not be entitled to recover profit for suspensions of Work. No adjustment in Contract Price will be made for delays in Work which

would have been deferred, stopped, slowed, suspended, interrupted or extended due to any other cause.

OWNER May Terminate:

15.2. Upon the occurrence of any one or more of the following events:

- 15.2.1. if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.9 as adjusted from time to time pursuant to paragraph 6.6);
- 15.2.2. if CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;
- 15.2.2. if CONTRACTOR disregards the authority of ENGINEER; or
- 15.2.4. if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;

OWNER may, after giving CONTRACTOR and the surety, if any, seven (7) days' written notice and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR's tools, appliances, construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds all claims, costs, losses and damages sustained by OWNER arising out of or resulting from completing the Work such excess will be paid to CONTRACTOR. If such claims, costs, losses and damages exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such claims, costs, losses and damages incurred by OWNER will be reviewed by ENGINEER as to their reasonableness and when so approved by ENGINEER incorporated in a Change Order, provided that when exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

15.3. Where CONTRACTOR's services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

15.4. Upon seven (7) days' written notice to CONTRACTOR and ENGINEER, OWNER may, without cause and without prejudice to any other right or remedy of OWNER, elect to terminate the Agreement. In such case, CONTRACTOR shall be paid (without duplication of any items):

- 15.4.1. for completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;

- 15.4.2. for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
- 15.4.3. for all claims, costs, losses and damages incurred in settlement of terminated contracts with Subcontractors, Suppliers and others; and
- 15.4.4. for reasonable expenses directly attributable to termination.
- 15.4.5. If it is determined, after notice of termination of the services of CONTRACTOR for any of the causes listed in paragraph 15.2 of the General Conditions that CONTRACTOR was not in default, the termination shall be deemed to have been for the convenience of OWNER. In such event CONTRACTOR may recover payment in accordance with paragraph 15.4 of the General Conditions.

CONTRACTOR shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

CONTRACTOR May Stop Work or Terminate:

- 15.5. If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety (90) days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within thirty (30) days after it is submitted or OWNER fails for thirty (30) days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may upon seven (7) days' written notice to OWNER and ENGINEER, and provided OWNER or ENGINEER do not remedy such suspension or failure within that time, terminate the Agreement and recover from OWNER payment on the same terms as provided in paragraph 15.4. In lieu of terminating the Agreement and without prejudice to any other right or remedy, if ENGINEER has failed to act on an Application for Payment within thirty (30) days after it is submitted, or OWNER has failed for thirty (30) days to pay CONTRACTOR any sum finally determined to be due, CONTRACTOR may upon seven (7) day's written notice to OWNER and ENGINEER stop the Work until payment of all such amounts due CONTRACTOR, including interest thereon. The provisions of this paragraph 15.5 are not intended to preclude CONTRACTOR from making claim under Articles 11 and 12 for an increase in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to CONTRACTOR's stopping Work as permitted by this paragraph.

ARTICLE 16 - DISPUTE RESOLUTION

16.1 CLAIMS UNDER THIS ARTICLE

- 16.1.1 All claims, counterclaims, disputes and other matters in question between OWNER and CONTRACTOR arising out of or relating to the Contract Documents or their breach shall be handled and resolved as provided in this Article 16.
- 16.1.2 A claim means a written demand or assertion by OWNER or CONTRACTOR seeking an adjustment in Contract Price or Contract Time (or any other relief arising out of or relating to the Contract Documents) which may become a claim after a determination by ENGINEER or OWNER under the appropriate provision(s) of the Contract Documents.

16.1.3 Claims for which a provision of the Contract Documents specifically authorizes or excludes the relief sought by the claimant shall be handled and resolved in accordance with the applicable provision.

16.1.4 No claim shall be valid unless it is based on written notice (stating the nature of the claim) delivered by the party making it to the other party promptly, but in no event later than thirty (30) days after ENGINEER's or OWNER's determination giving rise to the claim. The claim submittal with all supporting data shall be delivered within sixty (60) days after determination (unless ENGINEER allows an extension). The burden of proving a claim is on the party asserting it. Notwithstanding anything to the contrary in this Article, OWNER shall not be required to deliver notice of any claim for liquidated damages or involving retention (or securities in lieu) until sixty (60) days after final acceptance.

16.1.5 CONTRACTOR claims shall be submitted to ENGINEER for written decision by OWNER. OWNER claims shall be submitted to CONTRACTOR and ENGINEER for a written decision by ENGINEER.

16.2 CERTIFICATION OF CONTRACTOR CLAIMS

16.2.1 For all CONTRACTOR claims alleging an increase in Contract Price or Contract Time, CONTRACTOR shall submit an affidavit executed by an officer or partner in charge at CONTRACTOR's plant or location involved, or by a responsible senior officer or general or managing partner of CONTRACTOR, certifying that the claim is made in good faith; the amount claimed accurately reflects the adjustments in Contract Price or Contract Time for which CONTRACTOR believes OWNER is liable; the claim covers all costs and delays to which CONTRACTOR is entitled from the Occurrence of the claimed event; and that supporting cost and pricing data are current, accurate, complete and represent CONTRACTOR's best knowledge and believe.

16.3 DETERMINATION ON A CLAIM

16.3.1 For CONTRACTOR claims under \$50,000.00, OWNER will, if requested in writing by CONTRACTOR, render a decision within sixty (60) days of the request. For CONTRACTOR claims over \$50,000.00, OWNER will decide the claim or notify CONTRACTOR when the decision will be made within sixty (60) days of submission of all supporting data. OWNER's decision on all CONTRACTOR claims shall be final and binding on CONTRACTOR unless CONTRACTOR gives notice of intent to file suit in a court of this State located in Pinal County within thirty (30) days after receipt of OWNER's decision. Within the same period of time and if both parties agree, in writing, to arbitration, CONTRACTOR may demand arbitration of any CONTRACTOR claim; however, if CONTRACTOR fails to demand arbitration within thirty (30) days after receipt of OWNER's decision on a claim, the decision will be final and binding on CONTRACTOR. Neither party may compel arbitration of any claim.

16.3.2 For OWNER claims under \$50,000.00, ENGINEER will, if requested in writing by OWNER, render a decision within sixty (60) days of the request. For OWNER claims over \$50,000.00, ENGINEER will decide the claim or notify OWNER when the decision will be made within sixty (60) days of submission. ENGINEER's decision shall be final and binding on OWNER and CONTRACTOR unless either party files suit in Pinal

County, Arizona within thirty (30) days after receipt of the decision. Within the same period of time, and if both parties agree in writing to arbitration, OWNER or CONTRACTOR may demand arbitration of any OWNER claim; however, if OWNER or CONTRACTOR fails to demand arbitration within thirty (30) days after receipt of ENGINEER's decision on a claim, the decision will be final and binding on the parties. Neither party may compel arbitration of any claim.

16.3.3 Notwithstanding the assertion of any claim, and pending final resolution of all claims, CONTRACTOR shall proceed diligently with the Work and comply with any decision of OWNER or ENGINEER.

16.3.4 The prevailing party in any proceeding under this Article 16 shall recover, as part of its judgment, simple interest at the rate provided in the Agreement or by Laws and Regulations starting on the sixtieth (60th) day after the claim submittal was received by the other party, and such reasonable fees and charges of attorneys, engineers and others as may be fixed by a judge of the court.

16.3.5 After settlement or final adjudication of any claim under this Article 16 if payment by CONTRACTOR is not made to OWNER upon demand, OWNER may offset the appropriate amounts against (a) payments due to CONTRACTOR under any other contract between OWNER and CONTRACTOR, or (b) any amounts for which OWNER may be obligated to CONTRACTOR in any capacity. Alternatively, OWNER may demand payment of the claim from the surety, which shall pay the claims promptly.

16.4 VENUE: SERVICE OF PROCESS

16.4.1 CONTRACTOR consents and submits to jurisdiction and venue of, and will not commence any proceeding elsewhere than, the Superior Court of Arizona in and for Pinal County only, regardless of residence or domicile, for any action at law or suit in equity arising out of or relating to the bidding, award, performance or completion of the Work; payment for Work performed; termination; or any other claim based on the Contract Documents. CONTRACTOR consents and submits to service of process at the address specified in the Agreement. If the parties agree in writing to arbitration, all proceedings shall be conducted in the City of Maricopa 45145 W. Madison Avenue, Maricopa, Arizona 85139.

16.4.2 Paragraph 16.4.1 shall apply to all Subagreements and all agreements between CONTRACTOR and CONTRACTOR's sureties and insurers, altering that paragraph only to identify properly the contracting parties.

ARTICLE 17 - MISCELLANEOUS

Giving Notice:

17.1. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

Computation of Times:

- 17.2.1. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.
- 17.2.2. A calendar day of twenty-four hours measured from midnight to the next midnight will constitute a day.

Notice of Claim:

- 17.3. Should OWNER or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 17.3 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

Cumulative Remedies:

- 17.4. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 6.12, 6.16, 6.30, 6.31, 6.32, 13.1, 13.12, 13.14, 14.3 and 15.2 and all of the rights and remedies available to OWNER and ENGINEER thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply.

Professional Fees and Court Costs Included:

- 17.5. Whenever reference is made to "claims, costs, losses and damages," it shall include in each case, but not be limited to, all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution costs.

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FINAL SPECIAL PROVISIONS

FOR

**CITY OF MARICOPA
TRAFFIC ON-CALL PROJECT**

**TRAFFIC SIGNAL CONSTRUCTION –
HONEYCUTT ROAD AT GLENNWILDE DRIVE/PROVINCE PARKWAY**

CITY OF MARICOPA, ARIZONA

February 2012

PROPOSED WORK:

The proposed work is located at the intersection of Honeycutt Road and Glennwilde Drive/Province Parkway in the City of Maricopa, Arizona. The project consists of the installation of traffic signal equipment, modifications to the existing signing and striping, and other miscellaneous work.