SECTION 00500 - AGREEMENT

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SECTION 00500 - AGREEMENT

THIS AGREEMENT is dated as of the __ day of _____ in the year 20__ by and between the City of Maricopa organized and existing under and by virtue of the laws of the State of Arizona (hereinafter called OWNER) and _____ (hereinafter called CONTRACTOR). OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

Article 1 WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Construction of a Traffic Signal

Article 2 ENGINEER

The OWNER has retained **Atkins, North America** who is hereinafter called the ENGINEER and who is to assume all duties and responsibilities of and have the rights and authority assigned to the ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

Article 3 CONTRACT TIMES

3.1 The Work will be Substantially Completed within One Hundred Eighty (180) days after the date when the Contract Times commence to run as provided in paragraph 2.3 of the General Conditions, and Complete and ready for final payment in accordance with paragraph 14.13 of the General Conditions within Two Hundred (200) days after the date when the Contract Time commences to run.

3.2 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER per MAG Specification Section 108.9 (Table 108.9, "Failure to Complete On Time") for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 3.1 for completion and readiness for final payment or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER per MAG Specification Section 108.9 (Table 108.9, "Failure to Complete On Time"), stated below, for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

3.2.1 **Excerpted from: MAG 2007 *Uniform Standard Specifications for Public Works Construction***

108.9 FAILURE TO COMPLETE ON TIME:

TABLE 108-1		
LIQUIDATED DAMAGES		
Original Contract Amount		**Daily Charges**
From More Than	To and Including	Calendar Day or Fixed Date
$ 0	$ 25,000	$ 210
25,000	50,000	$250
50,000	100,000	$280
100,000	500,000	$430
500,000	1,000,000	$570
1,000,000	2,000,000	$710
2,000,000	5,000,000	$1,070
5,000,000	10,000,000	$1,420
10,000,000	—	$1,780

Article 4 CONTRACT PRICE

OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents an amount in current funds in accordance with the Bid Form.

Article 5 PAYMENT PROCEDURES

5.1 CONTRACTOR shall submit to OWNER and ENGINEER for review Applications for Payment covering Work performed during the preceding calendar month. OWNER and CONTRACTOR mutually agree that OWNER will make a progress payment based on a duly certified (by ENGINEER) and approved (by a duly authorized representative of OWNER) estimate of the Work covered by the corresponding Application for Payment, subject to those conditions stipulated below, in the General Conditions and in other parts of the Contract Documents.

5.1.1 Until the aggregate value of the duly certified and approved Applications for Payment equals fifty percent (50%) of the Contract Price (i.e. 50% completion), OWNER will make payments in an amount equal to 90% of Work completed (i.e. OWNER will retain 10% of each estimate as additional guarantee for complete performance of the Work), less the aggregate of payments previously made and less such deductions as ENGINEER or OWNER determines are appropriate to cover claims requiring a greater sum to be retained (as provided in paragraph 5.3 and elsewhere in the Contract Documents);

5.1.2 Upon fifty percent (50%) completion, one-half of the amount retained under the 10% retainage provision set forth in Section 5.1.1 above shall be paid to CONTRACTOR, provided CONTRACTOR is making satisfactory progress on the Work and there is no specific cause or claim requiring a greater amount to be retained. After fifty percent (50%) completion, OWNER will retain five percent (5%) of each estimate providing CONTRACTOR is making satisfactory progress, coupled with such deductions as OWNER determines are appropriate to cover claims requiring a greater sum to be retained. If at any time OWNER, with the advice of ENGINEER, determines satisfactory progress is not being made, ten percent (10%) retainage shall be reinstated for all subsequent payments, in accordance with A.R.S. § 34-221.

5.1.3 Except as qualified in paragraph 5.1.2, upon final completion and acceptance of the Work, or designated part of the Work on which separate final completion and acceptance and Contract Price are specified and upon compliance with all other terms and conditions of the Contract Documents, payment may be made in full, including retainage withheld, less such deductions as ENGINEER may recommend or OWNER may withhold to cover claims requiring a greater sum to be retained and liquidated damages.

5.2 In lieu of retention, OWNER will, at the option of CONTRACTOR, accept security, as provided in A.R.S. § 34-221.

5.3 OWNER may deduct from each progress payment and final payment an amount equal to OWNER's estimate of the liquidated damages then due or that would become due based on OWNER's estimate of late completion of the Work, provided CONTRACTOR fails to submit and implement a written schedule recovery plan describing the cause of schedule slippage or delayed progress and the actions proposed and taken to recover schedule.

Article 6 INTEREST

All moneys not paid when due as provided in Article 14 of the General Conditions shall bear interest in accordance with A.R.S. §34-221(J).

Article 7 CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement, CONTRACTOR makes the following representations:

7.1 CONTRACTOR has examined and carefully studied the Contract Documents (including the Addenda listed in paragraph 8) and the other related data identified in the Bidding Documents including "technical data."

7.2 CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance or furnishing of the Work.

7.3 CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance and furnishing of the Work.

7.4 CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities) which have been identified in the Supplementary Conditions as provided in paragraph 4.2.1 of the General Conditions. CONTRACTOR accepts the determination set forth in paragraph 4.2.1.3 of the Supplementary Conditions of the extent of the "technical data" contained in such reports and drawings upon which CONTRACTOR is entitled to rely as provided in paragraph 4.2 of the General Conditions. CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and Underground Facilities) at or contiguous to the site or otherwise which may affect cost, progress, performance or furnishing all the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.

7.5 CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.

7.6 CONTRACTOR has correlated the information known to CONTRACTOR, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents.

7.7 CONTRACTOR has given OWNER and ENGINEER written notice of all conflicts, errors, ambiguities or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER, as approved by OWNER, is acceptable to CONTRACTOR, and the Contract Documents are sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

Article 8 CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

8.1 This Agreement (pages 00500-1 to 00500-8, inclusive).

8.2 Addenda numbers ___ to ___, inclusive.

8.3 Performance Bond (pages 00610-1 to 00610-4, inclusive) and Payment Bond (pages 00620-1 to 00620-3, inclusive.)

8.4 Notice of Award and Notice to Proceed.

8.5 Change orders.

8.6 General Conditions.

8.7 Technical Specifications bearing the following general title and consisting of 00020 through 00900 and pages listed in Table of Contents therein:

City of Maricopa Traffic Signal at:
Glennwilde Drive and Honeycutt Road

Specifications and Contract Documents.

8.8 Drawings bearing the following general title and consisting of a cover sheet and sheets listed in the Index of Drawings therein:

City of Maricopa Traffic Signal at:
Glennwilde Drive and Honeycutt Road

8.9 CONTRACTOR's Bid Form (pages 00300-1 to 00300-8, inclusive).

8.10 CONTRACTOR's List of Subcontractors (page 00330-1).

8.11 CONTRACTOR's Schedule of Manufacturers and Suppliers of Major Equipment and Material Items (page 00340-1).

8.12 Bidder's Questionnaire (pages 00320-1 to 00320-7, inclusive).

8.13 CONTRACTOR's Noncollusion Affidavit (pages 00360 - 1 to 00360-2, inclusive).

8.14 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto:

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.

The documents listed in paragraphs 8.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.5 and 3.6 of the General Conditions.

Article 9 MISCELLANEOUS

9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.

9.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.5 The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Arizona. Any action at law or in equity brought by either party for the purpose of enforcing a right or rights provided for in this Agreement shall be tried in a court of competent jurisdiction in Pinal County, State of Arizona. The parties hereby waive all provisions of law providing for a change of venue in such proceeding to any other county. In the event either party shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition in this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs including: all litigation and appeal expenses, collection expenses, reasonable attorneys' fees, necessary witness fees and court costs to be determined by the court in such action.

9.6 Subject to existing law, and regulations, illegal or undocumented aliens will not be employed by the CONTRACTOR for any work or services to be performed pursuant to this Agreement. The CONTRACTOR will ensure that this provision is expressly incorporated into any and all subcontracts or subordinate agreements issued in support of this Agreement. CONTRACTOR agrees to comply with the provisions of section 274A(a)(1)(A) and 274A(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1324(a)(1)(A), 1324a(a)(2) (the "INA employment provisions"), and any amendments thereto, prohibiting the unlawful employment of illegal or undocumented aliens. Under the terms of this Agreement, the CONTRACTOR shall not knowingly hire or employ for any work performed pursuant to this Agreement any workers or employees not lawfully authorized to work under the provisions of the Immigration and Nationality Act or any other applicable federal or state laws. Violation of the provisions of this section shall be deemed a material breach of this Agreement.

9.7 This Agreement and any attachments represent the entire agreement between OWNER and CONTRACTOR and supersede all prior negotiations, representations or agreements, either expressed or implied, written or oral. It is mutually understood and agreed that no alteration or variation of the terms and conditions of this Agreement shall be valid unless made in writing and signed by the parties hereto. Written and signed amendments shall automatically become

part of the Agreement, and shall supersede any inconsistent provision therein; provided, however, that any apparent inconsistency shall be resolved, if possible, by construing the provisions as mutually complementary and supplementary.

9.8 The failure of either party to insist in any one or more instances on performance of any of the terms or conditions of this Agreement or to exercise any right or privilege contained herein shall not be considered as thereafter waiving such terms, conditions, rights or privileges, and they shall remain in full force and effect.

9.9 CONTRACTOR shall at all times during CONTRACTOR's performance of the services retain CONTRACTOR's status as independent contractor. CONTRACTOR's employees shall under no circumstances be considered or held to be employees or agents of OWNER, and OWNER shall have no obligation to pay or withhold state or federal taxes or provide workers' compensation or unemployment insurance for or on behalf of them or CONTRACTOR.

Article 10 AFFIRMATIVE ACTION REQUIREMENTS

10.1 Any CONTRACTOR in performing under this contract shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, national origin, age or disability nor otherwise commit an unfair employment practice.

10.2 The CONTRACTOR will take affirmative action to ensure that applicants are employed, and employees are dealt with during employment without regard to their race, color, religion, gender or national origin, age or disability. Such action shall include but not be limited to the following:

Employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training; including apprenticeship as well as all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this contract.

10.3 This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFF Parts 35 and 36. (Non-Discrimination: The CONTRACTOR shall comply with Executive Order 99-4, which mandates that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation shall have equal access to employment opportunities, and all other applicable state and federal employment laws, rules and regulations, including the Americans With Disabilities Act. The CONTRACTOR shall take affirmative action to ensure that applicants for employment and employees are not discriminated against due to race, creed, color, religion, sex, age, national origin or political affiliation or disability.)

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed, initialed or identified by OWNER and CONTRACTOR or identified by ENGINEER on their behalf.

City of Maricopa
PROJECT NAME: Traffic Signal Construction

AGREEMENT

This Agreement will be effective on _____, 20___ (which is the Effective Date of the Agreement).

OWNER: City of Maricopa

By: _____
Anthony Smith, Mayor

CONTRACTOR: AJP Electric, Inc.

By: _____

Attest _____
[CORPORATE SEAL]

Approved as to form this _____ day of _____, 20_____.

Attest_____

By: _____
Denis Fitzgibbons , City Attorney

Address for giving notices

City of Maricopa

P.O. Box 610
Maricopa, AZ 85139

CONTRACTOR:

AJP Electric, Inc.
11250 N. Cave Creek Rd.
Phoenix, AZ 85020
License No. 146006

Agent for service of process: Anna Pagorik

City of Maricopa

_____
Date

(If CONTRACTOR is a corporation, attach evidence of authority to sign.) (If the owner is a Public body, attach evidence of authority to sign and resolution or other documents authorizing execution of the agreement.)

SECTION 00610 - PERFORMANCE BOND

Any singular reference to CONTRACTOR, Surety, OWNER or other party shall be considered plural where applicable

CONTRACTOR (Name and Address):

_____
_____
_____

SURETY (Name and Principal Place of Business):

_____
_____
_____

OWNER: City of Maricopa
45145 W. Madison Avenue
Maricopa, Arizona 85139

AGREEMENT
Date: _____
Amount: _____
Description (Name and Location):

_____
_____
_____

BOND
Date (Not earlier than Construction Contract Date): _____
Bond Number: _____
Amount: _____
Modifications to this Bond Form: _____

CONTRACTOR AS PRINCIPAL
Company: _____
(Corp. Seal)

Signature: _____

Name and Title: _____
_____

SURETY
Company: _____
(Corp. Seal)

A.M. Best Rating: _____

Signature: _____

Name and Title: _____
_____

1. Definitions:

   1.1. Balance of the Contract Price: The total amount payable by OWNER to CONTRACTOR under the Agreement after all proper adjustments have been made, including allowance to CONTRACTOR of any amounts received or to be received by OWNER in settlement of insurance or other claims for damages to which CONTRACTOR is entitled, reduced by all valid and proper payments made to or on behalf of CONTRACTOR under the Agreement and OWNER's damages caused by a CONTRACTOR default.

   1.2. Agreement: the agreement between OWNER and CONTRACTOR identified on the signature page and all Contract Documents and changes thereto. The Contract Documents are incorporated herein by reference.

   1.3. CONTRACTOR Default: Failure of CONTRACTOR, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Agreement.

2. CONTRACTOR and SURETY, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to OWNER for the performance of the Agreement.

3. If CONTRACTOR performs the Agreement, SURETY and CONTRACTOR shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 4.1.

4. SURETY's obligation under this Bond shall arise after:

   4.1. OWNER has notified CONTRACTOR and SURETY at their addresses described in Paragraph 11 below, that OWNER is considering declaring a CONTRACTOR Default and has requested and attempted to arrange a conference with CONTRACTOR and SURETY to be held not later than fifteen (15) days after receipt of such notice to discuss methods of performing the Agreement. If OWNER, CONTRACTOR and SURETY agree, CONTRACTOR shall be allowed a reasonable time to perform the Agreement, but such agreement shall not waive OWNER's right, if any, subsequently to declare a CONTRACTOR Default; and

   4.2. OWNER has declared a CONTRACTOR Default and formally terminated CONTRACTOR's right to complete the contract. Such CONTRACTOR Default shall not be declared earlier than twenty (20) days after CONTRACTOR and SURETY have received notice as provided in Subparagraph 4.1; and

   4.3. OWNER has agreed to pay the Balance of the Contract Price to SURETY in accordance with the terms of the Agreement or to a contractor selected to perform the Agreement in accordance with it terms and conditions.

5. When OWNER has satisfied the conditions of Paragraph 4, SURETY shall promptly and at SURETY's expense take one of the following actions:

   5.1 Arrange for CONTRACTOR, with consent of OWNER, to perform and complete the Agreement; or

5.2. Undertake to perform and complete the Agreement itself, through its agents or through independent contractors; or

5.3. Waive its right to perform and complete or arrange for completion and with reasonable promptness under the circumstances:

5.3.1. After investigation, determine the amount for which it may be liable to OWNER and, as soon as practicable after the amount is determined, tender payment thereof to OWNER; or

5.3.2. Deny liability in whole or in part and notify OWNER in writing, citing reasons therefore.

6. If SURETY does not proceed as provided in Paragraph 5 with reasonable promptness, SURETY shall be deemed to be in default on this Bond fifteen (15) days after receipt of an additional written notice from OWNER to SURETY demanding that SURETY perform its obligations under this Bond, and OWNER shall be entitled to resort to all remedies available to OWNER. If SURETY proceeds as provided in Subparagraph 5.3, and OWNER refuses the payment tendered or SURETY has denied liability, in whole or in part, without further notice OWNER shall be entitled to resort to all remedies available to OWNER.

7. After OWNER has terminated CONTRACTOR's right to complete the Agreement, and if SURETY elects to act under Subparagraph 5.1 or 5.2 above, then the responsibilities of SURETY to OWNER shall not be greater than those of CONTRACTOR under the Agreement, and the responsibilities of OWNER to SURETY shall not be greater than those of OWNER under the Agreement. To the limit of the amount of this Bond, but subject to commitment by OWNER of the Balance of the Contract Price to mitigation of costs and damages on the Agreement, SURETY is obligated without duplication for:

7.1. The responsibilities of CONTRACTOR for correction of defective work and completion of the Agreement;

7.2. Additional legal, design, professional and delay costs resulting from the CONTRACTOR's Default, and resulting from the actions or failure to act of SURETY under Paragraph 5; and

7.3. Liquidated damages, or if no liquidated damages are specified in the Agreement, actual damages caused by delayed performance or non-performance of CONTRACTOR.; and

7.4. All other actual damages caused by CONTRACTOR's Default.

8. SURETY shall not be liable to OWNER or others for obligations of CONTRACTOR to others that are unrelated to the Agreement, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than OWNER or its heirs, executors, administrators, or successors.

9. SURETY hereby waives notice of all changes, including changes of time, to the Agreement or to related subcontracts, purchase orders and other obligations. SURETY voluntarily and

intentionally waives and relinquishes all of SURETY's rights specified in and each provision of A.R.S. Title 12, Sections 1641 and 1642.

10. Any suit or action under this Bond may be commenced only in a court of competent jurisdiction located in Pinal County, Arizona.

11. Notice to SURETY, OWNER or CONTRACTOR shall be mailed or delivered to the address shown on the signature page.

12. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction is performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

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SECTION 00620 - PAYMENT BOND

Any singular reference to CONTRACTOR, Surety, OWNER or other party shall be considered plural where applicable

CONTRACTOR (Name and Address):

_____
_____
_____

SURETY (Name and Principal Place of Business):

_____
_____
_____

OWNER: City of Maricopa
45145 W. Madison Avenue
Maricopa, Arizona 85139

AGREEMENT

Date:_____
Amount:_____
Description (Name and Location):

_____
_____
_____

BOND

Date (Not earlier than Construction Contract Date): _____
Bond Number:_____
Amount:_____
Modifications to this Bond Form:_____
_____

CONTRACTOR AS PRINCIPAL
Company:_____
(Corp. Seal)

Signature:_____

Name and Title:_____
_____

SURETY
Company: _____
(Corp. Seal)

A.M. Best Rating: _____

Signature:_____

Name and Title:_____
_____

1. DEFINITIONS:

   1.1. Claimant: An individual or entity having a direct contract with CONTRACTOR or with a subcontractor of CONTRACTOR to furnish labor, materials or equipment for use in the performance of the Agreement. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Agreement, architectural and engineering services required for performance of the work of the CONTRACTOR and the CONTRACTOR's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

   1.2. Agreement: The agreement between OWNER and CONTRACTOR identified on the signature page and all Contract Documents and changes thereto. The Contract Documents are incorporated herein by reference.

2. The CONTRACTOR and SURETY, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay for labor, materials and equipment furnished for use in the performance of the Agreement.

3. This obligation shall be null and void if CONTRACTOR:

   3.1. Promptly makes payment, directly or indirectly, for all sums due Claimants, and

   3.2. Defends, indemnifies and holds harmless OWNER from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Agreement, provided OWNER has notified CONTRACTOR and SURETY (at the address described in Paragraph 13) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the CONTRACTOR and SURETY.

4. All rights and remedies on this Payment Bond shall be solely for the protection of claimants supplying labor and materials to CONTRACTOR or CONTRACTOR's Subcontractors in the prosecution of the Work, and shall be determined in accordance with the provisions of A.R.S. 34-222 et seq. as if they were copied at length herein.

5. If a notice required by law is given by OWNER to CONTRACTOR or to SURETY, no further notice is required.

6. When the Claimant has satisfied the conditions of Paragraph 5, SURETY shall promptly at SURETY's expense take the following actions:

   6.1. Send an answer to the Claimant, with a copy to OWNER, within forty five (45) days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

   6.2. Pay or arrange for payment of any undisputed amounts.

7. SURETY's total obligation hereunder shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by SURETY.

8. The balance of the Contract Price shall be paid in accordance with the Contract Documents.

9. SURETY shall not be liable to OWNER, Claimants or others for obligations of CONTRACTOR that are unrelated to the Agreement. The OWNER shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

10. SURETY hereby waives notice of any change, including changes of time, to the Agreement or to related subcontracts, purchase orders and other obligations. SURETY voluntarily and intentionally waives and relinquishes all of SURETY's rights specified in and each provision of A.R.S. Title 12, Section 1641 and 1642.

11. Any suit or action under this Bond shall be commenced only in a court of competent jurisdiction located in Pinal County, Arizona.

12. Notice to SURETY, OWNER or CONTRACTOR shall he mailed or delivered to the address shown on the signature page. Actual receipt of notice by SURETY, OWNER or CONTRACTOR, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14. Upon request by any, person or entity appearing to be a potential beneficiary of this Bond, CONTRACTOR shall promptly furnish a copy of the Bond or shall permit a copy to be made.

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