

CONSTRUCTION MANAGER AT RISK
CONTRACT BETWEEN
ARIZONA WATER COMPANY AND *****

THIS CONSTRUCTION MANAGER AT RISK CONTRACT (this "Contract") is made this ____ day of _____, 2024, by and between the Arizona Water Company ("AWC"), an Arizona public service corporation, and ***** a(n) _____ corporation (the "Construction Manager"), for design phase review and complete construction services related to design, permitting, and construction of water infrastructure facilities for the southwestern portion of Casa Grande, Arizona paid for using funds from the American Rescue Plan Act ("ARPA") and other related items as deemed necessary by AWC (the "Project"). AWC and the Construction Manager are referred to herein individually as a "Party" and collectively as the "Parties."

**ARTICLE 1
GENERAL**

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

1.2 Phased Contract. The Services contemplated by this Contract will be carried out in several distinct phases. The initial Services will be to provide Pre-Construction Services including:

- A. such environmental investigation services as applicable pursuant to Section 2.1 below,
- B. review of the Project Designers' Construction Documents pursuant to Section 2.2 below, and
- C. the Pre-Construction Phase General Services, pursuant to Section 2.3 below (the "Pre-Construction Phase General Services").

The Construction Manager will be compensated on an hourly basis, at the agreed-upon hourly rates and a stipulated not-to-exceed total fee, for the Pre-Construction Services as set forth in Section 7.1 below, provided that such services may extend through the construction phase for various components of the Project. At a point in the Pre-Construction Services as determined by AWC, AWC may, in its

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sole discretion, request that the Construction Manager submit a proposal for a guaranteed maximum price ("GMP") for construction of the Project, which at AWC's sole discretion may be submitted as a single GMP or as multiple GMPs. The Construction Manager will prepare and submit the GMP Proposals pursuant to Article 3 below. If AWC and the Construction Manager agree upon the respective GMP Proposals, the Construction Manager will furnish, with respect to each GMP Proposal:

D. such environmental investigation services as applicable pursuant to Section 2.1 below, and

E. the Construction Services set forth in Article 4 below. If AWC and the Construction Manager cannot, after good faith efforts, agree on a GMP, AWC may, in its sole discretion, terminate this Contract (subject to the terms and conditions set forth in Section 12.2 below).

1.3 Definitions.

A. "Applicable Law" means any law, rule, code, regulation, requirement, action, determination, guideline, or order of, or any legal entitlement issued by, any governmental body having jurisdiction, applicable or relating to the design, permitting, construction, equipping, financing, ownership, possession, or any other transaction or matter contemplated hereby relating to the design and construction of the Project, and includes the Federally Funded Project Requirements attached hereto as Exhibit A and incorporated herein by reference.

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

C. "Construction Documents" means the plans, Specifications, drawings, and special provisions prepared by the Project Designers after correcting for permit review requirements, and as approved by AWC. The Construction Documents, once approved by AWC as 100% complete, will be attached hereto as Exhibit A and incorporated herein by reference.

D. "Construction Fee" means the portion of Construction Manager's compensation not related to Direct Construction Costs, as set forth in Subsection 3.4 below.

E. "Contract Documents" means all of the following:

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

2. This Contract.

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3. The Construction Documents.

4. The Construction Manager's Guaranteed Maximum Price Proposals (the "GMP Proposals"), attached hereto as Exhibit C and incorporated herein by reference, including but not limited to:

- a. The Construction Manager's proposed scope of services and fee breakdown for each GMP Proposal (the "Scope").
- b. The Master Schedule relating to the applicable Scope developed in accordance with Subsection 2.3(C) below and updated as set forth in this Contract, attached hereto as Exhibit D and incorporated herein by reference.

5. AWC's Request for Qualifications (the "RFQ"), attached hereto as Exhibit E and incorporated herein by reference.

6. The Construction Manager's response to AWC's RFQ, attached hereto as Exhibit F and incorporated herein by reference.

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

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

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

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

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

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

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

L. "Differing Site Conditions" means concealed or latent physical conditions or

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subsurface conditions at the Site not discoverable by normal means of inspection at the time Construction Manager inspected the Site prior to signing the Contract. Construction Manager warrants and represents that before signing this Contract it, by careful examination, inspected the Site and satisfied itself as to the nature, condition, and location of the Work, including without limitation the dimensions of the Site, water quality, soil conditions, surface and subsurface conditions, weather conditions Construction Manager might encounter, the character of the equipment and facilities needed, the presence of Hazardous Materials (whether identified in the Contract or not), and all other matters which can in any way affect the Work. Construction Manager compared and correlated all such conditions to and considered them in context of the Contract.

M. "Direct Construction Costs" means the sum of the General Conditions Costs and Cost of the Work as set forth in Section 3.3 below.

N. "Environmental Conditions" means collectively, Hazardous Materials and Underground Storage Tanks.

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

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

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

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

P. "Environmental Requirements" means all Applicable Laws, statutes, regulations, rules, ordinances, common law codes, licenses, permits, orders, and similar items of all governmental agencies or other instrumentalities of the United States, the State of Arizona, Pinal County, and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to health, safety, any Hazardous Materials, or the environment, including, without limitation, the Solid Waste Disposal Act, 42 U.S.C. §§ 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq. ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.; the Arizona Environmental

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Quality Act (Title 49, Arizona Revised Statutes); all requirements, including but not limited to, those pertaining to reporting, licensing, permitting, investigation, and remediation of emissions, discharges, releases, or threatened releases of Hazardous Materials into the air, surface water, ground water, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials; and any other local, state, or federal environmental statutes, and all rules, regulations, orders, and decrees now or in the future promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

Q. "Final Completion" means completion of the Project, including Punch List items, by the Construction Manager in accordance with the Contract Documents, certified to AWC by the Construction Manager.

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

S. "General Conditions Costs" means a portion of the costs incurred by the Construction Manager during the construction phase, as defined in Exhibit H and set forth in Section 3.3(A) below.

T. "AWC's Contingency" means a fund used at the discretion of AWC, usually for costs that result from AWC-directed changes.

U. "Hazardous Materials" means any substance:

1. Defined as a "regulated substance" within the meaning of Subtitle I of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6691 et seq., as amended from time to time, and regulations promulgated thereunder.

2. Designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. § 1321, as amended from time to time, and the regulations promulgated thereunder, or listed pursuant to Section 307 of the Clean Water Act, 33 U.S.C. § 1317, as amended from time to time, and the regulations promulgated thereunder.

3. Defined as "hazardous," "toxic," or otherwise regulated, under any Environmental Requirements adopted by the state of Arizona, or its agencies or political subdivisions.

4. Containing asbestos or asbestos-containing materials.

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

6. Which is or becomes defined as a "hazardous waste," "hazardous substance," pollutant, or contaminant under any federal, state, or local law, statute, regulation, rule, or

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ordinance, or amendments thereto.

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

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

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

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

V. "MAG Specifications" means, collectively, the "Uniform Standard Specifications for Public Works Construction," current edition as of the date of Contract award, and the "Uniform Standard Details for Public Works Construction," current edition as of the date of Contract award, which are sponsored and distributed by the Maricopa Association of Governments ("MAG").

W. "Master Schedule" is defined as set forth in Subsection 2.3(C) below.

X. "Minor Adjustment" means a written order prepared and signed by AWC and the Construction Manager, approving a change in the Work that does not require an adjustment in the Contract Price or the Contract Time.

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

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

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

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

AC. "Specifications" means the part(s) of the Contract Documents for the

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construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

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

AE. "Substantial Completion" means construction has been completed in accordance with Arizona Revised Statutes §12-552(H).

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

AG. The "Work" means, collectively, the (1) environmental investigation set forth in Section 2.1 below, (2) Review of Construction Documents and design remedies set forth in Section 2.2 below, (3) Pre-construction Phase General Services set forth in Section 2.3 below, (4) Construction Services provided in accordance with Article 4 below, if applicable, and (5) other services that are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

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

1.5 AWC Representations.

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

B. AWC's Project Manager. AWC has either designated an AWC staff member to act as AWC's Project Manager and/or has contracted separately with a person, firm, or corporation to act as AWC's Project Manager. While not primarily responsible to prepare the plans and other Construction Documents for the Project, AWC's Project Manager is responsible for plan review and directing the overall plan concept for the Project on behalf of AWC. None of the activities of AWC's Project Manager supplant or conflict with the services and responsibilities furnished by the Construction Manager, the Project Designers, or sub-consultants. All instructions by AWC relating

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to this Contract will be issued or given by AWC's Project Manager. All communications and submittals of Construction Manager to AWC will be issued or made through AWC's Project Manager unless AWC or AWC's Project Manager will otherwise direct. AWC's Project Manager will not unreasonably withhold approval for the Construction Manager to communicate directly with other AWC officials or the Project Designers. Throughout the term of this Contract AWC's Project Manager will have the authority to establish procedures, consistent with this Contract, to be followed by the Construction Manager and to call periodic conferences to be attended by the Construction Manager and the Construction Manager's Subcontractors.

C. Limited Project Management. None of AWC's project management activities are intended to supplant or conflict with the services and responsibilities customarily furnished by the Construction Manager or its Subcontractors, except as otherwise specifically modified by this Contract.

D. No Third-Party Relationships. The Construction Manager assumes responsibility to AWC for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between AWC and any level of Subcontractor, including but not limited to any third-party beneficiary rights; however, the Parties agree that this Section will not affect the obligations of Subcontractors, vendors, or suppliers to AWC pursuant to warranties for work or materials Construction Manager assigns to AWC upon AWC's Notice of Final Acceptance of the Work. Nothing contained in this Contract will create a contractual relationship with or a cause of action in favor of a third party against AWC.

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

F. Notice to Construction Manager of Defect. If AWC observes or otherwise becomes aware of any fault or defect in the Project or nonconformity with the Contract Documents, AWC will give written notice thereof to the Construction Manager.

G. Approvals. AWC will secure, submit, and pay for approvals, easements, assessments, permits, and charges required for the Project.

H. Communication. AWC, its representatives, and consultants will communicate with the Subcontractors only through the Construction Manager unless otherwise directed or permitted by the Construction Manager. Construction Manager will diligently and promptly convey communications between AWC and Subcontractors.

I. Notices. AWC will send to the Construction Manager, and will require the Project Designers to send to the Construction Manager, copies of all notices and communications sent

to or received by AWC or the Project Designers relevant to carry out the Construction Manager's Services with respect to the Project.

1.6 Construction Manager Representations.

A. Standards. The Construction Manager will provide the professional management and construction services for the Project in accordance with the terms and conditions of this Contract. The Construction Manager covenants with AWC to furnish its skill and judgment with due care and in accordance with the highest standards of its profession and with Applicable Law in effect at the time Construction Manager performs such services.

B. Subcontractor Selection Program. In conjunction with its response to AWC's RFQ, the Construction Manager submitted to AWC a written procedure in conformance with ARIZ. REV. STAT. §§ 34-601 et seq., as amended, for qualifications-based selection of Subcontractors to be utilized in completion of the Project (the "Subcontractor Selection Program"), which is attached hereto as part of Exhibit F. The Construction Manager will conduct a telephone and correspondence campaign to attempt to create interest among Subcontractors. The Construction Manager will develop and coordinate procedures to provide answers to Subcontractors' questions. The Construction Manager will use best efforts to utilize minority business enterprises, women business enterprises, and local contractors or suppliers so long as such minority business enterprises, women business enterprises, and local contractors or suppliers are qualified and capable of providing the services and/or Work that Construction Manager requires. The Construction Manager will ensure that each Subcontractor has secured the required business licenses, permits, insurance, and bonds. The Construction Manager will be solely responsible for ensuring that the Subcontractor Selection Program is in conformance with Applicable Law and all Subcontractors are selected in accordance with the Subcontractor Selection Program. The Construction Manager will defend, indemnify, and hold harmless AWC, its agents, representatives, officers, directors, officials, and employees for, from, and against all claims, damages, losses, and expenses (including, but not limited to, attorney fees, court costs, and the cost of appellate proceedings) relating to, arising out of, or alleged to have resulted from the Construction Manager's failure to appropriately select its Subcontractors. Additionally, as part of the Construction Manager's submittal of any GMP Proposal under this Contract, the Construction Manager will utilize the Subcontractor Selection Program to meet its requirements under Section 3.7 below.

C. Key Personnel. The Construction Manager will provide to AWC a list of the proposed key project personnel of the Construction Manager and its Subcontractors to be assigned to the Project. This list will include information on the professional backgrounds of each of the assigned individuals as may be requested by AWC. Such key personnel and consultants will be satisfactory to AWC and will not be changed except with the consent of AWC. The Construction Manager will maintain an adequate number of competent and qualified persons, as determined by AWC, to ensure acceptable and timely completion of the Services described in this Contract. If AWC objects to any of the Construction Manager's staff due to incompetence, lack of qualifications, unprofessional conduct, or behavior deemed detrimental to the Project, the Construction Manager will take prompt corrective action acceptable to AWC and, if required, remove such personnel from the Project and replace with new personnel with qualifications acceptable to AWC. Additionally, AWC will have the

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right to request that the Construction Manager personnel be removed from the Project if, in AWC's sole discretion, such personnel are detrimental to the Project delivery process. Upon receipt of such request, the Construction Manager will remove such personnel unless the Construction Manager can provide AWC with sufficient documentation that AWC, in its sole discretion, deems sufficient to prove it is commercially impractical to replace the personnel with similarly qualified personnel. AWC's approval of substituted personnel will not be unreasonably withheld.

D. Site Conditions. Construction Manager warrants and represents that it, by careful examination, inspected the Site and satisfied itself as to the nature, condition, and location of the Work, including without limitation the dimensions of the Site, water quality, soil conditions, surface and subsurface conditions, weather conditions Construction Manager might encounter, the character of the equipment and facilities needed, the presence of hazardous materials (whether identified in the Contract or not), and all other matters which can in any way affect the Work. Construction Manager compared and correlated all such conditions to and considered them in context of the Contract. If Construction Manager believes there is a conflict between the Contract documents or a discrepancy between the Contract terms and the actual conditions of the Work, Construction Manager must immediately provide notice to AWC's Project Manager. Absent receiving notice of AWC's response from AWC's Project Manager, Construction Manager will not perform any Work or make any adjustment except at its sole liability, risk, and expense and Company may require Construction Manager to remove and replace such unauthorized Work.

E. Notice to AWC of Defect. If Construction Manager observes or otherwise becomes aware of any fault or defect in the Project and/or the Work or nonconformity with the Contract Documents, Construction Manager will give written notice thereof to AWC.

1.7 AWC and Subcontractors. The Construction Manager will subcontract directly with such Subcontractors, vendors, and suppliers as may be necessary for performance of the Work and construction or supply of the Project. Construction Manager will write and issue all such subcontracts consistent with the provisions of this Contract and Applicable Law.

1.8 Construction Manager to Other Project Participants. In providing the Services described in this Contract, the Construction Manager will maintain a working relationship with the Project Designers. The Project Designers are solely responsible for the Project design, in compliance with AWC's overall direction and plan review and comments and will perform in accordance with their respective agreements with AWC. Nothing in this Contract will be construed to mean that the Construction Manager is responsible for the day-to-day preparation of the Construction Documents, including plan preparation for the Project, or that the Construction Manager assumes any of the contractual or customary responsibilities or duties of the Project Designers or any other persons or parties not specified by this Contract. Construction Manager will provide comment and input in the form of a value analysis and constructability review with respect to the Project Designers' designs as set forth in Section 2.2 below.

1.9 Data Confidentiality.

A. Data Defined. As used in this Contract, "data" means all information, whether

written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence, and any other similar documents or information prepared by or obtained by the Construction Manager in the performance of this Contract.

B. Confidentiality. The Parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the Construction Manager in connection with this Contract is confidential and proprietary information belonging to AWC.

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

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

2. Data that the Construction Manager is required to disclose by virtue of law, regulation, or court order.

D. Disclosure Notice. In the event the Construction Manager is required or requested to disclose data pursuant to Section 1.9(C)(2), the Construction Manager will immediately provide written notice to AWC. The Construction Manager will with such notice provide to AWC sufficient facts, such that AWC can have a meaningful opportunity to either first give its consent or take such action that AWC may deem appropriate to protect such data from disclosure.

E. Construction Manager Responsible. The Construction Manager assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate AWC if any of the provisions of this Section are violated by the Construction Manager, its employees, agents, or Subcontractors. Construction Manager agrees that AWC may obtain injunctive relief against Construction Manager to prevent Construction Manager's disclosure of data to third parties in violation of this Contract. For the purposes of seeking injunctive relief, it is agreed that a breach of this Section will be deemed to cause irreparable harm that justifies injunctive relief in court.

ARTICLE 2 PRE-CONSTRUCTION SERVICES

2.1 Environmental Investigation.

A. Discovery. Upon written notice from AWC or upon the Construction Manager's discovery of Environmental Conditions on the Site, the Construction Manager will recommend, for signing by AWC, one or more contracts with suitably qualified consultants and/or engineers, each of which will be subject to the approval of AWC, which may, at its discretion, select

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its own consultants and/or engineers and contract forms (the consultants and/or engineers are hereafter referred to as "Environmental Engineers" and the contracts as "Environmental Contracts" for purposes of this Section 2). Under the terms of the Environmental Contracts, the Environmental Engineers will perform an investigation and analysis of the Site prior to demolition and excavation activities, to determine the presence of any Environmental Conditions on, in, or under the Site. The Environmental Contracts will provide for a commercially reasonable scope of investigation and costs, as pre-approved by AWC, and may provide for conducting the investigation and testing in phases acceptable to AWC. The Environmental Contracts will also provide that the Environmental Engineers will begin their tests and inspections at the Site as soon as AWC is able to arrange access to the Site, or any portions thereof, for such purposes. The Environmental Contracts will provide that the Construction Manager, acting as agent of AWC, will coordinate the activities of the Environmental Engineers with the Work.

B. Assessment; Remediation Analysis. The Environmental Contracts will provide that the Environmental Engineers will prepare such reports, feasibility studies, and remedial plans in accordance with applicable local, state, and federal rules, regulations, and laws, including the federal "all appropriate inquiry" Standard and American Society for Testing and Materials, ASTM E1527-13 ("Environmental Assessments") as may be reasonably necessary in order to identify and explain the quantity, scope, and nature of the Environmental Conditions found to exist at the Site. The Environmental Assessments will contain a detailed analysis of the Environmental Conditions discovered, and the actions ("Remedial Actions") required for the response, removal, cleanup, or remediation of such Environmental Conditions that are required by Environmental Requirements or that are reasonably necessary to mitigate Environmental Damages.

C. Impact on Master Schedule. The Environmental Contracts will provide that the Environmental Engineers will promptly provide AWC and the Construction Manager with a copy of each Environmental Assessment, together with any other reports and test results generated pursuant to the Environmental Contracts. The Construction Manager will, promptly after receipt of the foregoing items from the Environmental Engineers, prepare and submit to AWC a written report setting forth the Construction Manager's understanding of whether and to what extent any recommended Remedial Actions may result in an amendment to the Master Schedule and the progress of the Work.

D. Notice; Permitting. The Environmental Contracts will require the Environmental Engineers to:

1. give notice to AWC of the presence of Environmental Conditions,
2. only upon the written consent of AWC, give any necessary notice to the Federal government and the State of Arizona or other agencies of the presence of any Environmental Conditions,
3. assist AWC in negotiations with Federal and Arizona agencies concerning preparation and approval of a plan for clean-up to the extent required, and
4. obtain all necessary permits to perform any Remedial Actions.

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E. Remediation Contractors. If so instructed by AWC, based upon the results of the Environmental Assessments, the Construction Manager will assist AWC by obtaining bids from remediation contractors ("Remediation Contractors") suitably qualified and approved by AWC to perform the Remedial Actions selected by AWC. If AWC elects to go forward with all or any portion of the Remedial Actions covered by the bids submitted, AWC will so advise the Construction Manager in a written notice on or before the date that is 60 Days after receipt of the foregoing items from the Construction Manager. Thereafter, AWC will sign contracts with the selected Remediation Contractors ("Remediation Contracts").

F. Coordination. Unless otherwise instructed, the Construction Manager, as agent for AWC, will be responsible for coordinating the work and services performed by the Remediation Contractors with the Work.

G. Payment for Remediation. AWC will make all payments due under the Environmental Contracts and the Remediation Contracts directly to the Environmental Engineers and the Remediation Contractors. The Remediation Contracts will require the Environmental Engineers to submit all invoices to the Construction Manager. Such payments will be based on requisitions, which requisitions will be reviewed, commented on, and approved by the Construction Manager prior to submission to AWC. All payments due under the Environmental Contracts, the Remediation Contracts, and for Environmental Damages, will not be a part of the applicable GMP, and will be the sole responsibility of AWC, except as expressly provided otherwise.

H. Additional Discovery. If, in the course of performance of the Work, the Construction Manager encounters on the Site any Environmental Conditions not previously disclosed and remediated by the Environmental Engineers or the Remediation Contractors, the Construction Manager will immediately suspend the Work in the area affected and with respect to the newly discovered Environmental Condition the Parties will comply with Sections 2.1(A) through (G), as applicable.

I. Construction Manager Responsibility. Except as set forth in Subsection 2.1(L) below, it is understood and agreed that with respect to any Environmental Conditions existing on the Site, the Construction Manager is not, and will not be deemed to be, a generator, arranger, owner, operator, treater, storer, transporter, or disposer of, or otherwise responsible for, any such Environmental Conditions. It is understood and agreed that the Construction Manager will have no right to direct the means or methods of performance of any Environmental Engineer or Remediation Contractor.

J. Delay for Remedial Actions. AWC acknowledges and agrees that the Construction Manager may elect to not commence or continue any demolition or construction activities on any portion of the Site on or in which Remedial Actions are to be performed unless such construction activities will not interfere with such Remedial Actions, as evidenced by appropriate certification by the applicable Environmental Engineer and/or Remediation Contractor, and any required approvals of any applicable government agencies. The Construction Manager agrees to use good faith efforts to adjust and reschedule its activities at the Site so as to minimize, to the extent

reasonably practical, the adverse effect on the progress of the Work resulting from any Remedial Actions.

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

L. Construction Manager Indemnity. The Construction Manager will indemnify, defend, and hold harmless AWC, its agents, representatives, officers, and employees for, from, and against any Environmental Damages asserted against or sustained by such parties as a result of any violation by the Construction Manager or the Subcontractors of any Environmental Requirements or arising from the use of Hazardous Materials by Construction Manager or the Subcontractors in violation of this Contract.

2.2 Review of Construction Documents; Design Remedies.

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

B. Design Document Review. The Construction Manager will assist AWC in reviewing the Construction Documents for clarity, consistency, constructability, and coordination among the various contractors. The Construction Manager's first review of the Construction Documents will occur at the 30% stage of the design for each component of the Project as designated by AWC and will be ongoing until 100% plans are final and complete for all phases of the Project. If the Construction Manager recognizes that portions of the Construction Documents are in violation of Applicable Law or in any way inadequate to achieve the intended result of the Project, the Construction Manager will immediately notify AWC in writing, describing the apparent violation or inadequacy.

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

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

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

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

1. Constructability Review. The Construction Manager will evaluate whether:

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

2. Biddability Review. The Construction Manager will check cross-references and complementary Project drawings and sections within the Construction Documents and evaluate whether (a) the plans and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations, (c) the design provides as-built data, (d) Specifications include alternatives in the event a requirement cannot be met in the field, and (e) the Project is likely to be subject to Differing Site Conditions considering the data

on subsurface conditions, physical conditions of existing surface and subsurface facilities, and physical conditions of underground utilities made available by the design or resulting from conditions inherent to work similar to the Work.

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

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

E. Value Analysis. The Construction Manager will make recommendations to AWC and the Project Designers with respect to constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction, and separation of the Project into contracts for various categories of the Work. Construction Manager will evaluate all design options to provide value analysis services and cost savings recommendations to AWC. The Construction Manager will consider options most effective in first costs as well as long term operational costs and life cycle costs when evaluating each design option. The Construction Manager will submit to AWC and Project Designers

1. written cost studies,
2. cost-benefit evaluations of each cost study,
3. a formal report to the design team,
4. a final written analysis study document, and
5. a tracking report for the increases or decreases in Project cost due to value engineering or scope changes.

AWC will decide which alternatives will be incorporated into the Project. The Project Designers will have full responsibility for the incorporation of the alternatives into the Contract Documents. The Construction Manager will include the cost of the alternatives into the Cost Model and any GMP Proposals.

F. Certification. At the completion of its review of the Construction Documents for each phase of the Project, the Construction Manager will certify, without assuming engineering responsibility therefore, that the Construction Documents are sufficient and complete to build the respective portion of the Project within the time available before the respective Substantial Completion date and within the Project budget. The Construction Manager's assistance in reviewing the Project design, Construction Documents, and in making recommendations as provided herein is

only for the purpose of providing advice to AWC. Nothing in this Subsection will relieve the Project Designers of their respective responsibility for the Construction Documents.

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

2.3 Pre-Construction Phase General Services.

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

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

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

B. Construction Management Plan.

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

and basis of the model; (j) a matrix summarizing each Project team member's responsibilities and roles related to the Services; and (k) construction security. If AWC has retained a "Project Manager" for this Project, the Construction Management Plan will be coordinated with the Project Management Plan and Design Phase Milestone Schedule prepared by the Project Manager.

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

C. Schedule Development. In accordance with the Construction Management Plan, the Construction Manager will prepare a master schedule for the Project (the "Master Schedule"). In preparing the Master Schedule, the Construction Manager will establish detailed Critical Path Method ("CPM") resource-loaded schedules for the pre- construction/design phase and the construction phase of the Project with concurrence of AWC and the Project Designers and monitor the Project schedules during the pre- construction and construction phases and ensure that the Master Schedule is updated as necessary and advise AWC of any schedule deficiencies.

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

2. The Construction Manager will include and integrate in the Master Schedule the services and activities required of AWC's Project Manager, Project Designers, and Construction Manager, including all construction phase activities. The Master Schedule will detail activities to the extent required to show:

a. the coordination between schematic design, design

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- b. development, and Construction Documents (detailed design),
- b. separate long-lead procurements,
- c. permitting issues,
- d. land and right-of-way acquisition, if any,
- e. bid packaging strategy and awards to Subcontractors and suppliers,
- f. major stages of construction,
- g. start-up, and
- h. occupancy of the completed Work by AWC.

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

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

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

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

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Designers. The individual aspect cost models will be collectively referred to as the "Cost Model."

1. As soon as practical during the schematic design phase, the Construction Manager will review all available information regarding the design and scope of the Project and based on the Construction Manager's experience in performing similar work, develop a Cost Model for review and approval by AWC and its Project Manager. Once approved by AWC, the Cost Model will be continually updated and kept current as the design progresses throughout the pre-construction phase until a final GMP for the entire Project is established. The Cost Model will be the Construction Manager's best representation of the complete functional Project's construction costs. The Construction Manager will communicate to the Project team any assumptions made in preparing the Cost Model and highlight such assumptions within the model itself. The Cost Model will support the Construction Manager's construction cost estimates and may be broken down initially as dictated by the available information. The Cost Model will also include allowances as agreed to by the Project team, including but not limited to (a) allowances for potential additional quantities and/or additional Work that AWC may require, and (b) any costs related to investigations described in Subsection 2.1.

2. After receipt of the Project Designers' most current documents from certain specified design milestones, the Construction Manager will provide a detailed written report to the Project team regarding the impact of and changes to the Cost Model based on the Construction Manager's review of Construction Documents made available at the specified design milestone. AWC's Project Manager, Project Designers, and the Construction Manager will reconcile any disagreements on the estimate to arrive at an agreed-upon estimate for the construction costs based on the scope of the Project through that specified design milestone. The design milestones applicable to this paragraph are schematic design document completion, design development document completion, and detailed design completion at 30%, 60%, 95%, and 100%. If no consensus is reached, AWC will make the final determination. If the Project team requires additional updates of the Cost Model beyond that specified in this Subsection, the Construction Manager will provide the requested information in a timely manner.

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

4. Near completion of the 60% detailed design review and included with the associated report, the Construction Manager will also submit to AWC for review and approval a "Schedule of Values" which complies with the following requirements. The Schedule of Values will highlight significant variances from any previously submitted preliminary Schedule of Values. The Schedule of Values will be directly related to the breakdowns reflected in the Construction Management Plan and the Construction Manager's Cost Model. In addition, the Schedule of Values will (a) detail unit prices and quantity take-offs, (b) segregate Work covered by any changes to construction phase Work already in progress, (c) reconcile used and remaining Construction Manager's Contingency (as defined in Subsection 3.3(D)(1) below) allowance, (d) detail all other

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allowances and unit price Work shown and specified in the detailed Construction Documents, and (e) material and equipment costs, labor costs, General Conditions costs, hourly labor rates, payment for pre-construction services, and total cost. Labor costs in the Schedule of Values will include employee benefits, payroll taxes, and other payroll burdens. The total cost for any portion of the Work to be performed by Subcontractors will include Subcontractor overhead and profit.

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

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

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

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

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

ARTICLE 3

GUARANTEED MAXIMUM PRICE PROPOSAL

3.1 GMP Submittal Process. At the stage of the pre-construction phase services as determined by AWC, the Construction Manager will, if requested by AWC, submit a GMP Proposal, which will be the sum of the estimated General Conditions Costs, Cost of the Work relating to completion of the Scope for the Project, and the Construction Fee relating to the Project based upon the most current version of the Cost Model. Each GMP Proposal will include, in the Cost of the Work, those taxes that are applicable at the time the GMP is established. Each GMP is the total cost of the applicable portion of the Project including the cost of labor, equipment, supplies, materials, services, and allowances to complete the applicable portion of the Project. The cost data is directly correlated to the specific Construction Documents in existence at the time each GMP Proposal is prepared. All assumptions or cost projections used in the preparation of the GMP Proposal will be identified by the Construction Manager as part of the GMP Proposal. In submitting this proposal, the Construction Manager represents that:

A. Document Review. Prior to signing the Contract, the Construction Manager examined and carefully studied the Contract Documents, including all addenda.

B. Site Visit. Prior to signing the Contract, the Construction Manager visited and carefully inspected the Site and became familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, performance, and furnishing of the Work. The Construction Manager also had adequate opportunity to conduct any testing necessary to determine the presence of Hazardous Materials and to discover latent conditions at or on the Site.

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

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

the determination of this GMP Proposal for performance and furnishing of the Work in accordance with the times, price, and other terms and conditions of the Contract Documents for the construction phase.

E. Work by Others. The Construction Manager is aware of the general nature of the Work to be performed by AWC and others at the Site that relates to the Work for which the GMP Proposal is submitted as indicated in the Contract Documents for the construction phase. The Construction Manager will perform the Work it is responsible for under this Contract in coordination with all work to be performed by others so as not to interfere with such other work as much as possible and to not delay Substantial or Final Completion of the Work.

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

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

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

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

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

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A. General Conditions Costs. The Construction Manager is entitled to receive reimbursement for the portion of actual costs directly attributable and allocable to the Project for the allowable General Conditions items incurred between issuance of the applicable Notice to Proceed and 30 days after the date of Final Completion, to the extent that such reimbursement is for the Project and falls within the GMP. The Construction Manager is entitled to reimbursement for General Conditions Costs incurred before receipt of the Notice to Proceed, or after Final Completion, only with prior written approval of AWC. Allowable General Conditions Costs are identified below and in Exhibit H, attached hereto and incorporated herein by reference. These items will be included in the General Conditions Cost amount shown as a line item in the applicable GMP Proposal and as detailed on the Schedule of Values. Items not specifically included below or in Exhibit H will not be allowed as General Condition Costs.

1. Personnel costs, which include wages paid for the Construction Manager's hourly employees and salaries of the Construction Manager's salaried personnel when:
 - a. stationed at the field office located at the Site and working on matters directly related to the Project, in whatever capacity employed;
 - b. engaged on the road expediting the production or transportation of material and equipment; and
 - c. performing functions directly related to the Work from the principal or branch office.

The project manager's salary may be included in the General Conditions Costs only when the project manager is directly managing the Project. Personnel costs also include the cost of all employee benefits and taxes including but not limited to, unemployment compensation, Social Security, health, welfare, retirement, and other fringe benefits as required by law, labor agreements, or paid under the Construction Manager's standard personnel policy. All personnel costs are subject to audit to determine the actual cost of the wages, salaries, and allowable employer contributions incurred by the Construction Manager for services performed for the Project.

2. Reasonable transportation, travel, and hotel expenses of the Construction Manager and the Construction Manager's personnel incurred in connection with the Work.
3. Costs of long-distance telephone calls, telegrams, postage, package delivery, and courier service, hardwired telephone service, and reasonable expenses of Construction Manager's jobsite office if incurred at the Site and directly and solely in support of the Work.
4. Costs of materials, supplies, temporary facilities, equipment, and hand tools (except those customarily owned by construction workers) supplied to the Site by the Construction Manager, if such items are fully consumed in the construction of the Work and are included in the list of Allowable General Conditions Cost Line Items set forth in Exhibit H. Cost for

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used items will be based on fair market value and may include transportation, installation, and minor maintenance costs, and removal costs. If an item is not fully consumed in the construction of the Work, its recoverable cost under this Contract will be based on the original cost of the item less its fair market salvage value.

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

6. The aggregate rental cost of any item charged to AWC will not exceed 50% of the purchase price and maintenance cost of the item without prior written approval by AWC. If the anticipated aggregate rental cost for an item of equipment matches the purchase and maintenance price, the Construction Manager will purchase the equipment and turn it over to AWC upon final completion of the Work or, at AWC's option, credit AWC with the fair market resale value of the item.

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

8. Cost of premiums for insurance policies required under Section 10.2. Construction Manager warrants that it included the costs for these insurance premiums in its bid. If Construction Manager elects to utilize Subcontractor's default insurance, Subcontractor liability insurance, builder's risk insurance, and/or Subcontractor Liability Wrap-up Coverage, it will include the costs for each such policy as a separate line item in its bid. Construction Manager further warrants that it included the costs for these insurance premiums in its bid. .

9. The cost of bond premiums to the extent directly attributable to the Project. The cost for such bonds, including performance and payment bond and bid bonds, will be included in Construction Manager's bid. Construction Manager warrants that it included the costs of all such bond premiums in its bid.

10. Governmental transaction privilege sales and use taxes directly attributable to the General Conditions Items that are not subject to exemption or that are pursuant to applicable law directly chargeable to AWC, in the form and at the rates legally enacted on the date they are incurred. Such taxes paid on materials or services that are chargeable to Construction Manager, Subcontractors, vendors, suppliers, or other third-parties, or that are entitled to tax exemption will not be reimbursed by AWC as Direct Construction Costs.

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

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

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

3. Payments made by the Construction Manager to Subcontractors and their Contractors or suppliers for the subcontract work in accordance with the Construction Documents and the requirements of the subcontracts with the Subcontractors, Contractors, or suppliers.

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

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

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

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

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

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

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

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

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

1. Any professional fees paid by AWC to the Project Designers or other consultants retained directly by AWC.
2. Any costs paid directly by AWC to Subcontractors or suppliers retained directly by AWC and outside the scope of all GMPs.
3. Any other costs not within the control of the Construction Manager or identified as being not within any GMP.
4. Any fees paid to the Construction Manager except those fees that may be paid to the Construction Manager for Pre-construction Phase Services above.

D. Construction Manager's Contingency.

1. The GMP Proposal may include a commercially reasonable amount (the "Construction Manager's Contingency") to be used to fund increases in the Direct Construction Costs of the Project identified through the refinement, development, and completion of the Construction Documents or procurement of the Work. The Construction Manager's Contingency will be negotiated and agreed to by the Parties and it will reflect the risk inherent in the state of completion of the Construction Documents at the time the GMP Proposal is submitted.

2. Any re-allocation of funds from the Construction Manager's Contingency to cover increases in the Direct Construction Costs must be carefully reviewed by Construction Manager to ensure the proposed changes associated with the increases in Direct Construction Costs are not already included in the Work and the Project. Such re-allocation of funds from the Construction Manager's Contingency to cover increases in the Direct Construction Costs must also be approved by AWC in advance and in writing, which approval will not be unreasonably withheld. In written requests to use the Construction Manager's Contingency, the Construction Manager will provide to AWC detailed documentation of the scope of work affected, the basis for any increases in costs resulting in the need to use Construction Manager's Contingency funds, and how these increased costs remain within the scope of construction services under the GMP.

3. As the Construction Documents are finalized and the buyout of the Work progresses, the Construction Manager's Contingency amount will be reduced by mutual agreement of AWC and the Construction Manager. The buyout will occur within the first 20% of the construction duration for each Notice to Proceed issued for construction. Should savings occur after the buyout stage, such savings, and related reductions to the Construction Manager's Contingency amount, will be retained by AWC.

E. Calculation Methods; Audits.

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

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

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

3.4 Construction Fee. The "Construction Fee" is the maximum amount payable to the Construction Manager for any cost or profit expectation incurred in the performance of the Work that is not specifically identified as being eligible for reimbursement by AWC elsewhere in this Contract. The Construction Fee, included within the GMP, will not exceed 5.0% of the total applicable GMP amount, excluding Construction Manager's Contingency. The Construction Fee includes, but is not limited to, the following items:

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

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

C. Overhead. Any and all overhead, labor, or general expenses of any kind unless specifically allowed under General Conditions.

3.5 Competitive Bidding and Sub-Bids.

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

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

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

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

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

F. Notice of Intent for Subcontracts. Within 15 Days after sub-bid opening, the Construction Manager will deliver to AWC's Project Manager a written notice of intent to award subcontracts, itemizing the Subcontractors, vendors, and suppliers selected by the Construction Manager. The notice of intent to award subcontracts will detail:

1. for each Subcontract the amount of the sub-bid and the corresponding Subcontractor or supplier,

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2. the sum of sub-bids received for all intended Subcontracts, and
3. trade work that the Construction Manager intends to self-perform, if any.

G. Pre-award Conference. Promptly after receipt of the notice of intent to award subcontracts, AWC will conduct a pre-award conference with the Construction Manager and other Project team members. At the pre-award conference, the Construction Manager will:

1. review the nominated slate of Subcontractors and suppliers and discuss any concerns with or objections that AWC has to any nominated Subcontractor or supplier;
2. discuss any concerns AWC has to any proposed self-performed Work;
3. review the Construction Manager's proposed Contract Price for the Work during the construction phase;
4. resolve possible time frames for the commencement date of the Contract Time for the construction phase Work;
5. schedule the pre-construction conference; and
6. discuss other matters as necessary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.9 Acceptance; Effect. Upon acceptance by AWC of each GMP Proposal, the GMP contained therein and its basis will be set forth in the applicable GMP Amendment. Once established,

the GMP and the corresponding Substantial and Final Completion dates will be subject to modification only as provided in Articles 6 and 8 below. AWC's approval of the GMP Amendment will include the amount of AWC's Contingency. The amount of AWC's Contingency will be set solely by AWC and will be in addition to the Project costs included in the Construction Manager's GMP Proposals. Use and management of AWC's Contingency is at AWC's sole direction.

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

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

ARTICLE 4 CONSTRUCTION SERVICES

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

4.2 Completeness and Accuracy of Construction Manager Work. The Construction Manager will be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other pre-construction deliverables prepared or compiled pursuant to its obligations under this Contract and will at its sole expense correct its work or deliverables to ensure compliance with Project requirements and quality standards. The fact that AWC has accepted or approved the Construction Manager's work or deliverables will in no way relieve the Construction Manager of any of its responsibilities under this Contract, nor does this requirement to correct the work or deliverable constitute a waiver of any claims or damages otherwise available by law or contract to AWC.

4.3 Alteration in Character of Work. In the event an alteration or modification in the character of Work or deliverable materially increases or decreases the scope of service, cost of performance, or Master Schedule as determined by AWC, the Work or deliverable will nonetheless be performed as directed by AWC. However, before any altered or modified Work begins, a Change Order must be approved and executed by AWC and the Construction Manager to address such change. Such Change Order will not be effective until approved by AWC. Additions to, modifications to, or deletions from the Work or the Project provided herein may be made, and the compensation to be paid to the Construction Manager may be adjusted accordingly, only by mutual agreement of the Parties. No claim for extra Work done or materials furnished by the Construction Manager will be allowed by AWC except as provided herein, nor will the Construction Manager

do any Work or furnish any material(s) not covered by this Contract unless such Work or material is first authorized in writing by AWC. Work or material(s) furnished by the Construction Manager without such prior written authorization will be the Construction Manager's sole jeopardy, cost, and expense, and the Construction Manager hereby agrees that, without prior written authorization, no claim for compensation for such Work or materials furnished will be made.

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

A. Government Approvals and Permits.

1. Unless otherwise specifically set forth in this Contract, the Construction Manager will be responsible to obtain all necessary permits, approvals, and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. The Construction Manager is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices.

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

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

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

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

B. Pre-construction Activities.

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

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

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

C. Project Management.

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

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

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

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

D. Reports.

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

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

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

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

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

4.5 Work Management.

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

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

C. Supervisor Presence. The Construction Manager's Representative or the

Construction Manager's Superintendent will be present at the Site at all times that the Work or any other construction activities are taking place.

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

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

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

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

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

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

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

I. Coordination of Activities. The Construction Manager will coordinate the activities of all Subcontractors. If AWC performs other work on the Project or at the Site with separate contractors under AWC's control, the Construction Manager agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project

can be completed in an orderly and coordinated manner without unreasonable disruption.

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

K. Subcontractor Meetings. Periodically and regularly, but in any event no less than bi-weekly, the Construction Manager will conduct meetings at the Site with each Subcontractor. The Construction Manager will conduct coordination meetings with all Subcontractors. The Construction Manager will record, transcribe, and distribute minutes to all attendees, AWC, and the Project Designers.

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

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

N. Subcontractor Change Request. The Construction Manager will review the contents of a request for changes to the subcontract time or price submitted by a Subcontractor, assemble information concerning the request, and endeavor to determine the cause of the requests. In instances where the Construction Manager's analysis reveals that the request is valid, the Construction Manager will prepare a detailed report to AWC for approval in accordance with Articles 6 and 8 below, as applicable. The Construction Manager will also prepare and timely

deliver a detailed report to AWC of other such requests and requests found to be invalid and timely inform the Subcontractor of any such determination. The Construction Manager will prepare the necessary change documents for signature by the Subcontractor.

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

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

Q. Traffic Control. All traffic affected by the Work under this Contract will be regulated in accordance with the Pinal County engineering design standards, as amended, the latest edition of the United States Department of Transportation Manual on Uniform Traffic Control Devices (the "MUTCD"), as supplemented and modified by the Arizona Supplement, published by the Arizona Department of Transportation ("Arizona Supplement"), which are incorporated herein by reference (collectively referred to herein as the "Traffic Control Requirements"). At the time of the pre-construction conference, each Subcontractor will designate an employee who is well qualified and experienced in construction traffic control and safety to be responsible for implementing, monitoring, and altering traffic control measures, as necessary. At the same time, the Construction Manager will designate a representative who will be responsible to see that all traffic control and any alterations are implemented and monitored to the extent that traffic is carried through the Work area in an effective manner and that motorists, pedestrians, bicyclists, and workers are protected from hazard and accidents. The Construction Manager will ensure that Subcontractors adhere to the following:

1. All traffic control devices and advance warning signs required for the Work under this Contract will be placed in accordance with the Traffic Control Requirements.
2. Construction Manager will require one or more Subcontractors to provide, erect, and maintain all necessary flashing arrow boards, barricades, suitable and sufficient warning lights, signals, and signs, and will take all necessary precautions for the protection of the Work and safety of the public. Such Subcontractors will provide, erect, and maintain acceptable and adequate detour signs at all closures and along detour routes.
3. All barricades and obstructions will be illuminated at night, and all safety lights will be kept burning from sunset until sunrise. All barricades and signs used by the

Subcontractor will conform to the standard design generally accepted for such purposes, and payment for all such services and materials will be considered as included in the other pay items of the Contract.

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

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

6. Manual traffic control will be in conformity with the Traffic Control Requirements. Off-duty police officers must be scheduled through the Flagstaff Police Department or Coconino County Sheriff's Department. AWC will reimburse the actual, documented cost of the off-duty police officers (no markups allowed). The Subcontractor will be required to present an overall estimate of off-duty officer hours required with the submission of its construction schedule. In the event the Subcontractor fails to prosecute the work in a timely manner, AWC will notify the Subcontractor and may deny reimbursement for the off-duty officer(s).

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

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

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

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

11. Caution should be used when excavating near intersections with traffic signal underground cable. The Subcontractor will notify AWC 24 hours in advance of any work at such intersections. The Subcontractor will install and maintain temporary overhead traffic signal cable as specified by AWC when underground conduit is to be severed by excavations at

intersections. The Subcontractor will provide an off-duty uniformed police officer in accordance with Subsection 4.5(R)(6) above to direct traffic while the traffic signal is turned off and the wiring is transferred. All damaged or modified traffic signal overhead and underground items will be repaired and restored to AWC's satisfaction. Magnetic detector loops will, under no circumstances, be spliced.

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

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

4.6 Control of the Work Site.

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

B. Dust Control. The Construction Manager will implement dust control measures in accordance with MAG Specifications, Subsection 104.1.4, or in accordance with the requirements of the Pinal County Air Pollution Control Rules and Regulations, or any other applicable law and regulations, whichever is most strict.

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

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

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

4.7 Time Management.

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

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

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

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

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

F. Payment Requests. An updated Master Schedule will be submitted to AWC with each and every Payment Request.

1. The Construction Manager will provide AWC with a monthly status report for the Master Schedule detailing the progress of the Work, including if the Work is proceeding according to schedule, any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and other items that require resolution so as not to

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jeopardize ability to complete the Work as presented in the applicable GMP and within the Contract Time.

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

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

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

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

the Critical Path.

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

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

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

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

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

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

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

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

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

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

2. The Construction Manager will not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing. Float time within the schedule is jointly owned; no time extensions will be considered or granted, nor delay damages considered or paid until a delay occurs that extends the Work beyond the Substantial Completion date.

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

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

4.8 Cost Management.

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

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

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

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

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

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

4.9 Shop Drawings, Product Data, and Samples.

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

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

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

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

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

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

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

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

4.10 Quality Control, Testing, and Inspection.

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

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

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

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

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

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

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

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

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

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

4.11 Trade Names and Substitutions.

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

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

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

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

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

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

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

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

4.12 Project Record Documents.

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

1. Mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents and give particular attention to information regarding concealed elements that would be difficult to identify or measure and record later. Items required to be marked include, but are not limited to:

- a. Dimensional changes to the drawings.
- b. Revisions to details shown on drawings.
- c. Depths of foundations below first floor.
- d. Locations and depths of underground utilities.
- e. Revisions to routing of piping and conduits.
- f. Revisions to electrical circuitry.
- g. Actual equipment locations.
- h. Duct size and routing.
- i. Locations of concealed internal utilities.
- j. Changes made by Change Order or Minor Adjustment.
- k. Details not on original Contract Documents.
- l. Similar deviations, variations, and modifications.

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

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

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

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

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

1. A complete set of electronic Project Record Documents prepared in AutoCAD format compatible with AWC's CAD technology, Bentley Microstation or such other system as WC may adopt from time to time. The Project Designers will provide files of the original Construction Documents to the Construction Manager for the use of preparing these final Project

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

2. A copy of the Project Record Documents showing all redline mark-ups against the original versions.

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

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

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

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

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

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

F. Subcontractor Responsibility. The Construction Manager's responsibility for safety under this Section is not intended in any way to relieve Subcontractors of their own contractual and legal obligations and responsibility for complying with Applicable Law, including

those related to health and safety matters and taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages, or accidents resulting from their performance of the Work.

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

4.15 Final Completion. In consultation with the Project Designers, AWC will determine when the Project and the Construction Manager's Work has reached Final Completion. Final Completion must occur not later than 60 Days after the Substantial Completion date, subject to modification by changes in the Contract Time in Article 6 below. Final Completion will be achieved only upon AWC's written acceptance of

- A. the construction,
- B. all testing,
- C. demonstration by the Construction Manager that the Work functions as required by the Contract Documents and meets all Contract Document requirements,
- D. resolution of all outstanding system deficiencies and Punch List items, if any,

- E. delivery of all as-built documentation, drawings, completed Project Record Documents (with revisions made after Substantial Completion), annotated submittals and design document deliverables,
- F. submittal, acceptance, and delivery of the 100% complete O&M manuals,
- G. delivery of warranties, guarantees, inspection certificates, bonds and all other required documents,
- H. all pre-requisites for final payment and (I) submittal of Construction Manager's request for final payment and acceptance enclosing all required documentation.

Upon Final Completion AWC will issue a Certificate of Final Completion to the Construction Manager on behalf of AWC. Following receipt of payment from AWC, the Construction Manager will make all payments due to the Subcontractors.

4.16 Correction of Defective Work.

A. During the Work. During the Work, Construction Manager will promptly and diligently correct nonconforming Work, whether such non-compliance is discovered by Construction Manager or as Construction Manager is notified by AWC. This includes the correction, removal, or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work.

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

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

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

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

ARTICLE 5 POST-CONSTRUCTION PHASE

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

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

5.3 Certificates. The Construction Manager will secure required certificates of inspection, testing, or approval and deliver them to AWC.

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

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

5.6 Warranties.

A. Warranty for the Work. Construction Manager warrants to AWC for two years from the date of AWC's Notice of Final Completion to Construction Manager (the "Warranty Period") that:

a. All materials and equipment furnished under the Contract will be good quality and new unless the Contract requires or permits otherwise;

b. All Work will conform to the requirements of the Contract and all applicable laws, rules, regulations, and standards; and

c. All materials, equipment, and Work will be free from defects and will not become defective.

All materials, equipment, and Work that do not conform to these requirements will be considered defective. If AWC requires, Construction Manager will furnish satisfactory evidence as to the kind and quality of materials and equipment. Neither AWC's partial nor complete occupancy of the Site nor AWC's partial or final acceptance of the Work will relieve Contractor of any liability under this warranty. Other warranties may be detailed elsewhere in the Contract with specified coverages or time periods, but these will in no event negate or diminish the warranty detailed in this Section. In addition to the express warranties set forth in this Contract, AWC retains all other warranties, express or implied, the law provides.

This warranty is in addition to any warranty the manufacturer or supplier of any materials or equipment provides. Contractor agrees to assign to AWC at the time of AWC's Notice of Final Acceptance any and all manufacturer's warranties relating to materials and equipment used in the Work, and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer or supplier warranties. If necessary as a matter of law, Contractor will retain the right to enforce directly any such manufacturer or supplier warranties.

B. New Materials. The Construction Manager warrants that all materials and equipment furnished under construction phase(s) of this Contract are new unless otherwise specified and approved by AWC, of good quality, in conformance with the Contract Documents, and free from defective workmanship, defective materials, and Hazardous Materials.

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

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

ARTICLE 6 CONTRACT TIME

6.1 Progress and Completion. AWC and the Construction Manager agree the time limits stated in the Contract Documents, as the same may be amended and updated by the Parties, are material terms of this Contract and that time is of the essence of this Contract.

6.2 Commencement of the Work. The Work, except for the environmental investigation services set forth in Section 2.1 above, review of Construction Documents and design remedies services set forth in Section 2.2 above, and Pre-Construction Phase General Services set forth in Section 2.3 above, will commence on the Notice to Proceed date of the applicable GMP

Amendment, and will proceed in general accordance with the Schedule for the Work set forth therein. Each GMP Amendment will establish a separate Notice to Proceed date, Substantial Completion date, and portion of the Contract Time applicable to that GMP. The Substantial Completion dates may be sequential or may run consecutively.

6.3 Prosecution of the Work. The Construction Manager will prosecute the Work so that the portion of the Work completed at any point in time will be not less than as required by the Master Schedule. If the delay is an Inexcusable Delay, as defined below, the Construction Manager will prepare a recovery schedule for AWC's review and approval, showing how the Construction Manager will compensate for the delays and achieve Substantial Completion by the date shown on the Master Schedule. If the Construction Manager is unable to demonstrate how it will overcome Inexcusable Delays, AWC may order the Construction Manager to employ such extraordinary measures as are necessary to bring the Work into conformity with the date of Substantial Completion set forth therein, the costs of which will be included as part of the Cost of the Work. If the delay is an Excusable Delay, as defined below, AWC will either authorize an equitable extension in the Master Schedule to account for such delay, and equitably adjust the GMP on account of such delay, or request that the Construction Manager prepare a recovery schedule showing how (if possible) the Construction Manager can achieve Substantial Completion by the date shown on the Master Schedule, and equitably adjust the applicable GMP in accordance with the Change Order provisions of this Contract related to any extraordinary activities required of the Construction Manager on account of such recovery schedule.

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

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

6.6 Extensions of Time.

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

B. Excusable Delays. To the extent any of the following events results in an actual delay in the Work affecting activities on the Critical Path, such will constitute an "Excusable

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Delay" (to the extent not set forth below, a delay will be considered an "Inexcusable Delay"):

1. Delays resulting from Force Majeure events. The term "Force Majeure" means an event beyond the control or reasonable anticipation of Company or Construction Manager, which prevents one or both Parties from complying with any of their obligations under this Contract, including but not limited to:

- a. Acts of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods);
- b. War, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition, or embargo;
- c. Rebellion, revolution, insurrection, military or usurped power, or civil war;
- d. Contamination by radioactivity from any nuclear fuel, nuclear waste, radio-active toxic explosive, hazardous properties of any explosive nuclear assembly or nuclear component of such assembly, or any other radio-active materials;
- e. Riot, commotion, strikes, work stoppages, go slows, lock outs or disorder; or
- f. Acts or threats of terrorism.

Government policies and other events that do not prevent Construction Manager from complying with its obligations under this Contract, but merely make compliance less profitable or unprofitable, are not Events of Force Majeure.

Neither Company nor Construction Manager will be considered in breach of this Contract to the extent that an Event of Force Majeure prevents them from performing their respective obligations. When an Event of Force Majeure prevents a Party from performing its obligations under this Contract, the affected Party will immediately give notice to the other Party of an Event of Force Majeure. Upon receipt of such notice, Company may terminate this Contract at any time and Construction Manager may terminate this Contract after 180 days. If a Party cancels this Contract pursuant to this paragraph, Company will be liable to pay Construction Manager pursuant to the terms of this Contract only for those portions of the Work completed before the non-affected Party receives the notice of an Event of Force Majeure. Construction Manager will not be entitled to additional compensation for an Event of Force Majeure. Force Majeure will be deemed to commence when the Party declaring Force Majeure notifies the other Party, in accordance with Subsection 14.6, of the existence of the Force Majeure and will be deemed to continue as long as the results or effects of the Force Majeure prevent the Party from resuming performance in accordance with this Contract. Force Majeure will not include late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences, or late performance by a

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Subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Subsection 6.6(B). Any delay or failure in performance by either Party hereto will not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by Force Majeure. The delayed Party will cause such delay to cease as soon as practicable and will notify the other Party in writing. The time of Substantial Completion or Final Completion will be extended by written amendment for a period of time equal to the time that the results or effects of an event of Force Majeure prevents the delayed Party from performing in accordance with this Contract.

2. Differing Site Conditions.

3. Delays resulting from the existence or discovery of Hazardous Materials on the Site brought to or placed on the Site after Construction Manager's inspection of the Site pursuant to Recital L, but not by or on behalf of the Construction Manager.

4. Delays resulting from changes in Applicable Law occurring after the date of execution of this Contract, but only if such changes in Applicable Law directly and explicitly prevent or delay Construction Manager's or a Subcontractor's performance of the Work.

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

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

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

C. Process for Requesting Extension of Time. To obtain an extension of time due to an Excusable Delay, the Construction Manager must comply with the following requirements: the Construction Manager will notify AWC of the Excusable Delay as soon as practicable, but in no event more than seven Days after the Construction Manager becomes aware of the occurrence of the Excusable Delay. Such notice will describe the Excusable Delay and will state the approximate number of Days the Construction Manager expects to be delayed. After the cessation of the Excusable Delay, the Construction Manager will notify AWC of the number of Days the Construction Manager believes that its activities were in fact delayed by the Excusable Delay. In the event that the delay arises as a result of a Change Order request by AWC, the request for an extension of time contained in the resulting Change Order proposal or amendment to this Contract, as applicable, will be deemed sufficient for purposes of this Subsection.

D. AWC Determination. Within 10 Days after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the Parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the Parties as to the then- current

status of Excusable Delays and Inexcusable Delays, AWC will provide the Construction Manager with written notice of AWC's determination of the number of Days of Excusable Delay and/or Inexcusable Delay within 10 Days after receipt by AWC of the Construction Manager's written request for such determination. The Construction Manager will not, however, deem an issuance by AWC of such a determination to be a concurrence with any matters set forth in the Construction Manager's request. The Construction Manager may invoke the dispute resolution procedures set forth in Article 13 below with respect to such determination.

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

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

6.9 Liquidated Damages.

A. Established. The Construction Manager and AWC acknowledge that in the event that the Construction Manager fails to achieve Substantial Completion or Final Completion of the Project by the dates established therefore in the applicable GMP Amendment, as adjusted, AWC will incur substantial damages and the extent of such damages will be incapable of accurate measurement. Nonetheless, the Parties acknowledge that on the date of this Contract, the amount of liquidated damages set forth below represents a good faith estimate as to the actual potential damages that AWC would incur as a result of late Substantial Completion or Final Completion of the Project. The amount of the liquidated damages calculated hereunder does not include any penalty.

B. Amount of Liquidated Damages.

1. If the Construction Manager fails to achieve Substantial Completion of that portion of the Work applicable to a particular GMP Proposal on or before the Substantial Completion date set forth in the applicable GMP Proposal, as adjusted, for any reason other than Excusable Delays, the Construction Manager will pay to AWC liquidated damages in the amount

per Day as determined by the MAG Specifications existing on the date this Contract is approved by AWC for each Day Substantial Completion is delayed beyond the Substantial Completion date set forth in the applicable GMP Amendment.

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

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

ARTICLE 7 CONTRACT PRICE

7.1 Pre-construction Phase Compensation.

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

B. Amount. AWC will pay the Construction Manager an amount not to exceed \$ _____, on a time and materials basis, for services performed during the Pre-construction Phase, as set forth in Article 2 above, and as more particularly described in the Pre-Construction cost summary, attached hereto as Exhibit I and incorporated herein by reference, including all cost items, allowances, and reimbursable expenses.

C. Payments. Payments for Pre-construction Services will be due and payable within 30 Days following approval of the Construction Manager's monthly invoice by AWC.

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

A. GMP. The Guaranteed Maximum Price is composed of the Direct Construction Costs and the Construction Fee. The Construction Manager is at risk to cover any additional Project costs. All Direct Construction Costs and the Construction Fee will be assumed to be included within each approved GMP, and all costs beyond the GMP, including unforeseen expenses or additional work, must be pre-approved by AWC in a signed Change Order. To the extent the combined total of the Direct Construction Costs and the Construction Fee at the conclusion of the Project is less than the GMP, the difference will be retained by AWC.

B. GMP Adjustment. If a GMP requires an adjustment due to changes in the Work, the cost of such changes is determined subject to Article 8. The markups permitted on such

changes will be no greater than the markups delineated in the approved GMP.

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

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

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

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

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

ARTICLE 8 CHANGES IN THE WORK

8.1 Prescribed Methods for Changes. Changes in the Construction Manager's Services will only be made by a written Minor Adjustment or Change Order to this Contract signed by AWC and the Construction Manager. All Change Orders must outline the impact on the GMP, Direct Construction Costs, and Construction Fees. Changes involving a change in the not-to-exceed amount for the Pre-Construction Services set forth in Section 7.1 above, or a change in any GMP, will be considered a Change Order and must be approved as an amendment to this Contract and executed by AWC and the Construction Manager. The Construction Manager will not eliminate any duties included in the Services until a written amendment addressing the Change Order has been properly approved and signed by both Parties. The Construction Manager will proceed to perform the Services required by the Change Order only after receiving written notice

from AWC directing the Construction Manager to proceed.

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

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

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

- A. Unit prices set forth in this Contract or as subsequently agreed.
- B. Mutually accepted, itemized lump sum.
- C. Costs determined as defined in Article 3 above.
- D. If an increase or decrease cannot be agreed to as set forth in Subsections 8.4(A) and (B) and AWC issues a written order for the Construction Manager to proceed with the change, the cost of the change in the Work will be determined by the reasonable expense or savings of the performance of the Work resulting from the change.

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

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

8.7 Unknown Conditions. If, in the performance of the Work, the Construction Manager or its Subcontractor finds latent, concealed, or subsurface physical conditions that (A)

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

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

ARTICLE 9 PAYMENT

9.1 Required Authorization to Bill Meeting with AWC's Representative; Draft Invoice. No later than seven days after the end of every billing period, and before submitting any invoice to AWC, whether for progress payments, final payment, release of retention, or otherwise, Construction Manager must schedule and conduct a meeting with the AWC Representative to review and discuss the Work performed during the previous billing period. At this meeting, Construction Manager will present a draft billing ("Draft Invoice") to be discussed and revised until Construction Manager and AWC have agreed upon the amount to be billed ("Invoice"). Construction Manager acknowledges a Draft Invoice for discussion and revision is not an authorized "billing" for purposes of compliance with ARS § 32-1181 et seq.

9.2 Invoices and Required Documentation. Construction Manager must submit to AWC all Invoices using the American Institute of Architects standardized method of billing using forms G-702 and G-703, and in no other method except with prior authorization in writing by AWC Authorized Representative. Construction Manager must submit with each Invoice all documentation Construction Manager possesses that supports the Invoice. Such documentation must include at a minimum the following:

a. Copies of all bills, receipts, and other statements for all costs and expenses Construction Manager incurred for all materials, labor, equipment, and services used to perform the Work or incorporated into the Work during the billing period;

b. Invoices and receipts for Subcontractors that performed any portion of the Work during the billing period, along with copies of all bills, receipts, and other statements for all costs and expenses the Subcontractors incurred for all materials, labor, equipment, and services used to perform the Work or incorporated into the Work during the billing period;

c. Lien waivers and releases from Construction Manager, all Subcontractors, and

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all Suppliers for all materials, labor, equipment, and services used to perform the Work or incorporated into the Work during the billing period. Specifically, Construction Manager will provide for the billing period of an Invoice a conditional lien waiver, using AWC's form, from itself and all subcontractors, sub-subcontractors, and suppliers furnishing labor, materials, equipment or fixtures to the Work. Construction Manager will also provide for the prior month's paid Invoice an unconditional lien waiver, using AWC's form, from all subcontractors, sub-subcontractors, and suppliers furnishing labor, materials, equipment, or fixtures to the Work.

AWC will pay the amount of an Invoice AWC certifies and approves using AWC's Authorization to Bill process, less amounts described in this Section 9 and less the estimated cost of any paving required of Construction Manager. AWC will not pay Construction Manager for materials not actually incorporated into the Work, and the disposition of such materials will remain Construction Manager's responsibility, subject to Section 9.3. Amounts withheld for paving will be paid by AWC within twenty days after inspection of permanent paving by AWC and acceptance by governmental agencies having jurisdiction.

Construction Manager must send Invoices to AWC by email at:

accountspayable@azwater.com

Construction Manager's authorized invoices not addressed and sent as shown above may cause a delay in payment of invoices, in which case Construction Manager will not charge AWC any interest or late charges.

9.3 Progress Payments. If AWC makes progress payments to Construction Manager, AWC may elect to not include in progress payments costs for materials not yet incorporated into the Work. AWC may choose to include in progress payments costs for materials previously delivered and securely stored at the Site or another location AWC approves if AWC has inspected and approved such materials and if Construction Manager provides to AWC bills of sale from vendors, invoices, lien waivers, and other proof that Construction Manager has purchased, paid for, and received the materials free and clear of liens, charges, security interests, or encumbrances and that the materials are covered by appropriate property insurance.

9.4 Retention. AWC may withhold 10% of the Contract Price, including 10% of any progress payment, as retention. AWC will have no obligation to pay the retention to Construction Manager until AWC provides Notice of Final Acceptance of the Work to Construction Manager and Construction Manager complies with the requirements of Section 9.1 for release of retention.

9.5 Payment Not a Waiver. No payment or release of retention by AWC will release Construction Manager from any liability or any obligation under this Contract.

9.6 Joint or Direct Checks. If AWC has concerns about Construction Manager's ability to timely pay any Subcontractor or Supplier as applicable law requires, AWC may make payments to

Construction Manager by checks payable jointly to Construction Manager and Subcontractors and Suppliers, or any of them; or, when in the sole opinion of AWC it is advisable, AWC may make payments directly to Construction Manager's Subcontractors and Suppliers and any amount so paid will be deducted from the amounts owed to Construction Manager under this Contract.

9.7 Liens. If Construction Manager fails to timely pay any Subcontractor or Supplier as applicable law requires, AWC will have the right to retain out of any payment to Construction Manager then due or thereafter to become due an amount sufficient to completely indemnify AWC against liens or claims for which AWC might become liable and which are chargeable to Construction Manager or any Subcontractor. If AWC, in its sole discretion, determines that any such lien or claim is valid, AWC may pay and discharge the same and deduct the amount so paid from any monies which may be or become due and payable to Construction Manager.

9.8 Accounting of Materials. With its last Invoice submitted to AWC, Construction Manager will submit an itemized accounting to AWC of all materials incorporated into the Work, including all supporting original subcontractor and vendor invoices and satisfactory evidence of payment thereof.

9.9 Financial Records and AWC's Right to Inspect and Audit. Construction Manager will upon reasonable notice make its financial records arising out of or related to the Contract and the Work available to AWC for inspection and audit, scanning, copying, and/or reproduction during normal business hours. Either AWC or its representatives may conduct such inspections and audits. AWC or its representatives may conduct such inspections or audits throughout the term of this Contract and for a period of five years after final payment. Such audits and inspections may also include, without limitation, AWC or its representatives counting employees at the Site, witnessing the distribution of payroll, verifying information and amounts through interviews and written communications with Construction Manager's employees, Subcontractors, suppliers, and vendors.

ARTICLE 10 INSURANCE AND INDEMNITY

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

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

performance of this Contract.

B. Additional Insured. All insurance coverage, except Workers' Compensation insurance and Professional Liability insurance, if applicable, will name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, AWC, its agents, representatives, officers, directors, officials and employees as Additional Named Insured as specified under the respective coverage sections of this Contract. The additional insured endorsement for products/completed operations of General Liability made for AWC will provide this coverage for at least seven years following AWC receipt of product or completion of work by the Construction Manager. The insurance policies for general liability and automobile liability must contain a severability of interest provision. AWC reserves the right to continue payment of premium for which reimbursement will be deducted from amounts due or subsequently due from the Construction Manager.

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

D. Primary Insurance. Construction Manager's insurance will be primary and non-contributory insurance with respect to performance of this Contract and in the protection of AWC as an Additional Insured.

E. Claims Made. In the event any insurance policies required by this Contract are written on a "claims made" basis, Construction Manager agrees that the retroactive date on the insurance policy will be the same as the effective date of this original contract or earlier and carried forward as that same retroactive date or earlier on any subsequent renewals of this agreement. In the event the policy is cancelled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggers the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of any resulting contract, Construction Manager agrees to purchase a SERP with a minimum reporting period not less than three (3) years. The requirement to purchase a SERP will not relieve Construction Manager of the obligation to provide replacement coverage.

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

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

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

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

1. AWC, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(a) Commercial General Liability – Under Insurance Services Office, Inc., ("ISO") Form CG 20 10 04 13 or equivalent for additional insured on premises/ongoing operations and Commercial General Liability CG 20 37 for additional insured on products/completed operations.

(b) Auto Liability – Under ISO Form CA 20 48 or equivalent for additional insured.

(c) Excess Liability – Follow Form to underlying insurance or, if an umbrella is used, provide endorsement indicating following form basis on underlying policies and their endorsements, or specific endorsements to provide additional insured and waiver of subrogation to the County on the underlying GL, AL, WC coverages. Declarations page or endorsement copy will also be needed to show that excess liability or umbrella covers over

underlying policies to include; GL, AL, WC, Professional Liability.

2. Construction Manager's insurance will be primary insurance with respect to performance of this Contract.

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

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

J. Endorsements. Construction Manager will provide AWC with the necessary endorsements to ensure AWC is provided the insurance coverage set forth in this Section.

10.2 Required Insurance Coverage.

A. Commercial General Liability. Construction Manager will maintain "occurrence" form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy will cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. The policy will include fire legal liability coverage in an amount not less than \$50,000. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured's clause. To the fullest extent allowed by law, for claims arising out of the performance of this Contract, AWC, its agents, representatives, officers, officials and employees will be cited or endorsed on a primary and non-contributory basis as an Additional Insured for premises/ongoing operations, personal and advertising injury, and for products/completed operations. The additional insured endorsement for products/completed operations of General Liability made for the County will provide this coverage for at least seven years following County receipt of product or completion of work by the Independent Contractor for the County. The insurance policy for general liability must contain a severability of interest provision. If any Excess or Umbrella insurance is utilized to fulfill the requirements of this subsection, such Excess or Umbrella insurance will be "follow form" equal or broader in coverage scope than underlying insurance.

B. Vehicle Liability. Construction Manager will maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on Construction Manager's owned, hired and non-owned vehicles assigned to or used in the performance of the Construction Manager's work or services under this Contract. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law,

for claims arising out of the performance of this Contract, AWC, its agents, representatives, officers, directors, officials and employees will be cited as an Additional Insured on a primary and noncontributory basis under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. The insurance policy for automobile liability must contain a severability of interest provision. If any Excess or umbrella insurance is utilized to fulfill the requirements of this subsection, such Excess or umbrella insurance will be "follow form" equal or broader in coverage scope than underlying insurance.

C. Professional Liability. If this Contract is the subject of any professional services or work, or if the Construction Manager engages in any professional services or work in any way related to performing the work under this Contract, the Construction Manager will maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Construction Manager, or anyone employed by the Construction Manager, or anyone for whose negligent acts, mistakes, errors and omissions the Construction Manager is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate. Construction Manager to provide a current loss run with in the last 15 days to verify limits are unimpeded prior to execution of this contract. Construction Manager has option to purchase and evidence higher limits if needed to overcome an existing impairment caused by open active claims upon it in this area or other claims against it settled with in the current policy period.

D. Workers' Compensation Insurance. If Construction Manager employs anyone who is required by law to be covered by workers' compensation insurance, Construction Manager will maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Construction Manager's employees engaged in the performance of work or services under this Contract and will also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

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

10.3 Cancellation and Expiration Notice. The Construction Manager will provide at least 30 Days' prior written notice to AWC before insurance required herein expires, is canceled, or is materially changed.

10.4 Indemnity. To the fullest extent permitted by law, the Construction Manager will indemnify, defend, and hold harmless AWC, its officers, directors, employees, agents, and

representatives from and against any and all claims, damages, losses, liabilities and expenses (including attorneys' fees and court costs) arising out of or resulting from acts or omissions, recklessness, intentional misconduct or breach of this Contract by the Construction Manager, its officers, employees, agents, or any tier of subcontractor in connection with the Construction Manager's work or services in the performance of this Contract. This indemnity obligation will not be limited by the amount and type of insurance coverage requirements set forth herein.

ARTICLE 11
BONDS

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

11.2 Payment Bond. After AWC and the Construction Manager have agreed to a GMP but prior to commencing the Construction Services attributable to such GMP, the Construction Manager will be required to furnish AWC with an irrevocable security for the protection of all claimants supplying labor or materials to the Construction Manager or any Subcontractor in the prosecution of the construction and not for the protection of persons providing any design services, preconstruction services, finance services, maintenance services, operations services, or other services related to the Contract. Payment security will be in the amount of 100% of the portion of the GMP attributable to the Construction Services and be payable to AWC. Payment security will be in the form of a payment bond, certified check, or cashier's check. If the Construction Manager fails to execute the security document as required, the Construction Manager may be found in material default of this Contract, permitting AWC to terminate this Contract for cause as set forth in Section 12 below. All payment bonds will be executed on the form attached hereto as Exhibit K and incorporated herein by reference, duly executed by the Construction Manager as Principal and having as Surety thereon a Surety company approved by AWC and holding a Certificate of Authority issued by the Arizona Department of Insurance to transact surety business in the State of Arizona. Individual sureties are unacceptable. All Insurers and Sureties will have at the time

of submission of the proposal an A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

ARTICLE 12
TERMINATION AND SUSPENSION

12.1 Termination by AWC for Cause.

A. Construction Manager Default. If the Construction Manager refuses or fails, except in cases for which extension of time is provided, to perform proper work, supply sufficient properly skilled staff or proper materials, or disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction, or otherwise substantially violates or materially breaches any term or provision of this Contract, and such nonperformance or violation continues without cure for 15 Days after the Construction Manager receives written notice of such nonperformance or violation from AWC, then AWC may, without prejudice to any right or remedy otherwise available to AWC, terminate this Contract.

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

1. Promptly cures all breaches within such three-Day period.
2. Provides adequate assurances of future performance.
3. Compensates AWC for actual pecuniary loss resulting from such

breach(es).

4. Assumes the obligations of the Construction Manager within the established time limits.

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

12.2 Termination by AWC for Convenience. AWC may, upon 30 Days' written notice

to the Construction Manager, terminate this Contract, in whole or in part, for the convenience of AWC, without prejudice to any right or remedy otherwise available to AWC. Upon receipt of such notice, the Construction Manager will immediately discontinue all services affected unless such notice directs otherwise. In the event of a termination for convenience of AWC, the Construction Manager's sole and exclusive right and remedy will be to be paid for all Work performed plus reasonable demobilization costs, subcontract and purchase order termination costs, reasonable overhead and profit on the Work performed. The Construction Manager will not be entitled to be paid any amount as profit for unperformed Work or Services or consideration for termination by AWC under this Section 12.3.

12.3 Set Off. Upon termination of this Contract by AWC, AWC will be entitled to furnish or have furnished the Services to be performed hereunder by the Construction Manager by whatever method AWC may deem expedient. Also, in such case, the Construction Manager will not be entitled to receive any further payment until completion of the Work and the total compensation to the Construction Manager under this Contract will be the amount that is equitable under the circumstances. If AWC and the Construction Manager are unable to agree on the amount to be paid under the foregoing sentence, AWC will fix an amount, if any, that it deems appropriate in consideration of all of the circumstances surrounding such termination, and will make payment accordingly.

12.4 Suspension by AWC for Convenience.

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

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

ARTICLE 13
ADDITIONAL PROVISIONS

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

13.2 Limitation and Assignment. AWC and the Construction Manager each bind themselves, their successors, assigns, and legal representatives to the terms of this Contract. Neither AWC nor the Construction Manager will assign or transfer its interest in this Contract without the written consent of the other, except that the Construction Manager may assign accounts receivable

to a commercial bank for securing loans without approval of the AWC. Nothing contained in this Section will prevent the Construction Manager from employing such Construction Managers, associates, or Subcontractors as the Construction Manager may deem appropriate to assist in performance of the Services hereunder.

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

13.4 Severability. If any provision of this Contract or the application of the same is, to any extent, held as a matter of law to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Contract, or the application of that provision to circumstances other than those under which it has been held invalid or unenforceable, will not be affected, and each remaining provision of this Contract will be interpreted as if it had been executed by both Parties subsequent to the expungement or judicial modification of the invalid or unenforceable provision.

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

13.6 Notices and Requests. Any notice or other communication required or permitted to be given under this Contract will be in writing and will be deemed to have been duly given if (A) delivered to the Party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below, or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to AWC: Arizona Water Company
5600 E. Commerce Ave
Flagstaff, Arizona 86004
Attn: _____

With copy to: AWC Attorney

Attn: _____

If to Project Designers: _____

Attn: _____

If to Construction Manager: _____

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Attn: _____

or at such other address, and to the attention of such other person or officer, as any Party may designate in writing by notice duly given pursuant to this Section. Notices will be deemed received (A) when delivered to the Party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage, or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a Party's counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party will mean and refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

13.7 Governing Law; Jurisdiction and Venue. This Contract will be governed by the laws of the State of Arizona without regard to the choice of laws provisions thereof. All disputes not subject to the jurisdiction of the Arizona Corporation Commission will be heard and decided by a court of competent jurisdiction located in Maricopa County, Arizona.

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

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

13.10 Survival of Representations and Warranties. Notwithstanding any other provision of this Contract, the representations, warranties, and covenants herein will survive termination of this Contract.

13.11 Third-Party Beneficiaries. The terms and conditions of this Contract are for the benefit of the Parties and there are no intended third-party beneficiaries under this Contract.

13.12 Further Instruments. The Parties will sign any further instruments and perform any further act which may become reasonably necessary to carry out the terms of this Contract.

13.13 Records and Audit Rights. The Construction Manager's and its Subcontractors' books, records, correspondence, accounting procedures, and practices, and any other supporting evidence relating to this Contract, including the papers of any of the Construction Manager's and its Subcontractors' employees who perform any work or Services pursuant to this Contract to ensure that the Construction Manager and its Subcontractors are complying with the warranty under Subsection 13.14 below (all the foregoing hereinafter referred to as "Records"), will be open to inspection and subject to audit and/or reproduction during normal working hours by AWC, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Construction Manager's and its Subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Contract, and (B) evaluation of the Construction Manager's and its Subcontractors' compliance with the Arizona employer sanctions laws referenced in Subsection 13.14 below. To the extent necessary for AWC to audit Records as set forth in this Subsection, the Construction Manager and its Subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, AWC will have access to said Records, even if located at its Subcontractors' facilities, from the effective date of this Contract for the duration of the work and until three years after the date of final payment by AWC to the Construction Manager pursuant to this Contract. The Construction Manager and its Subcontractors will provide AWC with adequate and appropriate workspace so that AWC can conduct audits in compliance with the provisions of this Subsection. AWC will give the Construction Manager or its Subcontractors reasonable advance notice of intended audits. The Construction Manager will require its Subcontractors to comply with the provisions of this Subsection by insertion of the requirements hereof in any subcontract pursuant to this Contract.

13.14 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Construction Manager and its Subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). The Construction Manager's or its Subcontractor's failure to comply with such warranty will be deemed a material breach of this Contract and may result in the termination of this Contract by AWC.

13.15 Israel. The Construction Manager certifies that it is not currently engaged in, and agrees for the duration of this Contract that it will not engage in, a "boycott" of Israel, as that term is defined in ARIZ. REV. STAT. § 35-393.

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

13.17 Contract Subject to Appropriation. AWC is obligated only to pay its obligations set forth in this Contract as may lawfully be made from funds appropriated and budgeted for that purpose during AWC's then-current fiscal year. AWC's obligations under this Contract are current

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SECTION B

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

13.18 Forced Labor of Ethnic Uyghurs. To the extent applicable under A.R.S. § 35-394, the Construction Manager certifies that it does not, and will not for the duration of this Contract, use the forced labor, any goods or services produced by the forced labor, or any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.

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

ARIZONA WATER COMPANY

Name, Title

“CONSTRUCTION MANAGER”

Name, Title

EXHIBIT A
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
ARIZONA WATER COMPANY AND

[Construction Documents]

See following pages.

EXHIBIT B
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
ARIZONA WATER COMPANY AND

[Amendments]

See following pages.

EXHIBIT C
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
ARIZONA WATER COMPANY AND

[GMP Proposals]

See following pages.

EXHIBIT D
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
ARIZONA WATER COMPANY AND

[Master Schedule]

See following pages.

EXHIBIT E
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
ARIZONA WATER COMPANY AND

[AWC's RFQ]

See following pages.

EXHIBIT F
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
ARIZONA WATER COMPANY AND

[Construction Manager's Response to the RFQ]

See following pages.

EXHIBIT G
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
ARIZONA WATER COMPANY AND

[Traffic Control/Construction Sequencing]

See following pages.

EXHIBIT H
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
ARIZONA WATER COMPANY AND

[Allowable General Conditions Cost Line Items] See

following page.

ALLOWABLE GENERAL CONDITIONS COST LINE ITEMS

On-Site Project Management Staff

Safety Coordinator/Assistant(s)
Project Executive
Office Engineer(s)
Project Expeditor(s)
Assistant Superintendent(s)

CPM Scheduler
Superintendent(s)
Project Manager(s)
Project Support Staff
Out-of-State Project Specific Travel*

Bonds and Insurance

Builder's Risk
Insurance
General Liability Insurance
Payment and Performance
Bonds
Other Project Insurance as Required
by Contract

Temporary Project Utilities

Non-LEED Recycling Dumpsters
Project Electricity
Monthly Telephone / Internet Service
Installation Street Rental and Barricades
Meters
Fencing and Covered Walkways
Meters Site Erosion Control (BMP) and Project
Prevent Entrance(s)

Temporary Toilets
Temporary Fire Protection
Telephone / Internet System
Temporary Water Distribution and
Temporary Electrical Distribution and
Project Water, Ice, and Supplements to
Dehydration

Field Offices & Office Supplies

Partnering Costs
Job Photos/Videos
Project Specific Signage
Postage/Special Shipping
Project/As-Built (Record) Drawings
Project Milestone Event(s)*
Move-In/Out and Office Setup
Employee Identification System
Ice)
Small Tools and Storage Trailers
Monthly Office Trailer Rental Costs
Engineering Mobilization and Demobilization
(Equipment Only)

First Aid Supplies
Reproduction Services
Monthly Office Supplies
Remote Parking Expenses
Project Reference Manuals
Security System/Watchman
Safety Material and Equipment
Drinking Water and Accessories (Including
Office Clean-Up/Janitorial Services
Field

* Specific justification and all estimated costs will be submitted and approved by AWC prior to any travel or event.

EXHIBIT I
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
ARIZONA WATER COMPANY AND

[Pre-Construction Cost Summary]

See following pages.

EXHIBIT J
TO
CONSTRUCTION MANAGER
AT RISK AGREEMENT
BETWEEN
ARIZONA WATER COMPANY AND

[

Performance Bond]

See following page.

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, _____ (hereinafter called Principal), as Principal, and _____, a corporation organized and existing under the laws of the State of _____, with its principal office at _____ (hereinafter called the Surety), as Surety, are held and firmly bound unto the Arizona Water Company (hereinafter called the Obligee) in the amount of _____ (Dollars) (\$ _____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the _____ day of _____ 20____, for the material, service or construction described as _____ is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the Contract during the original term of the Contract and any extension of the Contract, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the Contract that may hereafter be made, notice of which modifications to the surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond will be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond will recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the Court.

Witness our hands this _____ day of _____ 20__.

Principal Seal

By: _____

Surety Seal

By: _____

Agency of Record _____

EXHIBIT K
TO
CONSTRUCTION MANAGER
AT RISK CONTRACT
BETWEEN
ARIZONA WATER COMPANY AND

[Payment Bond]

See following page.

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, _____(hereinafter called Principal), as Principal, and _____, a corporation organized and existing under the laws of the State of _____, with its principal office at _____ (hereinafter called the Surety), as Surety, are held and firmly bound unto the Arizona Water Company (hereinafter called the Obligee) in the amount of _____ (Dollars) (\$ _____), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the _____ day of _____ 20____, for the material, service or construction described as _____ which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all monies due to all persons supplying labor or materials to the Principal or the Principal's Subcontractors in the prosecution of the Work provided for in the Contract, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond will be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if they were copied at length in this Contract.

The prevailing party in a suit on this bond will recover as a part of the judgment reasonable attorney fees that may be fixed by a judge of the Court.

Witness our hands this _____ day of _____, 20____.

Principal Seal
By: _____

Surety Seal
By: _____

Agency of Record

EXHIBIT L
TO
CONSTRUCTION MANAGER
AT RISK CONTRACT
BETWEEN
ARIZONA WATER COMPANY AND

[Lien Release]

See following pages.

EXHIBIT M
TO
CONSTRUCTION MANAGER
AT RISK CONTRACT
BETWEEN
ARIZONA WATER COMPANY AND

[Federally Funded Project
Requirements]

FEDERALLY FUNDED PROJECT REQUIREMENTS

Cancelation or Termination for Breach:

A contractor who violates or breaches a contract may have the contract terminated for cause. The Contractor will be paid for services provided but may be ineligible for future contracts. Contracts may also be terminated by the County for convenience.

Equal Employment Opportunity:

During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action will include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision will not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and will post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or Contractor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or Contractor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work, provided, that if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain

from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

Subcontracts. Each nonexempt prime contractor or subcontractor will include the above equal opportunity clause in each of its nonexempt subcontracts.

Davis Bacon Act

Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

If applicable pursuant to the conditions of a federal funding award:

- (1) All transactions regarding this contract will be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor will comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
- (2) Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
- (3) Additionally, contractors are required to pay wages not less than once a week.

Compliance with the Copeland Anti-Kickback Act:

- (1) Contractor. The contractor will comply with 18 U.S.C. §874, 40 U.S.C. §3145, and the requirements of 29 C.F.R. pt.3 as may be applicable, which are incorporated by reference into this contract.

- (2) Subcontracts. The contractor or subcontractor will insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor will be responsible for compliance by any subcontractor or lower-tier subcontractor with all of these contract clauses.
- (3) Breach. A breach of the contract clauses above may be grounds for termination of the contract and for debarment as a contractor and subcontractor as provided in 29 C.F.R §5.12.

Compliance with the Contract Work Hours and Safety Standards Act:

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics will require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor will be liable for the unpaid wages. In addition, such contractor and subcontractor will be liable to the United States (in the case of work done under contract for AWC of Columbia or a territory, to such AWC or to such territory), for liquidated damages. Such liquidated damages will be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) will, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) Subcontracts. The contractor or subcontractor will insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower-tier subcontracts. The prime contractor will be responsible for compliance by any subcontractor or lower-tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

Clean Air Act

(1) The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to the Arizona Water Company and understands and agrees that Arizona Water Company will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

(1) The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

(2) The contractor agrees to report each violation to the Arizona Water Company and understands and agrees that the Arizona Water Company will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Suspension and Debarment

(1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

(2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower-tier covered transaction it enters into.

(3) This certification is a material representation of fact relied upon by Arizona Water Company. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Arizona Water Company, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

(4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower-tier covered transactions.

Procurement of Recovered Materials

(1) In the performance of this contract, the Contractor will make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:

- a. Competitively within a timeframe providing for compliance with the contract performance schedule;
- b. Meeting contract performance requirements; or
- c. At a reasonable price.

(2) Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines website, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

(3) The contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Access to Records

- (1) The contractor agrees to provide Arizona Water Company, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- (2) The contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- (3) The contractor agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the contract.
- (4) In compliance with the Disaster Recovery Act of 2018, Arizona Water Company and the contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

DHS Seal, Logo and Flags

The contractor will not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

Compliance with Federal Law, Regulations, and Executive Orders

This is an acknowledgment that FEMA financial assistance will be used to fund all or a portion of the contract. The contractor will comply with all applicable Federal laws, regulations, executive orders, FEMA policies, procedures, and directives.

SAM.gov

Contractor will comply with the regulations relating to Universal Identifier and System for Award Management according to 2 CFR Part 25 and Appendix A thereto. Contractor must:

- (1) Be registered in the SAM prior to submission of an application or plan;
- (2) Maintain an active SAM registration with current information, including information on a recipient's immediate and highest-level owner and subsidiaries, as well as on all predecessors that have been awarded a Federal contract or grant within the last three years, if applicable, at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency;
- (3) Provide its unique entity identifier in each application or plan it submits to the Federal awarding agency.
- (4) Review and update its information in the SAM database on an annual basis from the date of initial registration or subsequent updates to ensure it is current, accurate and complete.

No Obligation by Federal Government

The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract.

Program Fraud and False or Fraudulent Statements or Related Acts

The Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this contract.

Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)

Contractors who apply or bid for an award of \$100,000 or more will file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier will also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

If applicable, contractors must sign and submit the certification that begins on the following page:

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned will require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients will certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractor's Authorized Official

Date