



**CITY OF SCOTTSDALE**

**JOB ORDER CONTRACT**

**NO. 2025-007-COS**

**ATTACHMENT 5**

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**CITY OF SCOTTSDALE**

**CONTRACT NO. 2025-007-COS**

**THIS JOB ORDER CONTRACT**, (the "Contract") is entered into this 28 day of January, 2025, (the "Effective Date") between the City of Scottsdale, an Arizona municipal corporation (the "City") and OMNI Electric, LLC, an Arizona Limited liability company (the "Contractor").

**RECITALS**

- A. The Mayor of the City of Scottsdale, Arizona, is authorized and empowered by the provisions of the City Charter to execute contracts for construction and related services.
- B. The City intends to contract for construction and related services for one or more individual Job Orders.
- C. Contractor has represented to the City the ability to provide or procure the required construction and related services and, based on this representation, the City engages Contractor for these services.

**FOR AND IN CONSIDERATION** of the mutual covenants and considerations contained in this Contract, it is agreed by the City and Contractor as follows:

**ARTICLE 1 - CONTRACTOR'S SERVICES AND RESPONSIBILITIES**

**1.1. GENERAL SERVICES**

- A. Contractor will furnish any and all labor, materials, equipment, transportation, utilities, services and facilities specified in the individual Job Order for which it is issued a Job Order Notice to Proceed in accordance with this Contract. The City may determine it is in its best interest to furnish materials and equipment for an individual Job Order in accordance with the Job Order.
- B. The Work will be performed in a good, workmanlike and substantial manner and to the satisfaction of the City Engineer and under the monitoring of the City Engineer, or her properly authorized agents, within the care and skill of a qualified contractor in Scottsdale, Arizona.
  - 1. Minor design services may be required for some Job Orders. For those Job Orders that may require design services, Contractor will seek the services of an Arizona registered architect or engineering professional to prepare plans for permitting. The procurement of design services will be in accordance with City of Scottsdale procurement procedures. If the services of a design professional are used, the design professional must maintain at least \$1,000,000 Professional Liability Coverage.
  - 2. All documents prepared by Contractor are subject to review by the City. Review by the City is for the benefit of the City only, is not intended to be for the benefit of any other person, and does not relieve Contractor from

the professional liability associated with the documents they have prepared.

3. Contractor's Representative shall be reasonably available to the City and will have the necessary expertise and experience required to supervise the Contract Services. A Contractor's Representative will be assigned for each Job Order. Contractor's Representative will communicate regularly with the City and will be vested with the authority to act on behalf of Contractor.
- C. The City is a member of \$AVE cooperative purchasing group. \$AVE includes the State of Arizona, Maricopa County, many Phoenix metropolitan area municipalities, and many K-12 unified school districts. Under \$AVE Cooperate Purchasing Agreement, and with the concurrence of successful Respondents under this solicitation, a member of \$AVE may access a contract resulting from this solicitation issued by the City. By signing the JOC Contract, Contractor agrees to allow other \$AVE members the ability to purchase their needs and "use" this contract for JOC requirements.

## **1.2. GOVERNMENT APPROVALS AND PERMITS**

- A. Unless otherwise provided, Contractor will obtain or assist the City in obtaining 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. Contractor is responsible for obtaining payment for the necessary environmental permits or file the necessary environmental notices.
- B. Copies of these permits and notices must be provided to the City's Representative before starting the permitted activity. This provision does not constitute an assumption by the City of an obligation of any kind for violation of the permit or notice requirements.
- C. The City is responsible for the City of Scottsdale review and permit(s) fees for building and demolition permits. The City will pay City review fees for grading and drainage, water, sewer, storm water management, and landscaping. The City will also pay for City utility design fees for permanent services.
- D. Contractor is responsible for all other permits and review fees not specifically listed in Article 1.2(C) above.
- E. Contractor is responsible for the cost of construction-related water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until Substantial Completion of the Project. Arrangements for construction water will be Contractor's responsibility. Construction water does not include "test water" required to complete new water line pressure tests.
- F. The M.A.G. Standard Specification 107.12 is modified to read as follows: "Contractor, at its own expense, is responsible for the acquisition of any necessary temporary easements for construction purposes, storage, maintenance, and refuse haul-off as indicated upon the plans, which are required in addition to existing easements or rights-of-way secured by the City."

### 1.3. PRE-CONSTRUCTION CONFERENCE

- A. After execution of a Job Order and before the commencement of any Work on any individual Job Order, a pre-construction conference may be scheduled.
- B. The purpose of this conference is to establish a working relationship between Contractor, utility firms, and various City departments. The agenda will include critical elements of the work schedule, submittal schedule, level of Record Drawings required, cost breakdown of major lump sum items, payment application and processing, coordination with the involved utility firms, and emergency telephone numbers for all representatives involved in the course of construction.
- C. At a minimum, attendees will include Contractor Representative, who is authorized to execute and sign documents on behalf of the firm, the job superintendent, and Contractor's safety officer.
- D. The Job Order Notice to Proceed date will be established.
- E. Contractor will provide a Baseline Project Schedule indicating duration, manpower and equipment resources required to complete all major work activities. The City and Design Team will review and comment on the Baseline Project Schedule. Contractor will revise the Baseline Project Schedule to the satisfaction of the City's Representative. No work will begin until the City accepts the Baseline Project Schedule.
- F. Contractor will submit a Schedule of Values based on the work and bids accepted from selected Subcontractors. These values will reflect the actual labor time, materials, profit and overhead for the Work or in accordance with Contractor's price book.

### 1.4. CONTROL OF THE WORK

Contractor will properly guard and protect all partially finished work and will be responsible for the Work until the entire Job Order is completed and accepted by the City. Any payment for completed portions of the Work will not release Contractor from this responsibility; however, he will turn over the entire Work in full compliance with the specifications or Job Order before final settlement is made. In case of suspension of the Work for any cause whatever, Contractor is responsible for the Project and will take all precautions necessary to prevent damage to the Project and will erect any necessary temporary structures, signs, or other facilities at no cost to the City.

- A. After all Work under the Job Order is completed, Contractor will remove all loose concrete, lumber, wire, reinforcing, debris and other materials not incorporated in the Work from the site of the Work.
- B. Unless the Job Order states that it is the responsibility of the City or a separate contractor, Contractor will provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, other temporary facilities, temporary fencing, roll-offs, and dust control to permit Contractor to complete the Work consistent with the Job Order.

- C. Contractor will perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Job Order. Contractor will at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.
- D. Survey stakes and marks required for the completion of the construction shown on the plans and described in the specifications will be furnished by Contractor.
- E. Contractor, its designee or Contractor's Superintendent will be present at the Work at all times that construction activities are taking place.
  - 1. All elements of the Work, such as concrete work, pipe work, etc., 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 Article 5.1, the City may require Contractor to stop or suspend the Work in whole or in part.
- F. Where the Job Order requires that a particular product be installed or applied by an applicator approved by the manufacturer, it is Contractor's responsibility to ensure the Subcontractor employed for the work is approved.
- G. Before ordering materials or doing work, Contractor and each Subcontractor will verify measurements at the Site and will be responsible for the correctness of these measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the drawings; differences, which may be found, will be submitted to the City for resolution before proceeding with the Work.
- H. Contractor will take field measurements and verify field conditions and carefully compare these field measurements, conditions and other information known to Contractor with the Job Order before starting activities. Errors, inconsistencies or omissions discovered will be immediately reported to the City.
- I. Contractor will establish and maintain all building and construction grades, lines, levels, and benchmarks, and will be responsible for the accuracy and protection of these items. This work will be performed or supervised by an Arizona licensed civil engineer or surveyor.
- J. Any person employed by Contractor or any Subcontractor who, in the opinion of the City, does not perform his work in a proper, skillful and safe manner or is intemperate or disorderly will, at the written request of the City, be removed from the Work by Contractor or Subcontractor employing this person, and will not be employed again in any portion of the Work without the written approval of the City. Contractor or Subcontractor will hold the City harmless from damages or claims, which may occur in the enforcement of this Article.
- K. Contractor assumes responsibility for the proper performance of the Work of Subcontractors and any acts and omissions in connection with this performance. Nothing in the Contract Documents is intended or considered to create any legal

or contractual relationship between the City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

- L. Contractor will coordinate the activities of all Subcontractors. If the City performs other work on the Project or at the Site with separate contractors under the City's control, Contractor agrees to reasonably cooperate and coordinate its activities with those of the separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.
- M. On a daily basis, Contractor will prepare a Contractor's Daily Report. The City's CPM Project Inspector or the Public Works Project Coordinator will provide a sample report format to the Contractor. The report will detail the activities that took place during the course of the day, all equipment utilized and the number of hours operated, and all personnel on the Site including Subcontractors. Unless otherwise arranged, the Daily Reports will be submitted on a daily basis to the City's CPM Inspector or the Public Work's Project Coordinator. The Daily Reports will also be made available to the City's Representative upon request. Failure to provide Daily Reports as arranged or requested above will result in the retention of monthly progress payments until the Reports are brought up to date.
- N. In the event of noncompliance with this Article 1.4, the City may require Contractor to stop or suspend the construction in whole or in part. Any suspension due to Contractor's noncompliance will not be considered a basis for an increase in the Contract Price or extension of the Contract Time.

#### **1.5. CONTROL OF THE WORK SITE**

- A. Throughout all phases of construction, including suspension of the Work, Contractor will keep the Site reasonably free from debris, trash and construction wastes to permit Contractor to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Contractor will remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions of it to permit the City to occupy the Project or a portion of the Project for its intended use.
- B. Dust Control. Contractor will take whatever steps, procedures or means required to prevent abnormal dust conditions due to his construction operations in connection with this Contract. The dust control measures will be maintained at all times during construction of the Project(s) to the satisfaction of the City in accordance with the requirements of the Maricopa County Health Department Air Pollution Control Regulations and City of Scottsdale Supplement to M.A.G. Standard Specifications together with applicable provisions of Federal and State Law.
- C. Dust Control Coordinator. At any City construction site of 5 acres or more of disturbed surface area, subject to a permit issued by a Control Officer requiring control of PM-10 emissions from dust generating operations, Contractor must have at all times at the Site, at least 1 Dust Control Coordinator trained in accordance with the requirements of A.R.S. §49-474.05 during primary dust generating operations that is related to the purposes for which the Dust Control Permit was

issued. The Dust Control Coordinator must have full authority to ensure that dust control measures are implemented at the Site, including authority to conduct inspections, deploy dust suppression resources, and modify or shutdown activities as needed to control dust. The Dust Control Coordinator must be responsible for managing dust prevention and dust control on the Site, including the use of leaf blowers and street sweeping equipment. The Dust Control Coordinator must have a valid Dust Training Certification Identification Card readily accessible on the Site while acting as the Dust Control Coordinator.

The requirements described in the above Article do not apply if all 3 of the following circumstances are present:

1. The area of disturbed surface area is less than 5 acres.
2. The previously disturbed areas are stabilized in accordance with the requirements of any applicable County rules.
3. Contractor with the Dust Control Permit provides notice of the acreage stabilized to the County Control Officer.

On sites with greater than 1 acre of disturbed surface area, Contractor holding a Dust Control permit issued by a County Control Officer, who is required to obtain a single permit for multiple noncontiguous sites that is required to control PM-10 emissions from dust generating operations must have at least 1 individual who is designated as a Dust Control Coordinator. The Dust Control Coordinator must have a valid Dust Training Certification Identification Card readily accessible on the Site while acting as the Dust Control Coordinator. The Dust Control Coordinator must be present on Site at all times during primary dust generating activities that are related to the purposes for which the permit was issued.

A Subcontractor who is engaged in dust generating operations at a Site that is subject to a Dust Control Permit issued by a County Control Officer and that requires the control of PM-10 emissions from dust generating operations must register with the County Control Officer. The Subcontractor must have its registration number readily accessible on the Site while conducting any dust generating operations.

- D. **Storage on Site.** Only materials and equipment, which are to be used directly in the Work, will be brought to and stored on the Site by Contractor. When equipment is no longer required for the Work, it will be removed promptly from the Site. Protection of construction materials and equipment stored at the Site from weather, theft, damage and all other adversity is solely the responsibility of Contractor.
- E. **Waste Products.** Contractor is responsible for the cost to dispose of all waste products including excess earth material which will not be incorporated into the Work under this Contract. The waste product referred to will become the property of Contractor. Contractor will provide for the legal disposal at an appropriate off-site location for all waste products, debris, etc., and will make necessary arrangements for its disposal. Any disposal/dumping of waste products or unused materials will conform to applicable Federal, State and Local Regulations.
- F. **Contractor will supervise and direct the Work.** He will be solely responsible for the

means, methods, techniques, sequences and procedures of construction. Contractor will employ and maintain on the Job Site a qualified supervisor or superintendent who will have been designated in writing by Contractor as Contractor's Representative. The Representative will have full authority to act on behalf of Contractor and all communications given to the Representative will be as binding as if given to Contractor. The Representative will be present on the Site at all times as required to perform adequate supervision and coordination of the Work. Where appropriate all Provisions of M.A.G., Section 105.5, will be applicable.

- G. **Abnormal Weather.** In the event of abnormal weather conditions, such as windstorms, rainstorms, etc., Contractor will immediately inspect the Work Site and take all necessary actions to ensure public access and safety are maintained.
- H. **Damage to Property at the Site.** Contractor will be responsible for any and all damage or loss to property at the Site, except to the extent caused by the acts or omissions of the City or its representatives, employees or agents and not covered by insurance. The costs and expenses incurred by Contractor under this Article will be paid as a Cost of the Work to the extent that these costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductibles, but they will not increase the Contract Price.
- I. **Damage to Property of Others.** Contractor will avoid damage, as a result of Contractor's operations, to existing sidewalks, curbs, streets, alleys, pavements, utilities, adjacent property, the work of Separate Contractors and the property of the City. Contractor will repair any damage caused by the operations of Contractor, and these costs will be paid as a Cost of the Work to the extent that the costs and expenses are in excess of or are not covered by required insurance, and to the extent of any deductible, but they will not increase the Contract Price.
- J. **Failure of Contractor to Repair Damage.** After receiving and acknowledging 10 days written notice, if Contractor fails to commence the repair of damage to property as provided in Articles 1.5(I) and 1.5(J), and diligently pursue the repair, then the City may elect to repair the damages with its own forces and to deduct from payments due or to become due to Contractor, amounts paid or incurred by the City in correcting the damage (provided Contractor has not commenced such repair during this 10 day period).

#### **1.6. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

- A. 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 Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Contractor will review, approve and verify that all submittals meet the intent of the Contract Documents.
- B. Three (3) copies of each Shop Drawing, Product Data, Sample, and similar submittals required by the Contract Documents will be delivered to the City in compliance with the approved schedule so as to cause no delay in the Work or in the activities of the City or of separate contractors. Submittals made by Contractor,

which are not required by the Contract Documents, may be returned without action.

- C. Contractor 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 City. All Work will be in compliance with approved submittals. Contractor will not be relieved of responsibility for any errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the City's approval. Deviation from the original specifications will be specifically noted on the submittal to the City and the City will be allowed 7 days to approve or reject any deviations.
- D. By approving, verifying and submitting Shop Drawings, Product Data, Samples and similar submittals, Contractor represents that Contractor has determined and verified materials, field measurements and field construction criteria, or will do so, and has checked and coordinated the information contained within the submittals with the requirements of the Work and of the Job Order.
- E. Contractor will not be relieved of responsibility for deviations from requirements of the Job Order by the City's approval of Shop Drawings, Product Data, Samples or similar submittals unless Contractor has specifically informed the City in writing of the deviation at the time of submittal and the City has given written approval to the specific deviation. Contractor will not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by the City's approval.
- F. Contractor 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 City on previous submittals.
- G. Informational submittals upon which the City is not expected to take responsive action may be so identified in the Contract Documents.
- H. When professional certification of performance criteria of materials, systems or equipment is required by the Job Order, the City will be entitled to rely upon the accuracy and completeness of the calculations and certifications.

#### **1.7. QUALITY CONTROL, TESTING AND INSPECTION**

- A. Inspection. The City's Inspectors may be stationed on the Work site to report to the City's Representative or his Designee as to the progress of the Work. The City's Representative or his Designee may also report as to the manner in which the Work is being performed and report whenever it appears that material furnished or Work performed by Contractor fails to fulfill the requirements of the specifications, this Contract or the Job Order. The Inspector may direct the attention of Contractor to any failure or infringement but this inspection will not relieve Contractor from any obligation to furnish acceptable materials or to provide completed construction that complies with the Contract or the Job Order in every way. The Inspector is for the purpose of assisting the City's Representative and should not be confused with an Inspector with a City regulatory agency or with an inspector from a laboratory under Article 1.8.

- B. In case of any dispute arising between the Inspector and Contractor as to material furnished or the manner of performing the Work, the Inspector will have the authority to reject materials or suspend the Work until the question and issue can be referred to and decided by the City. Inspectors are not authorized to revoke, alter, enlarge, relax, or release any requirements of the specifications. Inspectors will in no case act as foremen or perform other duties for Contractor or interfere with the management of the Work by Contractor.
- C. Inspection or supervision by the City's Representative or Designee will not be considered as direct control of the individual workman and his work. The direct control will be solely the responsibility of Contractor.
- D. The furnishing of these services for the City will not make the City responsible for or give the City control over construction means, methods, techniques, sequenced procedures or for safety precautions or programs or responsibility for Contractor's failure to perform the Work in compliance with the Contract Documents.

#### **1.8. MATERIALS TESTING**

All materials used in the Work will be new and unused, unless otherwise noted, and will meet all quality requirements of the Job Order.

- A. All construction materials to be used on 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 of the City. Any materials rejected by the City will be removed immediately and replaced in a manner acceptable to the City at no further cost to the City.
- B. The procedures and methods used to sample and test material will be determined by the City. Unless otherwise specified, samples and test will be made in compliance with the following: The City of Scottsdale Minimum Sampling Frequency Guide, the City of Scottsdale Material Testing Manual and the standard methods of AASHTO or ASTM, DSPM and MAG supplements.
- C. The City will select a pre-qualified City or Independent Testing Laboratory and will pay for initial City Acceptance Testing.
  - 1. When the first and subsequent tests indicate noncompliance with the Job Order, the cost associated with that noncompliance will be paid for by Contractor.
  - 2. When the first and subsequent tests indicate noncompliance with the Job Order, all retesting will be performed by the same testing agency. The cost associated with the noncompliance will be paid by Contractor.
  - 3. Contractor will cooperate with the selected testing laboratory and all others responsible for the testing and inspecting of the Work and will provide them access to the Work at all times.
- D. At the option of the City, materials may be approved at the source of supply before

delivery is started.

- E. Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority, and which are made by a legally constituted authority, will be the responsibility of and will be paid by Contractor, unless otherwise provided in the Job Order.
- F. Contractor's convenience and quality control testing and inspections will be the sole responsibility of Contractor and paid by Contractor.
- G. All soils and materials testing will be performed and paid for by the City. The City will order tests and distribute test results for all construction areas. The City will be responsible for ordering testing and will distribute test results within 24 hours of receipt.

### **1.9. PROJECT RECORD DOCUMENT/AS BUILTS**

- A. During the construction period, Contractor will maintain at the jobsite a set of blueline or blackline prints of the Construction Document drawings and Shop Drawings for Project Record Document purposes.
  - 1. Contractor will mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents. Contractor will give particular attention to information on concealed elements, which would be difficult to identify or measure and record later. Items required to be marked include but are not limited to:
    - Dimensional changes to the drawings.
    - Revisions to details shown on drawings.
    - Depths of foundations below first floor.
    - Locations and depths of underground utilities.
    - Revisions to routing of piping and conduits.
    - Revisions to electrical circuitry.
    - Actual equipment locations.
    - Duct size and routing.
    - Locations of concealed internal utilities.
    - Changes made by Change Order.
    - Details not on original Contract Drawings.
  - 2. Contractor will mark completely and accurately Record Documents, prints of Construction 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 location.
  - 3. Contractor will mark Project Record Drawings sets with red erasable colored pencil.
  - 4. Contractor will note Request for Information (RFI) Numbers, American Standards Institute (ASI) Numbers and Adjustment Numbers, etc., as required to identify the source of the change to the Construction

Documents.

5. Contractor will at the time of Substantial Completion, submit Project Record Drawing prints and Shop Drawings to the City or its representative for review and comment.
- B. Immediately upon receipt of the reviewed Project Record Drawings from the City, Contractor will correct any deficiencies or omissions to the drawings and prepare the following for submission to the City:
1. A complete set of PDF electronic files of all Project Record Drawings prepared in Microstation format compatible with City of Scottsdale CADD requirements. If a Design Professional is contracted with, the Design Professional will provide files of the original Construction Documents to Contractor for use in preparing these final Record Documents, or Contractor may contract with the Design Professional to revise and update the electronic drawing files. Each drawing will be clearly marked with "As-Built Document" and shall be certified by an Arizona Registered Land Surveyor.
  2. A complete set of As-Built reproducible mylars from the final Microstation drawings and an electronic pdf file on CD are required.
  3. The original copy of the Project Record Drawings (redline mark-ups).

**1.10. PROJECT SAFETY**

- A. The Occupational Safety and Health Act (OSHA) and the City of Scottsdale loss control procedures are the minimum standard for safety and environmental protection and must be fully complied with at all times. All Work will be performed in compliance with all applicable federal, state and local laws, ordinances, statutes, rules and regulations including ADOSH policies and procedures. Contractor may be required to attend a City safety briefing session at the pre-construction meeting. The session will be attended by the Contract Administrator, the designated Risk Management staff, and a Contractor's Representative.

Contractors that violate the aforementioned rules and regulations may be subject to job shutdown and or removal from City facilities.

- B. The Risk Management Division makes available a packet which contains the City's OSHA compliance guidelines, emergency evacuation, the City's safety and health plan, and other safety information.
- C. Contractor will conduct tailgate safety meetings regularly to ensure that safety on the job is given priority.
- D. Contractor will contact the City's Representative and the Risk Management Division within 24 hours of the occurrence of an accident or injury arising out of Contractor's Work under this Contract.
- E. Contractor employees are encouraged to abate or remedy any unsafe act or

condition, which may arise in the course of Contractor's Work under this Contract.

- F. The City reserves the right to conduct safety audits at the Job Site and stop unsafe acts at any time. In addition, the City will be notified within 4 hours should any OSHA inspection occur at a City Job Site.
- G. Contractor recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to:
  - 1. All individuals at the Site, whether working or visiting;
  - 2. The Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site; and
  - 3. All other property at the Site or adjacent to the Site.
- H. Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.
- I. Contractor will, before 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, Contractor's Safety Representative will be an individual stationed at the Site who may have responsibilities on the Project in addition to safety.
- J. Contractor must provide OSHA 300A Summary log information including total recordable cases, total case rates, and lost workday incident rates for the past 2 calendar years. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Contractor's personnel, Subcontractors and others as applicable.
- K. Contractor will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to City's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-governmental authorities having jurisdiction over safety-related matters involving the Project or the Work.
- L. Contractor's responsibility for safety under this Article 1.10 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for:
  - 1. Complying with all Legal Requirements, including those related to health and safety matters; and
  - 2. 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.
- M. Contractor and Subcontractors must agree to provide Material Safety Data Sheets for all substances that are delivered to the City of Scottsdale, that come under the

Occupational Safety and Health Administration Toxic and Hazardous Substances – Hazard Communication Standard, 29 CFR 1910.1200 Hazard Communication (reference Occupational Safety and Health Standards, Subpart Z Toxic and Hazardous Substances – Hazardous Communication Standard).

All Contractors and all Subcontractors using chemicals on City of Scottsdale property shall use only the safest chemicals, with the least harmful ingredients. These chemicals shall be approved for use by a City of Scottsdale representative before bringing them on the property.

Contractor and all Subcontractors shall make every attempt to apply approved chemicals with highly volatile organic compounds, outside of working hours. Adequate ventilation will be used at all times during the application of these approved chemicals.

In conjunction with the Occupational Safety and Health Standards, Subpart Z Toxic and Hazardous Substances – Hazard Communication Standard, 29 CFR 1910.1200 Hazard Communication, Contractor and Subcontractors are informed of the presence of (or possible presence of) chemicals in the area where the Work requested will be performed. It is the responsibility of Contractor or all selected Subcontractors to contact the City of Scottsdale for specific information relative to the type of chemicals present and location of appropriate Material Safety Data Sheets.

Unless included in the Work, if Contractor encounters onsite material which he reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by Public Health Laws, it will immediately stop Work and report the condition to the City.

If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by Public Health Laws, Contractor will not resume Work in the affected area until the material has been abated or rendered harmless. Contractor and the City may agree, in writing, to continue Work in non-affected areas onsite. An extension of the Contract Time may be granted as provided in Article 5.

#### **1.11. WARRANTY**

The provisions of M.A.G., Section 108.8 will apply with the following additional requirements:

Should Contractor fail to begin repairs or corrective work within 14 calendar days after receipt of written notice from the City, the City may perform the necessary work and Contractor agrees to reimburse the City for the actual cost.

The warranty period on any part of the Work repaired or replaced will be extended for a period of 1 year from the date of the repair or replacement.

This warranty will not apply to damage caused by normal wear and tear or by acts beyond Contractor's control.

- A. Contractor's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than Contractor or anyone for whose acts Contractor may be liable.
- B. Contractor's warranty obligation will be for 1 year.
- C. Nothing in this warranty is intended to limit any manufacturer's warranty which provides the City with greater warranty rights than those found in this Article 1.11 or the Contract Documents. Contractor will provide the City with all manufacturers' warranties upon Substantial Completion of each Job Order.

#### **1.12. CORRECTION OF DEFECTIVE WORK**

- A. Contractor agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Article 1.11 above, within a period of 1 year from the date of Substantial Completion of the Work or any portion of the Work, or within any longer period to the extent required by the Contract Documents. All removal/replacement work, as directed by the City to Contractor, in compliance with this Contract, MAG standards and City codes will have cost determinations by the City and be issued as a deduct or change order to the Project. A Progress Payment, or partial or entire use or occupancy of the Project by the City will not constitute acceptance of Work not in accordance with the Contract Documents.

During the Work, Contractor shall take meaningful steps to begin correction of any nonconforming Work as notified by the City. 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. If Contractor fails to begin the necessary steps during the Work, the City, in addition to any other remedies provided under the Contract Documents, may provide Contractor with written notice that the City will commence correction of any nonconforming Work with its own forces.

Contractor shall take meaningful steps to begin correction of nonconforming Work subject to Article 1.11 above. These measures include but are not limited to timely correction of the Work. If Contractor fails to initiate necessary measures for this Work within 7 days of receipt of written notice from the City, the City, in addition to any other remedies provided under the Contract Documents, may provide Contractor with written notice that the City will begin correction of the nonconforming Work with its own forces.

- B. If the City does perform this corrective Work, Contractor will be responsible for all reasonable costs incurred by the City in performing the correction.
- C. Contractor shall immediately respond to any nonconforming Work that creates an emergency.
- D. The 1 year period referenced in Article 1.11 above applies only to Contractor's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies the City may have regarding Contractor's other obligations under the Contract Documents.

### 1.13. SUBCONTRACTOR AND MAJOR SUPPLIER SELECTIONS

- A. Contractor shall select major Subcontractors and major Suppliers, subject to first obtaining the City's approval. Major Subcontractors may be selected based on qualifications or a combination of qualifications and price. Subcontractors must not be selected based on price alone. Except as noted below, the selection of major Subcontractors/Suppliers is the responsibility of Contractor, but the City must approve in writing the selection of all Subcontractors. In any case, Contractor is solely responsible for the performance of the selected Subcontractors/Suppliers.
1. Contractor shall prepare a Subcontractor/Supplier selection plan and submit the plan to the City for approval or Contractor may use the City's plan as described in Article 1.13(B). This Subcontractor selection plan will identify those Subcontractor trades anticipated to be selected by qualifications only as provided in Article 1.13(B) and those Subcontractor trades anticipated to be selected by qualifications and competitive bid as provided in Article 1.13(C). This plan will also identify those Subcontractors that will not be selected through a formalized qualifications-based selection process. The Subcontractor selection plan must be consistent with the selection requirements included in this Contract.
- B. **Selection by qualifications only** - The City may approve the selection of a Subcontractor(s) or Supplier(s) based only on their qualifications when Contractor can demonstrate it is in the best interest of the Project.
1. Contractor will apply the Subcontractor selection plan approved by the City in the evaluation of the qualifications of a Subcontractor(s) or Supplier(s) and provide the City with its review and recommendation. The selection plan will be Contractor's own selection plan approved by the City or the City's selection plan as provided in this Article 1.13(B).
  2. Contractor will negotiate costs for services/supplies from the Subcontractor(s)/Supplier(s) under the approved qualifications only method.

City Selection Plan:

3. Contractor may elect to comply with the following City procedures in its selection of Subcontractor(s) or Suppliers(s) based on qualifications only:
  - a. The Request for Qualifications (RFQ) will contain the best description of the services or material desired; and
  - b. A statement that only unpriced statements of qualifications will be considered; and
  - c. State the requirements for the project, such as drawings and descriptive literature; and
  - d. State the criteria for evaluating the qualifications; and

- e. A closing date and time for receipt of a statement of qualifications and the location where the statements should be delivered or mailed; and
  - f. A statement that discussions may be held; and
  - g. A statement that only statements of qualifications determined to be acceptable will be considered for award.
4. The RFQ may be amended after the submission of the statements of qualifications. Any amendment will be distributed only to bidders who submitted statements of qualifications. Those bidders will be permitted to submit new unpriced statements of qualifications or to amend statements already submitted.
  5. Statements of Qualifications will not be opened publicly but will be opened in the presence of Contractor. The contents of unpriced statements of qualifications will not be disclosed to unauthorized persons.
  6. Statements of Qualifications will be evaluated solely in accordance with the criteria stated in the RFQ and will be determined to be either acceptable for further consideration or unacceptable. A determination that the statement is unacceptable shall be in writing, state the basis of the determination and be retained by Contractor. Contractor will notify the bidder of the determination and the bidder will not be given an opportunity to amend its statement of qualifications further.
  7. Contractor may conduct discussions with any bidder who submits an acceptable or potentially acceptable statement of qualifications. During discussions, Contractor will not disclose any information derived from any other bidder's statement of qualifications.
  8. Contractor will negotiate costs for services/supplies from the Subcontractor(s)/Supplier(s) selected under this method.
- C. **Selection by qualifications and competitive bid** – Contractor will apply the City's Subcontractor selection plan stated above or Contractor's selection plan, if previously approved by the City, in Contractor's evaluation of the qualifications of Subcontractor(s)/Supplier(s) and will provide the City with the selected process to prequalify prospective Subcontractors/Suppliers. Selection may not be based on price alone. All Work by major Subcontractors and major Suppliers will then be competitively bid to the prequalified Subcontractors unless a Subcontractor or Supplier was selected in accordance with Article 1.13(B) above. Contractor may elect to comply with the following procedures in step 2 of its competitive bid process.
1. Contractor will develop Subcontractor and Supplier interest, submit the names of a minimum of 3 qualified Subcontractors or Suppliers for each trade in the Project and solicit bids for the various Work categories. If there are not 3 qualified Subcontractors/Suppliers available for a specific trade

or there are extenuating circumstances, Contractor may request approval by the City to submit less than 3 names. Without first giving written notice to the City, no change in the recommended Subcontractors/Suppliers will be allowed.

2. If the City objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, Contractor will nominate a substitute Subcontractor/Supplier that is acceptable to the City.
  3. Contractor will distribute Drawings and Specifications, and when appropriate, conduct a prebid conference with prospective Subcontractors and Suppliers. Contractor will then review the price bids submitted by Subcontractors and Suppliers and make its selection based on the responsive and responsible bidder with the lowest price.
  4. If Contractor desires to self-perform certain portions of the Work, it must request to be one of the approved Subcontractor bidders for those specific bid packages. Contractor's bid will be evaluated in accordance with the process identified in the Invitation for Bids. If events warrant and the City concurs that in order to ensure compliance with the Project Schedule or cost, Contractor may self-perform Work without bidding or re-bidding the Work. (For horizontal construction, as defined in A.R.S. § 34-101(15), Contractor must self-perform not less than 45% of the Work as required by A.R.S. § 34-603(I) (3).)
- D. If after receipt of sub-bids or after award of Subcontractors and Suppliers, the City objects to any nominated Subcontractor/Supplier or to any self-performed Work for good reason, Contractor will nominate a substitute Subcontractor or Supplier, preferably if this option is still available, from those who submitted Subcontractor bids for the Work affected. Once the substitute Subcontractors and Suppliers are consented to by the City, Contractor's proposed price for the Work or portion of the Work will be correspondingly adjusted to reflect any higher or lower costs from any substitution. Under no circumstances will the City's objection or comment on any Subcontractor or Supplier relieve Contractor of its sole responsibility for control over the methods, means and processes by which the Work is accomplished. The City must approve in writing the selected Subcontractor Selection Plan before work commences on any Job Order.

## **ARTICLE 2 - CITY'S SERVICES AND RESPONSIBILITIES**

### **2.1 INFORMATION AND SERVICES**

- A. The City will furnish Contractor, at no cost to Contractor, the following information or services for this Project:
1. One copy of data pertinent to the Work. However, Contractor will be responsible for searching the records and requesting information required for the Project.
  2. All available data and information relative to policies, standards, criteria, studies, etc.

3. Project funding and budget allocations and any changes affecting the funding or budget allocations.
4. For purpose of determining the Job Order Price, any Plans and Specifications.
5. For purpose of Project Record Drawings, a CADD file of the Construction Documents in Microstation format compatible with City of Scottsdale CADD requirements.

## **2.2 CITY'S REPRESENTATIVE**

- A. The City's Representative will be responsible for providing City-supplied information and approvals in a timely manner to permit Contractor to fulfill its obligations under the Contract Documents.

## **2.3 DESIGN PROFESSIONAL SERVICES**

- A. The City may contract separately with one or more Design Professionals to provide architectural or engineering design of the Project in accordance with the provisions of A.R.S. §34-603.
- B. The City may contract with the Design Professional to provide some or all of the following services during the performance of the Work:
  1. The Design Professional may provide administration of the Work. The City and Contractor will endeavor to communicate through the Design Professional. Communications by and with the Design Professional's consultants will be through the Design Professional.
  2. The Design Professional may visit the Site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in accordance with the Contract Documents. The Design Professional will keep the City informed of progress of the Work and will endeavor to guard the City against defects and deficiencies in the Work.
  3. Upon Contractor's submittals, the Design Professional may review and approve or take other appropriate action on submittals as Shop Drawings, Product Data and Samples in accordance with Article 1.6.
  4. All drawings produced for projects considered to be performed under Contractor are the property of the City and are owned in whole by the City for any and all future use and considerations.

## **2.4 CITY'S SEPARATE CONTRACTORS**

The City is responsible for all Work performed on the Project or at the Site by separate contractors under the City's control. The City will contractually require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with

Contractor in order to enable Contractor to timely complete the Work consistent with the Contract Documents. Contractor agrees to reasonably cooperate and coordinate its activities with those of the separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

## **2.5 FURNISHING OF SERVICES AND INFORMATION**

- A. The City will be responsible for the payment or waiver of the following:
1. City review and permit(s) fees for building, encroachment, and demolition permits including City, State and County.
  2. City review fees for grading and drainage, water, sewer and landscaping.
  3. Utility design fees or permanent services fees are paid by the City, but all submittals are the responsibility of Contractor.
  4. Obtaining Nationwide 404 Permits.
  5. City Development Fees.
- B. Unless expressly stated to the contrary in the Contract Documents, the City will provide, at its own cost and expense, for Contractor's information the following:
1. To the extent available, surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;
  2. Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, necessary to permit the proper design and construction of the Project and enable Contractor to perform the Work;
  3. A legal description and Street or Physical address of the Site;
  4. To the extent available, as-built record or historical drawings of any existing structures at the Site;
  5. To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including hazardous materials, in existence at the Site; and
  6. To the extent available, Geotechnical studies describing subsurface conditions and other surveys describing other latent or concealed physical conditions at the Site.

The City will provide all City standards and guidelines, supplementary conditions and special provisions that will be included in the plans and specifications for the Project. These may include but are not limited to: disposal of surplus material, special security provisions, investigation of underground facilities, traffic controls and regulations, special quality control testing and termite treatment requirements.

## **2.6 PROJECT MANAGEMENT SERVICES**

- A. The City may contract separately with one or more Technical Consultants to provide project management assistance for the Project. The Technical Consultant's contract as well as contracts with other firms hired by the City will be furnished to Contractor. Contractor will not have any right, however, to limit or restrict any Contract Modifications that are mutually acceptable to the City and Technical Consultant.
- B. The Technical Consultant services will augment the City staffing resources to effectively manage the objectives of the City and this Project with the goal of managing the key Project communication, cost and time parameters.
- C. The Technical Consultant may provide preprogramming and design standards.
- D. The City may contract with the Technical Consultant to provide any or all of the services or functions of the City's project manager during the performance of the construction:

## **2.7 PERMIT REVIEW AND INSPECTIONS**

For clarification, permitting activities are handled by the City of Scottsdale Developmental Services, Fire and Planning Departments. Obtaining any permits and submittals are the responsibility of the City.

## **2.8 UTILITY COMPANY COORDINATION**

Contractor will be responsible for coordinating utility design work for permanent service to the Project and will ensure that the work takes place in a timely manner and does not impact the Project Schedule. Any utility design fees for permanent services to a Job Order will be paid by the City in accordance with Article 2.6.

# **ARTICLE 3 - CONTRACT TIME AND JOB ORDER TIME**

## **3.1 CONTRACT TIME**

- A. Contract Time for this Job Order Contract will commence on the Effective Date and will be for two years, with the option to extend for three additional years in one-year increments.
  - 1. The option to extend may be exercised based on Contractor's successful performance and the needs of the City.
  - 2. A Contract Modification will be processed for each extension and will commence on or about the anniversary date of the Contract. Each extension must be authorized by the Contract Administrator and Purchasing Director. If the City Council has approved this Contract, a subsequent Contract Modification that is limited to extending the Contract Time pursuant this Article 3.1 does not require additional approval from the City Council.

- B. The Contract will remain in full force and effect during the performance of any Job Order.

### **3.2 JOB ORDER TIME**

- A. Job Orders may be issued at any time during the term of this Contract.
- B. Each individual Job Order will include a Job Order Notice to Proceed date, Duration of the Work as determined in accordance with this Article 3.2 and a calculated Substantial Completion date.
- C. Contractor agrees that it will commence performance of the Work and achieve each individual Job Order Time.
- D. Each Job Order Time will be subject to adjustment in accordance with Article 5.

### **3.3 SUBSTANTIAL COMPLETION**

- A. Substantial Completion of each Job Order is when all construction has been completed with the exception of final inspection punch list work. The purpose of granting or acknowledging substantial completion is to stop Job Order Time.
- B. Before notifying the City in accordance to Article 3.3(C), Contractor will inspect the Work and prepare and submit to the City a comprehensive list of items to be completed or corrected. Contractor will proceed promptly to complete and correct items on the list. Failure to include an item on the list does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents.
- C. Contractor will notify the City when it believes a Job Order, or to the extent permitted in the Contract Documents, a portion of the Job Order, is substantially complete.
- D. Within 5 days of the City's receipt of Contractor's notice, the City and Contractor will jointly inspect the Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents.
- E. If the Work is substantially complete, the City will prepare and issue a Certificate of Substantial Completion that will state:
  - 1. The date of Substantial Completion of the Work or portion of the Work;
  - 2. The remaining items of Work that have to be completed within 30 calendar days before Final Acceptance;
  - 3. Provisions (to the extent not already provided in the Contract Documents) establishing the City's and Contractor's responsibility for the Project's security, maintenance, utilities and insurance pending Final Acceptance.
- F. The City, at its option, may use a portion of the Work which has been determined

to be substantially complete provided, however, that:

1. Certificate of Substantial Completion has been issued for the portion of Work addressing the items in Article 3.3(E) (2);
2. Contractor and the City have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project, and
3. The City and Contractor agree that the City's use or occupancy will not interfere with Contractor's completion of the remaining Work.

**3.4 PUNCH LIST PREPARATION**

A minimum of 7 days before Substantial Completion Contractor, in conjunction with the City, will prepare a comprehensive list of Punch List items, which the City may edit and supplement. Contractor will proceed promptly to complete and correct the Punch List items. Failure to include an item on the Punch List does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. Warranties required by the Contract Documents will not commence until the date of Final Acceptance unless otherwise provided in the Contract Documents. Seven (7) days before the City issues its Final Acceptance Letter, Contractor will deliver to the City all Operation and Maintenance Manuals necessary for the City to assume responsibility for the operation and maintenance of that portion of the Work.

**3.5 FINAL ACCEPTANCE**

Upon receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance the City and Contractor will jointly inspect to verify that the remaining items of Work have been completed as provided in Article 3.3(E). The City will issue a Final Acceptance Letter.

**3.6 LIQUIDATED DAMAGES**

- A. Contractor understands that if Substantial Completion is not attained within the Job Order Time of the Work as may be adjusted for each Job Order, the City will suffer damages, based on the anticipated loss caused by the breach and the difficulty in determining and accurately specifying the damages. Contractor agrees that if Substantial Completion is not attained within the Job Order Time as adjusted, Contractor will pay the City the amount prescribed in Article 3.6(B) below as liquidated damages for each Day that Substantial Completion extends beyond the date determined by the Job Order Time as adjusted.
- B. The following will be the liquidated damages for each Job Order unless a specific amount has been determined for each individual Job Order.

**LIQUIDATED DAMAGES**

Original Job Order Amount		Daily Charges
From more than	To and including	Calendar Day or Fixed Date
\$00	\$25,000	\$200
25,001	50,000	250

50,001	100,000	280
100,001	500,000	430
500,001	750,000	500
750,001	1,000,000	570
1,000,001	1,250,000	610
1,250,001	1,500,000	650

**ARTICLE 4- CONTRACT PRICE AND JOB ORDER PRICE**

**4.1 CONTRACT PRICE**

This Contract will have a maximum contract amount of \$6,000,000.00 for the initial two-year term and \$3,000,000.00 for any one-year renewal term. The Contractor agrees at its own cost and expense, to do all the Work as specified in the Contract Documents and any Work contingent to the Contract and necessary for the construction of the improvements. The Contractor will completely construct the Work and install the materials, free and clear of all claims, liens, and charges of any kind, in the manner and under the conditions specified within the time or times stated in each Job Order.

- A. In no event will any individual Job Order Price exceed \$2,000,000.00. If the City opts to extend this Contract in accordance with Article 3.1(A), the Contract Modification may increase the maximum amount, if necessary, at that time.
- B. The Job Order Price is subject to adjustments made in accordance with Article 5.
- C. Unless otherwise provided in the Contract Documents, the Job Order Price is considered to include all sales, use, consumer and other taxes throughout the term of this Contract, whether or not yet effective or merely scheduled to go into effect.
- D. Contractor must secure and maintain, during the life of the Contract, State of Arizona and City of Scottsdale Transaction Privilege (sales) Tax Licenses.

To obtain a State of Arizona Privilege (Sales) Tax License Application, please go to the following website:

<https://azdor.gov/transaction-privilege-tax/tpt-license/applying-tpt-license>

To obtain a City of Scottsdale Transaction (Sales) Tax License Application, please go to the following website:

<http://www.scottsdaleaz.gov/taxes/>

Contractor must demonstrate compliance with the E-Verify Program as provided in Article 11.34 and as required by A.R.S. §41-1080 before issuance of any License by the City.

**4.2 RESPONSIBILITY FOR PRIVILEGE (SALES) TAXES**

- A. Contractor is responsible for payment of all applicable State of Arizona and City of Scottsdale transaction privilege (sales) taxes due on construction income whether

or not these taxes are specifically separated in the bid amount. The taxes are to be reported on either a progressive billing (accrual) basis or cash receipts basis, depending on the method chosen at the time application was made for the Privilege (sales) Tax License.

City Privilege (sales) tax exemptions/deductions may be applicable to certain projects. Contractor is advised to consider this as it prepares its bid. Please review, in detail, Sections 415, 465, and 110 of the Scottsdale Revised City Code, Appendix C to determine if exemptions/ deductions are applicable. For tax guidance, please reference the City Code and other tax resources at the following website:

<http://www.scottsdaleaz.gov/taxes/>

The State of Arizona has similar exemptions; please reference A.R.S. Title 42 at the following website:

<http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=42>

For further questions regarding tax treatment, please contact the Arizona Department of Revenue at 602-255-2060 and the City of Scottsdale Tax & Audit Section at 480-312-2768.

## **ARTICLE 5 - CHANGES TO THE CONTRACT PRICE AND TIME**

### **5.1 DELAYS TO THE WORK**

- A. Delays may be compensable, concurrent, excusable or non-excusable as defined in Article 12.
- B. If Contractor is delayed in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Contractor is responsible, the Contract Times for performance may be reasonably extended by Job Order Adjustment.
- C. Contractor must request an increase in the Job Order Time by written notice including an estimate of the probable effect of delay on progress of the Work. In the case of a continuing delay only one request is necessary.
- D. Written notice will be received within 5 days of the commencement of the cause of the delay.
  - 1. If written notice is received more than 5 days after commencement of the cause of the delay, the period of delay will be considered to commence 14 days before the giving of any notice.
- E. If adverse weather conditions are the basis for a request for additional Job Order Time, the requests shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

- F. Permitting Contractor to proceed to complete any Work, or any part of the Work, after the date to which the time of completion may have been extended, will in no way act as a waiver on the part of the City of any of its legal rights.
- G. In the event that Contractor sustains damages as a result of expenses incurred by a delay for which the City is responsible, Contractor and the City will negotiate to determine the amount of any damages. This provision is made in accordance with Arizona Revised Statutes Section 34-607 (E) and is effective only if the delay caused by the City is unreasonable under the circumstances and was not within the contemplation of the parties. This provision will not be construed to void any provision of this Contract pertaining to notice of delays, arbitration or other settlement provisions applicable to disputes, or provisions relating to liquidated damages.
- H. In addition to Contractor's right to a time extension for those events stated in this Article 5.1, Contractor may also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price will not be adjusted for those events stated in this Article that are beyond the control of both Contractor and the City, including the events of war, acts of terrorism, floods, labor disputes (but not including Contractor's own work force and those of its subcontractors), earthquakes, epidemics, excessive inclement weather conditions not reasonably anticipated.

## **5.2 DIFFERING SITE CONDITIONS**

- 5.2.1.** If Contractor encounters a Differing Site Condition(s), Contractor may be entitled to an adjustment in the Contract Price or Contract Time(s) to the extent Contractor's cost or time of performance are the direct result of a Differing Site Condition(s).
- 5.2.2.** Upon encountering a Differing Site Condition, Contractor shall provide prompt written notice to the City of the condition, which notice will not be later than 7 days after the condition has been encountered. Final costs must be submitted within thirty (30) days after notice is received by the City, unless extended by written agreement of the parties. Contractor must give the City's Contract Administrator written notice of and an opportunity to observe, such condition before disturbing or altering the Differing Site conditions. The failure of Contractor to give written notice and make the Claim as required by this Article and Article 7.1.5 shall constitute a waiver by Contractor of any rights arising out of or relating to such Differing Site Conditions. (Final costs must be submitted within thirty (30) days after notice is received by the City, unless extended by written agreement of the parties.)
- 5.2.3.** In order for the JOC to obtain any additional compensation or time extensions for Differing Site Conditions, the JOC must demonstrate that it encountered a material difference at the Site, as defined in Article 13, that required it to expend additional cost or time. The JOC will also establish that it actually and reasonably relied upon the representations found in the Contract Documents concerning the Site conditions.

**5.3 APPLICATION FOR EXTENSION OF TIME**

**5.3.1** If performance by Contractor is delayed for a reason set forth in Article 5, Contractor may be allowed a reasonable extension of time in conformance with this Article. Before Contractor's time extension request may be considered, Contractor shall notify the City of the condition which allegedly has caused or is causing the delay, and shall submit a written application to the City identifying:

1. Liquidated damage assessment rate, as specified in the Contract;
2. Original Job Order Price;
3. The original Contract start date and completion date;
4. Any previous time extensions granted (number and duration); and
5. The extension of time requested.

**5.3.2** In addition, the application for extension of time shall set forth in detail:

1. The nature of each alleged cause of delay in completing the Work;
2. The date upon which each such cause of delay began and ended and the number of dates attributable to each such cause;
3. A statement that Contractor waives all claims except for those delineated in the application, and the particulars of any claims which Contractor does not agree to waive. For time extensions for Substantial Completion and final completion payments, the application shall include a detailed statement of the dollar amounts of each claim item reserved; and
4. A statement indicating Contractor's understanding that the time extension is granted only for purposes of permitting continuation of Contract performance and payment for Work performed and that the City retains its right to conduct an investigation and assess liquidated damages as appropriate in the future.

**5.4 ERRORS, DISCREPANCIES AND OMISSIONS.** If Contractor observes errors, discrepancies or omissions in the Contract Documents, it will promptly notify the City and request clarification. Contractor will provide a copy of this notice to the City's Representative.

- B. If Contractor proceeds with the Work affected by the errors, discrepancies or omissions, without receiving any clarifications, it does so at its own risk. Adjustments involving these circumstances made by Contractor before clarification by the Design Professional will be at Contractor's risk.

**5.5 CITY REQUESTED CHANGE IN WORK**

- A. The City reserves the right to make, at any time during the progress of the Work, any alterations as may be found necessary or desirable.

- B. These alterations and changes will not invalidate this Contract nor release the surety and Contractor agrees to perform the Work as altered, the same as if it had been a part of the original Contract Documents. Contractor will notify the surety of the changes and will assure that the alternations and changes are adequately covered by the surety bond.
- C. The City will request a proposal for a change in Work from Contractor, and an adjustment in the Contract Price or Contract Times will be made based on a mutual agreed upon cost and time.

## **5.6 LEGAL REQUIREMENTS**

The Job Order Price or Job Order Times will be adjusted to compensate Contractor for the effects of any changes in the Legal Requirements enacted after the date of the Contract affecting the performance of the Work.

## **5.7 JOB ORDER ADJUSTMENTS**

- A. In accordance with Scottsdale Revised Code §2-200 and related Rules and Procedures, the City and Contractor will negotiate in good faith and as expeditiously as possible the appropriate Adjustments to the Contract. Upon reaching an agreement, the parties will prepare and execute an appropriate Adjustment reflecting the terms of their agreement. The change in Work may or may not include an Adjustment in the Job Order Price or Job Order Time.
- B. All changes in Work authorized by Job Order Adjustments will be performed under the conditions of the Contract Documents. The decision to make an Adjustment in the Contract rests solely with the City and any decision to make a Contract Adjustment must be promptly complied with by Contractor, subject to the provisions of Article 5.8.
- C. The execution of a Job Order Adjustment by Contractor shall constitute conclusive evidence of Contractor's agreement to the ordered changes in work, this Contract as thus amended, the Contract Price, and the time for performance by Contractor. Contractor, by executing the Job Order Adjustment, waives and forever releases any claim against the City for any additional time or compensation for matters relating to, arising out of, or resulting from the work included within or affected by the executed Job Order Adjustment of which Contractor knew or should have known.

## **5.8 UNILATERAL DETERMINATION OF CHANGE ORDER VALUE**

If no mutual agreement occurs between the City and Contractor, the change in Contract Price, if any, shall be derived by determining the reasonable actual costs incurred or savings achieved, resulting from revisions to the Work. Such reasonable actual costs or savings shall include a component for direct job site overhead and profit but shall not include home-office overhead or other indirect costs and components. The calculation of actual costs shall conform to the markup schedule in Article 5.12 below. Any such costs or savings shall be documented in the format and with such content and detail as the City requires. Contractor shall promptly submit such documentation and other

backup as the City may require in evaluating the actual costs incurred.

## **5.9 ADDITIONAL CHANGE ORDER COST REQUIREMENTS**

Contractor's or Subcontractor's submittals shall include the cost of materials, sales tax, and the cost of all transport. The cost of items listed shall be directly related to the Job Order Adjustment. Indirect costs not specifically related to the Job Order Adjustment shall not be considered. Contractor's or Subcontractor's Direct Labor Costs shall be limited to the hourly rate of directly involved workmen, employer contributions toward Contractor standard benefits, pensions, unemployment or social security (if any), and employer costs for paid sick and annual leave. Contractor's or Subcontractor's Overhead shall include license fees, bond premiums, supervision, wages of timekeepers and clerks, incidentals, home and field office expense, and vehicle expense directly related to the Project, and all other direct Project expenses not included in Contractor's material, direct labor, and equipment costs.

**5.9.1** The allowance for overhead and profit shall be limited to the following schedule:

1. For Contractor, for any work performed by Contractor's own forces, fifteen (15%) percent of the Subtotal of Costs to Contractor.
2. For Contractor, for any work performed by its Subcontractor, six (6%) percent of the amount due to the Subcontractor.
3. For each Subcontractor or Sub-subcontractor involved, for any work performed by their own forces, fifteen (15%) of their materials and direct labor costs.
4. For each Subcontractor, for work performed by its Sub-Subcontractor(s), six (6%) percent of the amount due to the Sub-subcontractor.

## **5.10 LIMITATION OF COMPENSABLE ITEMS**

**5.10.1** For Job Order Adjustment, the total cost or credit to the City shall be based on the following schedule:

1. Contractor's Materials Costs.
2. Contractor's Direct Labor Costs.
3. Contractor's Equipment Costs (includes owned/rented equipment).
4. Applicable Subcontractor Costs.
5. Subtotal of Costs to Contractor.
6. Contractor's Overhead and Profit.
7. Total Cost or Credit to the City.

## **5.11 FIELD ORDERS**

- A. The City has authority to initiate Field Orders that do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Field Orders will be made by written order and will be binding on the City and Contractor. Contractor will carry out any written orders promptly.
- B. Field Orders will not involve an Adjustment in the Job Order Price or Job Order Times unless or until it becomes a Contract Adjustment.
- C. Contractor may make minor changes in the Work, provided, however that Contractor will promptly inform the City, in writing, of any changes and record the changes, if appropriate, on the Project Record Documents maintained by Contractor.

#### **5.12 JOB ORDER PRICE ADJUSTMENTS**

- A. The increase or decrease in Job Order Price resulting from a change in the Work will be determined by one or more of the following methods:
  - 1. Unit prices stated in the Contract or as subsequently agreed to between the parties;
  - 2. A mutually agreed upon accepted, lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by the City; and
  - 3. Costs, fees and any other markups.
- B. If an increase or decrease cannot be agreed to as stated in Article 5.8(A) (1) through Article 5.8(A) (3) the cost of the change of the Work will be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be stated in the Contract. Contractor will maintain a documented, itemized accounting evidencing the expenses and savings associated with these changes.
- C. If unit prices are stated in the Contract Documents or are later agreed to by the parties, but application of the unit prices will cause substantial inequity to the City or Contractor because of differences in the character or quantity of the unit items as originally contemplated, the unit prices will be equitably adjusted.
- D. If the City and Contractor disagree upon whether Contractor is entitled to be paid for any services required by the City, the amount to be paid, other disagreements over the Scope of Work, proposed changes to the Work, the time required to complete the Work, the City and Contractor will resolve the disagreements in accordance with Article 7.
  - 1. As part of the negotiation process, Contractor will furnish the City with a good faith estimate of the costs to perform the disputed services, or the additional time required in accordance with the City's interpretations.

2. If the parties are unable to agree and the City expects Contractor to perform the services in accordance with the City's interpretations, Contractor will proceed to perform the disputed services, conditioned upon the City issuing a written order to Contractor:

- (a) directing Contractor to proceed; and

- (b) specifying the City's interpretation of the services that are to be performed.

- E. Emergencies. In any emergency affecting the safety of persons or property, Contractor will act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Job Order Price or Job Order Time(s) resulting from emergency work under this Article 5.8(F) will be determined as provided in this Article 5.

## **ARTICLE 6- PROCEDURE FOR PAYMENT**

### **6.1 JOB ORDER PAYMENT REQUEST**

- A. At the pre-construction conference prescribed in Article 1.3, Contractor will submit for the City's review and approval a Schedule of Values. The Schedule of Values will include values for all items comprising the Job Order Price and will serve as the basis for monthly progress payments made to Contractor throughout the Work.
- B. At least 5 working days before the date established for a progress payment, Contractor will meet with the City's Representative to review the progress of the Work, as it will be reflected on the Job Order Payment Request.
- C. The Job Order Payment Request will constitute Contractor's representation that the Work has been performed consistent with the Contract Documents, has progressed to the point indicated in the Job Order Payment Request, and that title to all Work will pass to City free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project.

### **6.2 PARTIAL PAYMENTS**

- A. Partial payment will be made for Job Orders with Job Order Time greater than 30 Days and may be made if the Job Order Time is less than 30 Days.
- B. The Job Order Payment Request may request payment for equipment and materials not yet incorporated into the Project if construction progress is in reasonable conformance with the approved schedule.
- C. For equipment and materials suitably stored at the Site, the equipment and materials will be protected by suitable insurance and the City will receive the equipment and materials free and clear of all liens and encumbrances.
  1. For materials and equipment stored off the Site, the City must approve the storage. The material and equipment must be stored within Maricopa County and be accessible for the City's inspection. Title to the materials and equipment will include applicable insurance, bonding, storage and

transportation to the Site.

2. All bonds and insurance required for stored materials will be in the City's name.

### **6.3 PAYMENT OF JOB ORDER PRICE**

- A. Payments should be provided on the City format for a Pay Application which is based on the agreed upon "Schedule of Values." The City will make payment in accordance with A.R.S. §34-607. Payment will be made no later than 14 days after the Job Order Payment Request is certified and approved, but in each case less the total of payments previously made.
- B. The City will pay Contractor all amounts properly due. If the City determines that Contractor is not entitled to all or part of a Contractor Payment Request, it will notify Contractor in writing within 7 days after the date Contractor Payment Request is received by the City. The notice will indicate the specific amounts the City intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Contractor must take to rectify the City's concerns. Contractor and the City will attempt to resolve the City's concerns. If the parties cannot resolve the concerns, Contractor may pursue its rights under the Contract Documents, including those under Article 7.

### **6.4 RETENTION ON JOB ORDER PAYMENTS**

In compliance with Arizona Revised Statutes §34-607, there is no retention for Job Order Contracting construction services.

### **6.5 FINAL PAYMENT**

- A. After receipt of a final Contractor Payment Request, the City will make final payment as required by this Article, provided that Contractor has completed all of the Work in conformance with the Contract Documents and a Final Acceptance Letter has been issued by the City.
- B. At the time of submission of its final Contractor Payment Request, Contractor will provide the following information:
  1. An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect the City's interests; and
  2. A general release executed by Contractor waiving, upon receipt of final payment by Contractor, all claims, except those claims previously made in writing to the City and remaining unsettled at the time of final payment.

### **6.6 PAYMENTS TO SUBCONTRACTORS OR SUPPLIERS**

- A. Contractor will pay its Subcontractors or suppliers within 7 calendar days of receipt of each progress payment from the City. Contractor will pay for the amount of

Work performed or materials supplied by each Subcontractor or supplier as accepted and approved by the City with each progress payment. No Contract between Contractor and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment as provided in this Contract.

- B. If Contractor fails to make payments in accordance with these provisions, the City may take any one or more of the following actions and Contractor agrees that the City may take these actions:
  - 1. To hold Contractor in default under this Contract;
  - 2. Withhold future payments until proper payment has been made to Subcontractors or suppliers in accordance with these provisions;
  - 3. Reject all future offers to perform work for the City from Contractor for a period not to exceed 1-year from the Substantial Completion date of this Project; or
  - 4. Terminate this Contract.
- C. Should the City fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, the failure or delay will not be considered a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions of this Contract.
- D. Contractor will include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Contract.

#### **6.7 RECORD KEEPING AND FINANCE CONTROLS**

- A. Records of Contractor's direct personnel payroll, reimbursable expenses related to each Job Order and records of accounts between the City and Contractor will be kept on a generally recognized accounting basis and will be available for 3 years after completion of the Project.

From the effective date of this Contract and until 3 years after the date of final payment by the City of Scottsdale to Contractor, the City, its authorized representative, or the appropriate federal or state agencies, reserve the right to audit Contractor's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any change orders. The City of Scottsdale or its authorized representative will have access, during normal working hours, to all necessary Contractor and Subcontractor facilities, and will be provided adequate and appropriate workspace, in order to conduct audits in compliance with the provisions of this Article. The City of Scottsdale will give Contractor or Subcontractor reasonable advance notice of intended audits.

- B. The City reserves the right to decrease Job Order Price or payments made on this Contract if, upon audit of Contractor's records, the audit discloses Contractor has provided false, misleading, or inaccurate cost and pricing data.

- C. Contractor will include a similar provision in all of its Contracts with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the City, its authorized representative, or the appropriate federal or state agency, has access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.
- D. The City reserves the right to decrease Job Order Price or payments made on this Contract if the above provision is not included in Subconsultants' and Subcontractors' contracts, and one or more Subconsultants or Subcontractors do not allow the City to audit their records to verify the accuracy and appropriateness of pricing data.
- E. If an audit in accordance with this Article, discloses overcharges of any nature by Contractor to the City in excess of 1% of the total contract billings, the actual cost of the City's audit will be reimbursed to the City by Contractor. Any adjustments or payments which must be made as a result of any audit or inspection of Contractor's invoices or records will be made within a reasonable amount of time (not to exceed 90 days) from presentation of the City's findings.
- F. This audit provision includes the right to inspect personnel records as required by Section 11.34.

## **ARTICLE 7- CLAIMS AND DISPUTES**

### **7.1 REQUESTS FOR CONTRACT ADJUSTMENTS AND RELIEF**

- 7.1.1** If either Contractor or the City believes that it is entitled to relief against the other Contractor for any event arising out of or related to Contract Services, that party will provide written notice to the other party of the basis for its claim for relief. The claims shall set forth in detail all known facts and circumstances supporting the claim; final costs associated with any claim upon which notice has been given must be submitted in writing to the City within thirty (30) days after notice has been received.
- 7.1.2** This notice will, if possible, be made before incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of the Contract.
- 7.1.3** In the absence of any specific notice requirement, written notice will be given within a reasonable time, not to exceed 10 days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later.
- 7.1.4** This notice will include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of the request. ANY NOTICE OF CLAIM NOT FILED WITH THE CITY WITHIN SUCH TIME AND IN COMPLIANCE WITH THE PRECEEDING PROVISIONS SHALL BE CONSIDERED TO HAVE BEEN WAIVED AND SHALL BE DISMISSED.

**7.1.5** In the event Contractor seeks to make a claim for an increase in the Contract Price, as a condition precedent to any liability of the City therefore, unless emergency conditions exist, Contractor shall strictly comply with the requirements of this section and such claim shall be made by Contractor before proceeding to execute any work for which a claim is made. Failure to comply with this condition precedent shall constitute a waiver by Contractor of any claims for compensation.

**7.1.6** Contractor must continue its performance under this contract regardless of the existence of any claims by Contractor.

**7.1.7** In a claim by Contractor against the City for compensation in excess of the Contract sum, any liability of the City to Contractor shall be strictly limited and computed in accordance with the Contract documents and shall in no event include indirect costs (such as home office overheads or consequential damages of Contractor or any estimated costs or damages).

## **7.2 DUTY TO CONTINUE PERFORMANCE**

Unless provided to the contrary in the Contract Documents, Contractor will continue to perform the Work and the City will continue to satisfy its payment obligations to Contractor, until final resolution of any dispute or disagreement between Contractor and the City.

## **7.3 REPRESENTATIVES OF THE PARTIES**

### **A. City's Representatives**

1. The City designates the individual listed below as the City's Senior Representative. This individual has the authority and responsibility for avoiding and resolving disputes under Article 7.2(C):

Alison Tymkiw  
City Engineer  
One Civic Center – 2<sup>nd</sup> Floor  
7447 East Indian School Road  
Scottsdale, AZ 85251  
(480) 312-2641

2. The City will designate an individual for each Job Order as the City's Representative. This person will manage the Job Order.

### **B. Contractor's Representatives**

1. Contractor designates the individual listed below as Contractor's Senior Representative. This individual has the authority and responsibility for avoiding and resolving disputes under Article 7.2(C):

Name: Todd Gladden  
Address: 4640 E. Cotton Gin Loop  
Phoenix, AZ 85040  
Telephone No: 623-242-0246

2. Contractor will designate an individual for each Job Order as Contractor's Representative.

## **ARTICLE 8 – SUSPENSION, TERMINATION AND CANCELLATION**

### **8.1 CITY'S RIGHT TO STOP JOB ORDER SERVICES**

- A. The City may, at its discretion and without cause, order Contractor in writing to stop and suspend any Job Order. Immediately after receiving this notice, Contractor will discontinue advancing the Job Order. The suspension will not exceed 180 consecutive days. If the City suspends the Job Order for 181 consecutive Days or more, the suspension will be considered a termination for convenience.
- B. Contractor may seek an adjustment of the Job Order Price or Job Order Time if its cost or time to perform the Contract Services has been adversely impacted by any suspension or stoppage of Work by the City.

### **8.2 TERMINATION FOR CONVENIENCE**

- A. Upon receipt of written notice to Contractor, the City has the right to terminate this Contract or abandon any portion of any Job Order for which services have not been performed by Contractor.

1. Contractor will estimate the value of the Work it has completed and submit its appraisal to the City for evaluation. The City will have the right to inspect the Work to appraise the Work completed.

Contractor will receive compensation for services performed to the date of the termination . The fee will be an amount mutually agreed upon by Contractor and the City. If there is no mutual agreement, the final determination will be made in accordance with this Article.

2. The City will make the final payment within 60 days after Contractor has delivered the last of the partially completed items and the final fee has been agreed upon.

If the City terminates this Contract in compliance with this Article and proceeds to construct the Job Order through its employees, agents or third parties, the City's rights to use the Work product will be as stated in Article 8.3.

- B. Upon termination of construction services during any Job Order, Contractor will proceed with the following obligations:
  1. Stop Work as stated in the notice;
  2. Place no further subcontracts or orders;

3. Terminate all subcontracts to the extent they relate to the Work terminated;
  4. Assign to the City all right, title and interest of Contractor under the subcontracts terminated, in which case the City will have the right to settle or to pay any termination settlement proposal arising out of those terminations; and
  5. Take any action that may be necessary for the protection and preservation of the property related to the Contract that is in the possession of Contractor and which the City has or may acquire an interest.
  6. Comply with the requirements of Article 6.5(B)(1) and (2).
- C. Contractor will submit complete termination inventory schedules no later than 60 days from the date of the notice of termination.
- D. The City will pay Contractor the following:
1. The direct value of its completed Work and materials supplied as of the date of termination;
  2. The reasonable costs and expenses attributable to the termination;
  3. Contractor will be entitled to profit and overhead on completed Work but will not be entitled to anticipated profit or anticipated overhead. If it appears Contractor would have sustained a loss on the entire Work had the Job Order been completed, Contractor will not be allowed profit and the City will reduce the settlement to reflect the indicated rate of loss;
  4. Contractor will maintain all records and documents for 3 years after final settlement. These records will be maintained and subject to auditing as required in Article 6.7; and
  5. Take any action that may be necessary for the protection and preservation of the property related to the Job Order or Orders that is in the possession of Contractor and in which the City has or may acquire an interest.

### **8.3 CANCELLATION FOR CAUSE**

- A. The City may also cancel this Contract or any part of it with 7 days notice for cause in the event of any default by Contractor, or if Contractor fails to comply with any of the terms and conditions of this Contract. Unsatisfactory performance, despite a reasonable opportunity to cure as judged by the City's Representative and failure to provide the City, upon request, with adequate assurances of future performance will all be causes allowing the City to cancel this Contract for cause. In the event of cancellation for cause, the City will not be liable to Contractor for any amount, and Contractor will be liable to the City for any and all damages sustained as a result of the default that caused the cancellation.

### **8.4 CITY'S RIGHT TO PERFORM AND CANCEL FOR CAUSE**

- A. If Contractor persistently fails to:
1. Provide a sufficient number of skilled workers;
  2. Supply the materials required by the Contract or Job Order Documents;
  3. Comply with applicable Legal Requirements;
  4. Timely pay, without cause, Subconsultants or Subcontractors;
  5. Prosecute the Contract Services with promptness and diligence to ensure that a Job Order is completed by the Job Order Time, as the times may be adjusted; or
  6. Perform material obligations under the Contract Documents;

Then the City, in addition to any other rights and remedies provided in the Contract Documents or by law, will have the rights stated in Articles 8.2 and 8.3.

In the event the City cancels this Contract or any part of the services under any Job Order, the City will notify Contractor in writing, and immediately upon receiving this notice, Contractor will discontinue advancing the Work under this Contract or the Job Order and proceed to close all operations of any affected Job Order or this Contract.

- B. If the City provides Contractor with a written order to provide adequate maintenance of traffic, adequate cleanup, adequate dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and Contractor fails to comply in a time frame specified, the City may have the Work accomplished by other sources at Contractor's expense.
- C. Upon the occurrence of an event stated in Article 8.3(B), the City may provide written notice to Contractor that it intends to cancel the Contract unless the problem cited is cured, or commenced to be cured, within 7 days of Contractor's receipt of notice.
1. If Contractor fails to cure, or reasonably commence to cure, the problem, then the City may give a second written notice to Contractor of its intent to cancel within an additional 7 day period.
  2. If Contractor, within this second 7 day period, fails to cure, or reasonably commence to cure the problem, then the City may declare the Contract cancelled for default by providing written notice to Contractor of this declaration.
- D. Upon declaring the Contract cancelled in accordance with Article 8.3(B), and for the purpose of completing the Work, the City may for all Job Orders enter upon the premises and take possession of all materials, equipment, scaffolds, tools, appliances and other items, which have been purchased or provided for the performance of the Work, all of which Contractor now transfers, assigns and sets over to the City for this purpose, and to employ any person or persons to complete

the Work and provide all of the required labor, services, materials, equipment and other items.

- E. If through any cause, Contractor fails to fulfill in a timely and proper manner its obligations under this Contract, or if Contractor violates any of the covenants, Contracts, or stipulations of this Contract, the City may withhold any payments to Contractor for the purpose of setoff until the exact amount of damages due the City from Contractor is determined by a court of competent jurisdiction.
- F. In the event of a cancellation, Contractor will not be entitled to receive any further payments under the Contract Documents until the Work on all Job Orders is finally completed in accordance with the Contract Documents. At that time, Contractor will only be entitled to be paid for Work performed and accepted by the City before its default.
- G. If the City's cost and expense of completing the Work exceeds the unpaid balance of a Job Order Price, then Contractor will be obligated to pay the difference to the City. These costs and expense will include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by the City in connection with the procurement and defense of claims arising from Contractor's default.
- H. If the City cancels this Contract for cause and the cancellation is determined to have been without legal right, the cancellation for cause will be considered to have been a termination for convenience in accordance with the provisions of Article 8.2.

## **ARTICLE 9 - INSURANCE AND BONDS**

### **9.1 INSURANCE REQUIREMENTS**

- A. At the same time as execution of this Contract, Contractor will furnish the City of Scottsdale a Certificate of Insurance on a standard insurance industry ACORD form. The ACORD form will be issued by an insurance company authorized to transact business in the State of Arizona.
- B. Contractor, Subcontractors and Subconsultants must procure and maintain, until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property, which may arise from or in connection with the performance of the Work by Contractor, its agents, representatives, employees, or Subcontractors.
- C. The insurance requirements are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.
- D. The City in no way warrants that the minimum limits contained in this Contract are sufficient to protect Contractor from liabilities that might arise out of the performance of the Contract Services under this Contract by Contractor, its agents, representatives, employees, Subcontractors or Subconsultants and Contractor is free to purchase any additional insurance as may be determined necessary. The

City will not pay for higher limits, but if Contractor pays for insurance with higher limits, Contractor will name the City as an additional insured on any additional insurance.

- E. Claims Made. In the event any insurance policies required by this Contract are written on a “claims made” basis, coverage shall continue uninterrupted throughout the term of this Contract by keeping coverage in force using the effective date of this Contract as the retroactive date on all “claims made” policies. The retroactive date for exclusion of claims must be on or before the effective date of this Contract, and can never be after the effective date of this Contract. Upon completion or termination of this Contract, the “claims made” coverage shall be extended for an additional three (3) years using the original retroactive date, either through purchasing an extended reporting option; or by continued renewal of the original insurance policies. Submission of annual Certificates of Insurance, citing the applicable coverages and provisions specified herein, shall continue for three (3) years past the completion or termination of this Contract.
  
- F. Self-Insured Retentions. Any self-insured retentions and deductibles must be declared to and approved by the City. If not approved, the City may require that the insurer reduce or eliminate any self-insured retentions with respect to the City, its officers, officials, agents, employees, and volunteers.

**9.2 MINIMUM SCOPE AND LIMITS OF INSURANCE**

Contractor must provide coverage with limits of liability not less than those stated below.

A. Commercial General Liability-Occurrence Form

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$2,000,000
Fire Damage (Any one fire)	\$100,000
Medical Expenses (Any one person)	<i>OPTIONAL</i>

B. Automobile Liability-Any Auto or Owned, Hired and Non-Owned Vehicles

Combined Single Limit Per Accident For Bodily Injury and Property Damage	\$1,000,000
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C. Workers Compensation and Employers Liability

Workers Compensation	<i>Statutory</i>
Employers Liability:	
Each Accident	\$500,000
Disease - Each Employee	\$500,000
Disease - Policy Limit	\$1,000,000

D. Coverage Terms and Required Endorsements

- 1. The City of Scottsdale, its officers, officials, agents, and employees are

additional insureds with respect to liability arising out of activities performed by, or on behalf of, Contractor including the City's general supervision of Contractor; products and completed operations of Contractor; and automobiles owned, leased, hired, or borrowed by Contractor.

2. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by Contractor even if those limits of liability are in excess of those required by this Contract.
3. Contractor's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by the City, its officers, officials, agents, and employees will be in excess of the coverage provided by Contractor and must not contribute to it.
4. Contractor's insurance must apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Coverage provided by Contractor must not be limited to the liability assumed under the indemnification provisions of this Contract.
6. All policies must contain a waiver of subrogation against the City, its officers, officials, agents, and employees, for losses arising from Work performed by Contractor for the City.
7. Workers' Compensation and Employers Liability Coverage: The insurer must agree to waive all rights of subrogation against the City, its officers, officials, agents, employees, and volunteers for losses arising from Work performed by Contractor for the City.
8. If Contractor receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Contractor's responsibility to provide prompt notice to the contract administrator of same to the City, unless such coverage is immediately replaced with similar policies.

E. Builders Risk Insurance (Course of Construction)

To be provided if determined by the City as necessary with each Job Order.

Contractor bears all responsibility for loss to all Work being performed and to buildings under construction. Unless waived in writing by the City of Scottsdale, Contractor will purchase and maintain in force Builders Risk-Installation insurance on the entire Work until completed and accepted by the City. This insurance will be Special Causes of Loss or Open Perils policy form, for the completed value, at replacement cost equal to each Job Order contract price and all subsequent modifications. Contractor's Builders Risk-Installation insurance will be primary and not contributory; and waive all rights of subrogation against the City of Scottsdale, its officers, officials and employees.

This Builders Risk-Installation insurance must name the City of Scottsdale,

Contractor and all tiers of Subcontractors as respects their insurable interest at the date of loss. It must contain a provision that subject insurance will not be canceled or materially altered without at least 30 days advance notice to the City. Contractor is also required to give the City thirty (30) days advance written notice of the coverage termination for each project. The City will also be named as a Loss Payee under Builders Risk-Installation coverage.

This Builders Risk-Installation insurance must cover the entire Work including reasonable compensation for architects and Contractor's services and expenses and other "soft costs" made necessary by an insured loss. Builders Risk-Installation insurance must provide coverage from the time any covered property comes under Contractor's control and or responsibility, and continue without interruption during course of construction, renovation and or installation, including any time during which any project property or equipment is in transit, off site, or while on site for future use or installation. Insured property must include, but not be limited to, scaffolding, false work, and temporary buildings at the site. This insurance must also cover the cost of removing debris, including demolition as may be legally required by operation of any law, ordinance, regulation or code.

Contractor must also purchase and maintain Boiler and Machinery insurance with the same requirements as Builders Risk-Installation insurance stated above if the Work to be performed involves any exposures or insurable property normally covered under a Boiler and Machinery insurance policy or made necessary as required by law and or testing requirements in the performance of this Contract.

Contractor will be responsible for any and all deductibles under these policies and Contractor waives all rights of recovery and subrogation against the City under Contractor-provided Builders Risk-Installation insurance described in this Article.

The Builders' Risk insurance must be endorsed so that the insurance will not be canceled or lapse because of any partial use or occupancy by the City. Builders' Risk Insurance must be maintained until whichever of the following first occurs: (i) final payment has been made; or (ii) until no person or entity, other than the City, has an insurable interest in the property required to be covered.

By signing this Contract, all rights of subrogation are waived against the City of Scottsdale, its officers, officials, agents and employees.

### **9.3 OTHER INSURANCE REQUIREMENTS**

The policies are to contain, or be endorsed to contain, the following provisions:

- A. Contractors Professional Liability: Contractor must carry Contractors Professional Liability insurance to cover the residual, contingent, and passive design exposures of Contractor.
  - 1. The City of Scottsdale, its officers, officials, agents, and employees, are to be named as additional insureds with respect to liability arising out of: activities performed by or on behalf of Contractor, including the City's general supervision of Contractor; products and completed operations of Contractor.

2. The City, its officers, officials, agents, and employees must be additional insureds to the full limits of liability purchased by Contractor, even if those limits of liability are in excess of those required by this Contract. The Commercial General Liability policy will be at least as broad as the Insurance Service Office, Inc.'s CG 0 0 01 07 98.
- B. Contractors Professional Limits of Liability: Contractor must carry limits of \$1,000,000 each Project and \$2,000,000 in the Aggregate under a stand-alone policy or included by endorsement under the Commercial General Liability policy. Contractor, its successors and or assigns, is required to maintain this Professional Liability insurance as specified in this Contract for a minimum period of 3 years following completion and acceptance of the Work. Certificates of Insurance citing that applicable coverage is in force and contains the provisions required by this Contract must be submitted for the 3-year period.
1. Contractor's insurance coverage must be primary insurance with respect to the City, its officers, officials, agents, and employees. Insurance or self-insurance maintained by the City, its officers, officials, agents, and employees must be in excess of Contractor's insurance and will not contribute to it.
  2. Contractor's insurance must apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. The coverage provided by Contractor and its Subcontractors must not be limited to the liability assumed under the indemnification provisions of this Contract.
  3. The policies must contain a waiver of subrogation against the City, its officers, officials, agents, and employees for losses arising from Work performed for the City.
- C. Contractor, its successors and assigns, is required to maintain Commercial General Liability insurance as specified in this Contract for a minimum period of 3 years following completion and acceptance of the Work. Contractor must submit a Certificate of Insurance evidencing the Commercial General Liability insurance during this 3 year period containing all the insurance requirements including naming the City of Scottsdale, its agents, representatives, officers, directors, officials and employees as Additional Insured as required.

#### **9.4 SUBCONSULTANT'S AND SUBCONTRACTOR'S INSURANCE**

Unless Contractor's Subconsultants and Subcontractors can provide the same level of coverage as detailed in Article 9.2 and name the City and Contractor as Additional Insureds, Contractor's certificates must include all Subcontractors and Subconsultants as insureds under its policies or Contractor must maintain separate certificates and endorsements for each Subcontractor and Subconsultant. All coverages for Subcontractors and Subconsultants must be in the amounts shown in Article 9.2. Certificates must contain a provision that the insurance will not be canceled or materially altered without at least 30 days advance notice to the City. The City must also be named as a Loss Payee under the Builders Risk-Installation coverage.

## 9.5 NOTICE OF CANCELLATION

If Contractor receives notice that any of the required policies of insurance are materially reduced or cancelled, it will be Contractor's responsibility to provide prompt notice to the contract administrator of same to the City, unless such coverage is immediately replaced with similar policies. Each insurance policy required by the insurance provisions of this Contract must provide the required coverage and must not be suspended, voided, canceled by either party, reduced in coverage or in limits until 30 days written notice has first been given, by certified mail, return receipt requested to:

Melanie Gibson  
Capital Project Management  
7447 E. Indian School Road, Suite 205  
Scottsdale, Arizona 85251

Todd Gladden  
OMNI Electric LLC  
4640 E. Cotton Gin Loop  
Phoenix, AZ 85040

## 9.6 ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers duly licensed or approved to conduct business in the State of Arizona and with an A. M. Best rating of no less than B++6. The City in no way warrants that the above required minimum insurer rating is sufficient to protect Contractor from potential insurer insolvency. Failure to maintain insurance as required may result in termination of this Contract at the City's option.

## 9.7 VERIFICATION OF COVERAGE

- A. Contractor must furnish the City Certificates of Insurance (ACORD form or equivalent approved by the City) and with original endorsements effecting coverage as required by this Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.
- B. All certificates and endorsements are to be received and approved by the City before Contract Services commence except for Builders Risk Insurance, which will be received and approved as provided in Article 9.2(E). Each insurance policy required by this Contract must be in effect at or before the earlier of commencement of Contract Services under the Contract Documents or the signing of this Contract except for Builders Risk Insurance which must be in effect before commencement of the Work and remain in effect for the duration of the Project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.
- C. All Certificates of Insurance required by this Contract must be sent directly to the City of Scottsdale, Capital Project Management Office. **The project number and project description must be included on the Certificates of Insurance.** The City reserves the right to require complete, certified copies of all insurance policies

required by this Contract, at any time. Failure to provide a Certificate of Insurance with the appropriate verbiage will result in rejection of Contractor's Certificate and delay in contract execution.

Additional Certificates of Insurance submitted without referencing a Contract number will be subject to rejection and returned or discarded.

## **9.8 APPROVAL**

Any modification or variation from the insurance requirements in this Contract must be approved by the Risk Management Division, whose decision is final. This action does not may be made by administrative action.

## **9.9 BONDS AND OTHER PERFORMANCE SECURITY**

- A. Before execution of each individual Job Order, Contractor must provide a performance bond and a payment bond for all construction services, each in an amount equal to the full amount of the agreed upon cost for that Job Order. Contractor may, at its own option, provide Payment and Performance Bonds for the entire Job Order Contract amount, but there shall be no obligation for the City to reimburse Contractor for bond costs incurred, except on an actual cost basis as each individual Job Order is issued. Bonds must be submitted in accordance with Title 34, Chapter 6 of the Arizona Revised Statutes and must be in substantially the same form as Exhibits A and B, attached to this Contract.
- B. Each bond must be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the State of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority must accompany the bonds. The Certificate must have been issued or updated within 2 years before the execution of this Contract.
- C. The bonds must be made payable and acceptable to the City of Scottsdale.
- D. The bonds must be written or countersigned by an authorized representative of the surety and the bonds must have attached a certified copy of the Power of Attorney of the signing official.
  - 1. If one Power of Attorney is submitted, it must be for twice the total Job Order Price.
  - 2. If two Powers of Attorney are submitted, each must be for the total Job Order Price. Personal or individual bonds are not acceptable.
  - 3. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents, Contractor must promptly furnish a copy of the bonds or must permit a copy to be made.
- E. All bonds submitted for this Project must be provided by a company which has been rated "A or better" by the A.M. Best Company.

## ARTICLE 10 - INDEMNIFICATION

### 10.1 CONTRACTOR'S GENERAL INDEMNIFICATION

**Contractor's General Indemnification.** To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, must defend, indemnify and hold harmless the City of Scottsdale, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, expenses, including but not limited to, reasonable attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expense, investigation and litigation, for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, related to, arising from or out of, or resulting from any acts, omissions, negligence, recklessness, or intentional wrongful conduct to the extent caused by Contractor or any of its owners, officers, directors, agents or employees performing Work or Services under this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages by any of Contractor employees. This indemnity includes any claim or amount arising out of, or recovered under, the Worker's Compensation Law or arising out of the failure of Contractor to conform to any federal, state, or local law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the parties that the City shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the City, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary investigation, defense, and judgment costs where this indemnification is applicable. In consideration of the award of this Contract, Contractor agrees to waive all rights of subrogation against the City, its officers, agents, representatives, directors, officials, and employees for losses arising from the work performed by the Architect for the City.

Insurance provisions in this Contract are separate and independent from the indemnity provisions of this Article and will not be construed in any way to limit the scope and magnitude of the indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

### 10.2 INTELLECTUAL PROPERTY

- A. Contractor must pay all royalties and license fees associated with its performance of services.
- B. Contractor must defend any action or proceeding brought against the City based on any claim that the Work, or any part of the Work, or the operation or use of the Work or any part of it, constitutes infringement of any United States patent or copyright, now or subsequently issued. The City will give prompt written notice to Contractor of any action or proceeding and will reasonably provide authority, information and assistance in the defense of the action. Contractor shall indemnify and hold harmless the City from and against all damages, expenses, losses, royalties, profits and costs, including but not limited to attorneys' fees and expenses awarded against the City or Contractor in any action or proceeding. Contractor agrees to keep the City informed of all developments in the defense of

these actions. The City may be represented by; and actively participate through its own counsel in any suit or proceedings if it so desires.

- C. If the City is enjoined from the operation or use of the Work, or any part of the Work, as the result of any patent or copyright suit, claim, or proceeding, Contractor shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Contractor cannot procure this right within a reasonable time, Contractor will promptly, at Contractor's option and at Contractor's expense, (i) modify the Work so as to avoid infringement of any patent or copyright or (ii) replace the Work with Work that does not infringe or violate any patent or copyright.
- D. Articles 10.2(B) and 10.2(C) will not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright:
  - 1. Relating solely to a particular process or product of a particular manufacturer specified by the City and not offered or recommended by Contractor to the City; or
  - 2. Arising from modifications to the Work by the City or its agents after acceptance of the Work.
- E. The obligations stated in this Article 10.3 will constitute the sole Contract between the parties relating to liability for infringement or violation of any patent or copyright.

## **ARTICLE 11 – GENERAL PROVISIONS**

### **11.1 MARSHALING AREA**

Contractor is advised to contact the City of Scottsdale Development Services to determine the requirements for obtaining a permit for marshaling areas it proposes to use. Marshaling areas must be fenced. Contractor will obtain written approval from the property owner for marshaling area use. This approval must contain any requirements, which are a condition of this approval. Marshaling yard requirements according to M.A.G. Subsection 107.6.1 and the City of Scottsdale Supplemental Specifications will apply.

### **11.2 CONTRACT DOCUMENTS**

- A. Contract Documents are as defined in Article 12.
- B. The Contract Documents form the entire Contract between the City and Contractor. No oral representations or other Contracts have been made by the parties except as specifically stated in the Contract Documents.
- C. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents will take precedence in the order in which they are listed in the definition of Contract Documents in Article 12. As to drawings and plans, given dimensions will take precedence over scaled measurements, and large-scale plans over small-scale plans. Contract specifications will take precedence over contract plans.

- D. The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the times and prices agreed upon for each Job Order. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.
- E. This Contract, the Plans, Standard Specifications and Details, Special Provisions, Performance Bond, Payment Bond, Certificates of Insurance, and Job Order Adjustments (if any) are by reference made a part of this Contract to the same extent as if set forth in full.
- F. Work Product
  - 1. All Work products (electronically or manually generated) including but not limited to: cost estimates, studies, design analyses, original mylar drawings, Computer Aided Drafting and Design (CADD) file diskettes, and other related documents which are prepared or procured in the performance of this Contract (collectively referred to as documents) are to be and remain the property of the City and are to be delivered to the City before the final payment is made to Contractor. In the event these documents are altered, modified or adapted without the written consent of Contractor or the Subconsultants, which consent Contractor or the Subconsultants will not unreasonably withhold, the City agrees to hold Contractor and the Subconsultants harmless to the extent permitted by law from the legal liability arising out of the City's alteration, modification or adoption of the documents.
  - 2. The copyrights, patents, trade secrets or other intellectual property rights associated with the ideas, concepts, techniques, inventions, processes or works of authorship developed, created by Contractor, its Subconsultants or personnel, during the course of performing this Contract or arising out of the Project will belong to Contractor.

### **11.3 MODIFICATIONS**

The Contract Documents may not be changed, altered, or amended in any way except in writing, signed by a duly authorized representative of each party.

### **11.4 TIME IS OF THE ESSENCE**

Time is of the essence with respect to the dates and times stated in the Contract Documents.

### **11.5 COOPERATION AND FURTHER DOCUMENTATION**

Contractor agrees to provide the City any other duly executed documents as will be reasonably requested by the City to implement the intent of the Contract Documents.

#### **11.6 ASSIGNMENT**

Neither Contractor nor the City will, without the written consent of the other, assign, transfer or sublet any portion of this Contract or part of the Work or the obligations required by the Contract Documents.

#### **11.7 FORCE MAJEURE**

Neither party will be responsible for delays or failures in performance resulting from acts beyond their control. These acts include, but are not limited to, acts of God, riots, acts of war, acts of terrorism, epidemics, governmental regulations imposed after the fact, fire, communication line failures, or power failures.

#### **11.8 FUNDS APPROPRIATION**

If the City Council does not appropriate funds to continue this Contract and pay for charges, the City may terminate this Contract at the end of the current fiscal period. The City agrees to give written notice to Contractor at least 30 days before the end of its current fiscal period and will pay Contractor for all approved charges incurred through the end of the period.

#### **11.9 CONSTRUCTION METHODS**

If the City provides Contractor with a written order to provide adequate maintenance of traffic, clean-up, dust control or to correct deficiencies or damage resulting from abnormal weather conditions, and Contractor fails to comply in the time frame specified, the City may have Work accomplished by other sources at Contractor's expense.

#### **11.10 UTILITY RELOCATIONS FOR CONSTRUCTION METHODS**

If any utility is relocated or rebuilt to accommodate Contractor's construction methods and available equipment, the expense will be borne by Contractor and will be replaced to the original location before completion of the Job Order at the request of the City's Project Coordinator at Contractor's sole expense.

#### **11.11 DAMAGED UTILITIES DURING CONSTRUCTION**

Any utilities damaged during construction shall be replaced at Contractor's expense as per the requirements of the M.A.G. Standard Specifications.

#### **11.12 SUCCESSORSHIP**

Contractor and City intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

#### **11.13 CONFLICT IN LANGUAGE**

All services performed will conform to all applicable City of Scottsdale codes, ordinances and requirements as outlined in the Contract Documents. If there is a conflict in interpretation between provisions in this Contract and those in exhibits, the provisions in this Contract will prevail.

#### **11.14 THIRD PARTY BENEFICIARY**

Nothing under the Contract Documents will be construed to give any rights or benefits in the Contract Documents to anyone other than the City and Contractor, and all duties and responsibilities undertaken in accordance with the Contract Documents will be for the sole and exclusive benefit of the City and Contractor and not for the benefit of any other party.

#### **11.15 GOVERNING LAW**

The Contract and all Contract Documents will be considered to be made under and will be construed in accordance with and governed by the laws of the State of Arizona without regard to the conflicts or choice of law provisions. Any action to enforce any provision of this Contract or to obtain any remedy with respect to this Contract shall be brought in Maricopa County, Arizona.

#### **11.16 SEVERABILITY**

If any provision of the Contract Documents or the application to any person or circumstance is invalid, illegal or unenforceable to any extent, the remainder of the Contract Documents and the application of the Contract will not be affected and will be enforceable to the fullest extent permitted by law. In accordance with the provisions of ARS § 41-194.01, should the Attorney General give notice to the City that any provisions of the Contract violates state law or the Arizona Constitution, or that it may violate a state statute or the Arizona Constitution, and the Attorney General submits the offending provision to the Arizona Supreme Court, the offending provision(s) shall be immediately severed and struck from the Contract and the City and Contractor shall, within 10 days after such notice, negotiate in good faith to resolve any issues related to the severed provision(s).

#### **11.17 LEGAL REQUIREMENTS**

Contractor shall perform all Contract Services in accordance with all Legal Requirements and will provide all notices applicable to the Contract Services as required by the Legal Requirements.

#### **11.18 INDEPENDENT CONTRACTOR**

Contractor is and will be an independent contractor. Any provisions in the Contract Documents that may appear to give the City the right to direct Contractor as to the details of accomplishing the Work or to exercise a measure of control over the Work means that Contractor will follow the wishes of the City as to the results of the Work only. These results will comply with all applicable laws and ordinances.

#### **11.19 CITY'S RIGHT OF CANCELLATION**

This Contract is subject to cancellation by the City of Scottsdale in accordance with the provisions of Section 38-511, Arizona Revised Statutes.

**11.20 SURVIVAL**

All warranties, representations and indemnifications by Contractor shall survive the completion or termination of this Contract.

**11.21 COVENANT AGAINST CONTINGENT FEES**

Contractor warrants that no person has been employed or retained to solicit or secure this Contract upon any Contract or understanding for a commission, percentage, brokerage, or contingent fee, and that no member of the City Council, or any employee of the City of Scottsdale has any interest, financially, or otherwise, in the firm. For breach or violation of this warrant, the City of Scottsdale will have the right to annul this Contract without liability, or at its discretion to deduct from the Contract Price or consideration, the full amount of any commission, percentage, brokerage, or contingent fee.

**11.22 NO WAIVER**

The failure of either party to enforce any of the provisions of the Contract Documents or to require performance of the other party of any of its provisions will not be construed to be a waiver of those provisions, nor will it affect the validity of the Contract Documents or any part of the Contract Documents, or the right of either party to enforce each and every provision.

**11.23 HEADINGS**

The headings used in this Contract, or any other Contract Documents, are for ease of reference only and will not in any way be construed to limit or alter the meaning of any provision.

**11.24 NOTICE**

Whenever the Contract Documents require that notice be provided to the other party, notice will be considered to have been validly given (i) if delivered in person to the individual intended to receive the notice, (ii) 3 days after the date of the postmark of deposit by first class United States mail, registered or certified mail, postage prepaid to the address indicated below. Notice by electronic mail or facsimile will not be considered notice.

To City:	Alison Tymkiw City Engineer 7447 E. Indian School Road, Suite 205 Scottsdale, Arizona 85251
To JOC Contractor:	Todd Gladden OMNI Electric LLC 4640 E. Cotton Gin Loop Phoenix, AZ 85040

**11.25 EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this Contract Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant

orders of the Federal government's Affirmative Action guidelines to ensure that employees or applicants applying for employment will not be discriminated against because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will include the terms of this provision in all contracts and subcontracts for Work performed under this Contract, including supervision and oversight. The JOC 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 shall 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 JOC agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.

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

**11.25.1 No Preferential Treatment or Discrimination:** In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

#### **11.26 ADDITIONAL CITY RIGHTS REGARDING SECURITY INQUIRIES**

In addition to the foregoing, the City reserves the right to: (1) have an employee/prospective employee of Contractor be required to provide fingerprints and execute any other documentation as may be necessary to obtain criminal justice information pursuant to A.R.S. § 41-1750(G)(4); (2) act on newly acquired information whether or not that information should have been previously discovered; (3) unilaterally change its standards and criteria relative to the acceptability of Contractor's employees or prospective employees; and, (4) object, at any time and for any reason, to an employee of Contractor performing Work (including supervision and oversight) under this Contract.

A. Provisions Applicable to all Contractor Contracts and Subcontracts. Contractor will include the terms of this provision for employee background and security checks and screening in all contracts and subcontracts for Work performed under this Contract, including supervision and oversight.

B. Materiality of Security Inquiry Provisions. The Security Inquiry provisions of this Contract, as stated above, are material to the City's entry into this Contract and any breach by Contractor may, at the City's sole option and unfettered discretion, be considered to be a breach of contract of sufficient magnitude to terminate this Contract. Termination will subject Contractor to liability for its breach of contract.

#### **11.27 HAZARDOUS MATERIALS**

A. Hazardous Materials. Upon discovery of hazardous materials Contractor will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions.

- B. Unless included in the Work, if Contractor encounters onsite, or as material to be incorporated in the Work, any material which it reasonably believes to contain asbestos, polychlorinated biphenyl (PCB), or other hazardous substances or materials regulated by public health laws, it will immediately stop work and report the condition to the City.
- C. If the material is found to contain asbestos, PCB or other hazardous substances or materials regulated by public health laws, Contractor will not resume work in the affected area until the material has been abated or rendered harmless. Contractor and the City may agree, in writing, to continue work in non-affected areas onsite.
- D. An extension of Contract Time may be granted in accordance with Article 5.
- E. Contractor will comply with all applicable laws/ordinances and regulations and take all appropriate health and safety precautions upon discovery.
- F. Despite the provisions of this Article 11.27, the City is not responsible for Hazardous Conditions introduced to the Site by Contractor, Subcontractors or anyone for whose acts they may be liable. Contractor will indemnify, defend and hold harmless the City and the City's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Contractor, Subcontractors or anyone for whose acts they may be liable.

#### **11.28 TRAFFIC CONTROL**

- A. Complete street closures will not be permitted unless specified in the Special Provisions or approved by the City. The timing and sequence of street closures will be approved by the Traffic Engineering Director (or designee) at least 14 days before the closure. This approval is necessary to provide coordination with other roadway projects and special events.
- B. Adequate barricades and lighted warning signs must be installed and maintained by Contractor throughout the duration of any Project. All traffic control must be in accordance with the current version of the City of Scottsdale Supplement to MAG Uniform Standard Specifications Section 401 or as required by the approved barricade plan unless otherwise specified in the Special Provisions.
- C. Contractor will submit a construction schedule and a barricade plan to the City Traffic Engineering Director (or designee) for approval or modification at least 72 hours before construction is initiated, and must wait to commence construction until the plan is signed as accepted by the City Traffic Engineering Director (or designee).

#### **11.29 MATERIAL SOURCE**

No material source has been designated by the City for use under this Contract. MAG Specification, Section 106 will apply as will ADOT Standard Specifications 1982, Section 106.1, 106.2, 106.7 & 106.8, which outline controls and Section 1001-1, -2, & -4

concerning approval of Contractor-Furnished Source and supplemental Contracts in regards to environmental analysis and the liability for materials testing costs.

Contractor and Subcontractor furnished material sources situated in the 100-year flood plain of any stream or watercourse will not be allowed if located within 1.0 mile upstream and 2.0 miles downstream of any highway structure or surfaced roadway crossing.

A Contractor and Subcontractor-furnished source will be defined as a material source, which is neither an A.D.O.T. furnished source nor a commercial source, as defined in this Contract.

A commercial source will be defined as a material source in which the owner or producer has been for at least 1-year regularly engaged during regular business hours on a regular basis in the processing and selling of sand, rock, ready mixed Portland cement concrete, asphaltic concrete and other similar products normally produced and sold to all parties. The company must have an Arizona retail sales tax license.

The location of any new material source or existing non-commercial material source proposed for use under this Contract must be reviewed by the appropriate agency having flood plain management jurisdiction over the area of proposed source location. Contractor and Subcontractor will obtain a letter from the agency addressed to the Contract Administrator certifying that the proposed source location conforms to the required conditions and the applicable Standard Specifications. Contractor will familiarize himself with the nature and extent of the Contract Documents, work to be performed, all local conditions, and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

### **11.30 FAMILIARIZATION WITH APPLICABLE LAWS**

Contractor will familiarize itself with the nature and extent of the Contract Documents, work to be performed, all local conditions, and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

### **11.31 NATIVE PLANTS**

Contractor will take whatever steps, procedures or means necessary to remove, move, displace and save all native plants within the contract work area in accordance with the City of Scottsdale's Ordinance No. 1438, Native Plants, and all applicable state and county statutes, ordinances, codes and other policy requirements and recognized methods, procedures, techniques and equipment for protection, salvage, and handling of all plants to be moved from the construction area. This is not a pay item unless specified upon the Schedule of Bid Items.

### **11.32 ENDANGERED HARDWOODS**

Any construction, building addition or alteration project which is financed by monies of this state or its political subdivisions will not use endangered tropical hardwood unless an exemption is granted by the Director of the State of Arizona, Department of Administration..

### 11.33 HOURS OF WORK

- A. All building construction and associated work will be restricted to the applicable summer or winter hours. Construction activity will include any work requiring the use of manually operated or power assisted tools or equipment and vehicles used to excavate, erect or deliver materials associated with construction. Summer hours begin April 1 and end on October 31. No work may begin before 6:00 a.m. or continue after 7:00 p.m., Monday through Friday. No work will begin on Saturday or Sunday before 7:00 a.m. or continue after 7:00 p.m. Sunday work may be conducted only if Contractor demonstrates, in writing to the building official, justifiable cause for the Sunday work.
- B. Winter hours begin November 1 and end on March 31. No work will begin before 7:00 a.m. or continue after 5:00 p.m., Monday through Friday. No work may begin on Saturday or Sunday before 8:00 a.m. or continue after 5:00 p.m. Sunday work may be conducted only if Contractor demonstrates, in writing to the building official, justifiable cause for the Sunday work.
- C. The City may establish other times of work as necessary based on the geographical location of the jobsite in relation to surrounding occupancies, buildings and structures.
- D. Contractor must submit a written request to the Building Official for a variance from the required work hours at least 7 days before the date for which the variance is desired. Variances will not be granted for more than 30 days at a time. A new application must be made for each additional variance. Contractor must notify adjacent property owners of the intended work and the duration of the requested variance. Proof of notification must be presented to the building official before the variance can be granted.
  - 1. The application for the variance must demonstrate justifiable cause why the work must be done outside the prescribed time period (e.g. pouring concrete during "summer hours"). A variance will not be granted based solely on convenience or for work that can be completed during daytime construction hours.
  - 2. The application for a variance must state the construction permit number, the address of the work, type of work, time period of the work, and the duration of the variance.

### 11.34 COMPLIANCE WITH FEDERAL LAWS

Contractor understands and acknowledges the applicability to it of the American with Disabilities Act, the Immigration Reform and Control Act of 1986 and the Drug Free Workplace Act of 1989. Contractor agrees to comply with these laws in performing this Contract and to permit the City to verify compliance. Contractor will also comply with A.R.S. §34-301, "Employment of Aliens on Public Works Prohibited," and A.R.S. §34-302, "Residence Requirements for Employees," as amended. Contractor will include the terms of this provision in all contracts and subcontracts for Work performed under this Contract, including supervision and oversight.

**Under the provisions of A.R.S. §41-4401, Contractor warrants to the City that Contractor and all its Subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that Contractor and all its Subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).**

A breach of this warranty by Contractor or any of its Subcontractors will be considered a material breach of this Contract and may subject Contractor or Subcontractor to penalties up to and including termination of this Contract or any subcontract.

The City retains the legal right to inspect the papers of any employee of Contractor or any Subcontractor who works on this Contract to ensure that Contractor or any Subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of Contractor and any of its Subcontractors to ensure compliance with this warranty. Contractor agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

The City will not consider Contractor or any of its Subcontractors in material breach of this Contract if Contractor and its Subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. §23-214(A). The "E-Verify Program" means the employment verification pilot program as jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.

The provisions of this Article must be included in any contract Contractor enters into with any and all of its Subcontractors who provide services under this Contract or any Subcontract. "Services" are defined as furnishing labor, time or effort in the State of Arizona by a Contractor or Subcontractor. Services include construction or maintenance of any structure, building or transportation facility or improvement to real property. Contractor will take appropriate steps to assure that all Subcontractors comply with the requirements of the E-Verify Program. Contractor's failure to assure compliance by all its Subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

**A. Compliance with Americans with Disabilities Act**

Contractor acknowledges that, in accordance with the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor will provide the services specified in this Contract in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Contract and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Contract.

**11.35 DATA CONFIDENTIALITY**

A. 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 Contractor in the performance of this Contract.

- B. The parties agree that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to Contractor in connection with Contractor's performance of this Contract is confidential and proprietary information belonging to the City.
- C. Contractor will not divulge data to any third party without first obtaining the written consent of the City. Contractor will not use the data for any purposes except to perform the services required under this Contract. These prohibitions will not apply to the following data provided Contractor has first given the required notice to the City:
  - 1. Data, which was known to Contractor before its performance under this Contract unless the data was acquired in connection with the Work performed for the City;
  - 2. Data which was acquired by Contractor in its performance under this Contract and which was disclosed to Contractor by a third party, who to the best of Contractor's knowledge and belief, had the legal right to make disclosures and Contractor is not otherwise required to hold the data in confidence; or
  - 3. Data, which is required to be disclosed by virtue of law, regulation, or court order to which Contractor is subject.
- D. In the event Contractor is required or requested to disclose data to a third party, or any other information to which Contractor became privy as a result of any other contract with the City, Contractor will first notify the City as required in this Article of the request or demand for the data. Contractor will give the City sufficient facts so that the City can be given an opportunity to first give its consent or take any action the City may consider appropriate to protect the data or other information from disclosure.
- E. Unless prohibited by law, within 10 days after completion of services for a third party on real or personal property owned or leased by the City, Contractor will promptly deliver, as stated in this Article, a copy of all data to the City. All data will continue to be subject to the confidentiality requirements of this Contract.
- F. Contractor assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the City if any of the provisions of this Article are violated by Contractor, its employees, agents or Subconsultants. Solely for the purposes of seeking injunctive relief, it is agreed that a breach of this Article will be considered to cause irreparable harm that justifies injunctive relief in court.

### **11.36 CONFLICT OF INTEREST**

- A. To evaluate and avoid potential conflicts of interest, Contractor will provide written notice to the City, as stated in this Article, of any work or services performed by Contractor for third parties that may involve or be associated with any real property or personal property owned or leased by the City. The notice will be given 7 business days before commencement of the Project by Contractor for a third party, or 7 business days before an adverse action as defined below. Written notice and disclosure will be sent to the City Senior Representative identified in Article 7.4.
- B. Actions that are considered to be adverse to the City under this Contract include but are not limited to:
  - 1. Using data as defined in this Contract acquired in connection with this Contract to assist a third party in pursuing administrative or judicial action against the City;
  - 2. Testifying or providing evidence on behalf of any person in connection with an administrative or judicial action against the City; and
  - 3. Using data to produce income for Contractor or its employees independently of performing the services under this Contract, without first obtaining the written consent of the City.
- C. Contractor represents that except for those persons, entities and projects identified to the City, the services to be performed by Contractor under this Contract are not expected to create an interest with any person, entity, or third party project that is or may be adverse to the interests of the City.
- D. Contractor's failure to provide a written notice and disclosure of the information stated in this Article on Conflicts of Interest will constitute a material breach of this Contract.

### **11.37 LOSS AND DAMAGES**

All loss or damage arising out of the nature of the Work to be done or from the action of the elements, or from any unforeseen circumstances, in the prosecution of the same, or from any unusual obstructions or difficulties which may be encountered in or during the prosecution of the Work, or from any casualty whatsoever of every description, will be sustained and borne by Contractor at its own cost and expense.

### **11.38 RIGHTS-OF-WAY**

The M.A.G. Standard Specification 107.12 is modified to read as follows: "Contractor, at its own expense, is responsible for the acquisition of any necessary temporary easements for construction purposes, storage and maintenance purposes, which are required in addition to existing easements or rights of way secured by the City as indicated upon the plans."

### **11.39 EXISTING TRAFFIC AND STREET SIGNS AND TRAFFIC SIGNAL EQUIPMENT**

Contractor will use due care when excavating at or near intersections where traffic signal underground conduit is located. Contractor will notify the Transportation Maintenance

Traffic Signal Division (480.312.5620) 48 hours in advance of any work at the intersections. Contractor will be responsible for the installation and maintenance of temporary overhead traffic signal cable as specified by the Traffic Engineering Director when underground conduit is to be severed by excavations at the intersection. The Transportation Maintenance Manager will have all underground traffic conduit located and will provide the necessary City Technicians to assist Contractor in identifying wiring phases and direction of conduit runs upon 24 hours notice from Contractor and at least 1 day before Contractor's scheduled wiring and installation of temporary cables. Contractor will be responsible for the wiring and connection of all temporary cable within the pull boxes and terminal compartments. The Transportation Maintenance Manager will provide a City technician to assist Contractor with connecting field wiring within the traffic signal control cabinet. Contractor will provide, at its expense an off-duty uniformed Police Officer to direct traffic while the traffic signal is turned off and the wiring is transferred. Contractor will be responsible as specified by the Traffic Engineering Manager for the repair and restoration of all traffic signal overhead and underground items that have been damaged or modified. The City does not permit the splicing of Magnetic Detector Loops.

#### **11.40 CERTIFICATION OF USE OF BENCHMARKS**

In compliance with the City's Design Standards & Policies Manual (DS&PM), Sections 9-1.1 and 9-1.301, it is the City's intent that Contractor must use both horizontal and vertical benchmarks with City of Scottsdale published values for any survey on all public works projects. These published values are available for public use at the following website: <https://eservices.scottsdaleaz.gov/maps/benchmarks>. AT LEAST 1 HORIZONTAL AND 1 VERTICAL BENCHMARK MUST MATCH THE NORTHING, EASTING OR ELEVATION VALUES PUBLISHED ON THE CITY'S WEBSITE. Contractor must sign and submit with this Contract, the Certificate of Use attached and by reference made a part of this Contract.

#### **11.41 TAXES AND INDEMNIFICATION**

The fee listed in this Contract includes any and all taxes applicable to the activities under this Contract. The City will have no obligation to pay additional amounts for taxes of any type. JOC and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the JOC, except as may be otherwise provided in this Contract. The JOC shall, and require all subcontractors to hold the City harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

#### **11.42 NO BOYCOTT OF ISRAEL**

By submitting a quote/proposal/bid and/or entering into a contract with the City, the vendor/company certifies that they are not currently engaged in and agrees for the duration of the Contract to not engage in a boycott of Israel as defined in A.R.S. § 35-393.

**11.43 CONTRACTOR WARRANTS AND CERTIFIES THAT IT DOES NOT CURRENTLY, AND AGREES FOR THE DURATION OF THE CONTRACT THAT IT WILL NOT, USE:**

- 1) The forced labor of ethnic Uyghurs in the People's Republic of China.
- 2) Any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China.
- 3) 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.

If Contractor becomes aware during the term of the Agreement that Contractor is not in compliance with this paragraph, Contractor shall notify the City within five business days after becoming aware of the noncompliance. Failure of Contractor to provide a written certification that Contractor has remedied the noncompliance within one hundred eighty (180) days after notifying the public entity of its noncompliance, this Contract shall terminate unless the Term of this Contract shall end prior to said one hundred eighty (180) day period.

**ARTICLE 12 – DEFINITIONS**

“Adjustment” means a written order signed by an authorized representative of the City and Contractor and which approves changes in the scope of the Work in the Job Order; in the total compensation or time allowed for completion of the Job Order, or modifications to other contract terms.

“Allowance” means an agreed amount by the City and Contractor for items which may be required to complete the scope of work.

“As-built Document” – “As-built in construction is equivalent to “as-is.” Drawings deemed “as-built” are final drawings that include all changes made during the actual construction process. These drawings represent the actual existing constructed conditions as opposed to designs or a proposed condition. The As-built Documents should be per Arizona Revised Statute 32-152.

“Blueline or Blackline Prints” – Prints that allows comparison of document versions to show what has been revised.

“Change Order” means a written order signed by an authorized representative of the City and which approves changes in the total compensation or time allowed for completion of services consistent with S.R.C. Sec. 2-200.

“City” means the City of Scottsdale, Arizona, an Arizona municipal corporation. Regulatory activities handled by the City of Scottsdale Development Services, Planning and Fire Departments or any other City department are not subject to the responsibilities of the City under this Contract.

“City’s Representative” means the person designated in Subdivision 7.4(A) (2).

“City’s Senior Representative” means the person designated in Subdivision 7.4(A) (1).

“Construction Coordinator” means a City employee who coordinates the daily construction

activities with Contractor, and with their inspection staff that performs quality control inspections, enforces project plans and specifications and adopted City codes and ordinances.

"Construction Documents" means the plans, specifications and drawings prepared by the Design Professional after correcting for permit review requirements and incorporating addenda and approved Job Order Adjustments.

"Construction Fee" means Contractor's home office overhead and profit, whether at Contractor's principal or branch offices. This includes the home office costs and any limitations or exclusions that may be included in the General Conditions for the construction phase.

"Contract" or "Job Order Contract" means this fully executed Contract between the City and Contractor.

"Contract Administrator" means the person designated in Article 7.4.

"Contract Documents" means the following items and documents in descending order of precedence executed by the City and Contractor: (1) Change Orders; (2) Job Order Adjustments; (3) Contract Modifications; (4) this Contract including all exhibits and attachments; (5) Contractor's Proposal (if any); (6) Contractor Statement of Qualifications.

"Contract Modification" means a specific written concurrence between the City and Contractor for changes to this Contract.

"Contract Price" means the amount or amounts stated in Article 4 subject to any Contract Adjustments.

"Contract Services" means the services required by the Contract Documents.

"Contract Time(s)" means the time stated in Article 3, subject to Job Order Adjustments or extensions as permitted by this Contract.

"Contractor" is Contractor selected by the City to provide or procure construction services as detailed in this Job Order Contract.

"Contractor Payment Request" means the City form used by Contractor to request progress payments for Job Orders in accordance with Article 6.

"Contractor's Representative" means the person described in Article 7.4(B) (2).

"Contractor's Senior Representative" means the person described in Article 7.4(B) (1).

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

"Delay" means an unanticipated event or interference with the progress of a critical path work activity being performed at the time that causes the completion date of the project to be extended. Delays may be caused by the City, Contractor, third parties or Force Majeure events. Delays may be excusable, compensable, non-compensable or concurrent.

"Delay, Compensable" means delay that results from the City's actions or inactions that entitle Contractor to both a time extension and delay damages.

“Delay, Concurrent” means 2 or more delays, within the same timeframe, both of which would independently impact the project’s critical path. If one delay is caused by the City and the other by Contractor, Contractor will generally be entitled to an excusable, non-compensable time extension, to the degree the delays may “overlap.”

“Delay, Excusable” means an unforeseeable delay caused by an event beyond the control and without the fault or negligence of Contractor (including its Suppliers and Subcontractors). Excusable delays may be compensable or non-compensable, depending upon whether the terms of the contract or the law allows recovery of delay costs. Unless otherwise shown, it will generally be presumed that these delays are non-compensable.

“Delay, Non-Excusable” means a delay within the control of Contractor, its suppliers and subcontractors, or a delay resulting from a risk taken by Contractor under the terms of the Contract. Contractor will not be due any time extension or delay damages, and may be responsible for paying to the City, actual or liquidated damages for the delay.

“Deliverables” means the work products prepared by Contractor in performing the scope of work described in this Contract. Some of the major deliverables to be prepared and provided by Contractor may include, but are not limited to: Construction Management Plan, Project Schedule, Schedule of Values, alternative system evaluations, procurement strategies and plans, cost estimates, construction market surveys, cash flow projections, Subcontractor procurement plan, Subcontractor Contracts, Subcontractor bid packages, Supplier Contracts, and others as indicated in this Contract or required by the Project Team.

“Design Professional” means a qualified, licensed design professional who furnishes design or construction administration services.

“Differing Site Conditions” comply with M.A.G. Standard Specifications, Subsection 102.4.

“Duration of the Work” means the number of Days from a Job Order Notice to Proceed to Substantial Completion.

“Field Order” means a written field directive prepared and signed by the City, directing a change in work that may or may not include an adjustment in contract price or contract time.

“Final Acceptance” means the completion of a Job Order as prescribed in Article 3.4.

“Informational Submittals” – Submittals are required (common with construction projects) for the architect and engineer to verify that the correct products and quantities will be installed on a project.

“Job Order” or “Project” means a specific scope of Contract Services done pursuant to an individual Job Order and includes a specific written Contract between the City and Contractor for a Job Order including a Scope of Work, a Job Order Price, a Duration of the Work and any special conditions that may apply to be performed under this Contract. The Job Order includes the plans, technical specifications, special provisions and Contractor’s proposal either by reference or inclusion.

“Job Order Price” means the amount negotiated between Contractor and the City that includes costs, overhead, bonding, insurance, profit and other costs as agreed to and calculated on the

Unit Prices, Cost-coefficient and Special Items as prescribed in Article 4.

“Job Order Time” means the time from the Job Order Notice-to-Proceed to Substantial Completion. The approved Job Order Time will be made part of this Contract by executing an individual Job Order for that specific Project.

“Legal Requirements” means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over a Project or Site, the practices involved in a Project or Site, or any Work.

“Liquidated Damages” means an amount Contractor will pay in compliance with Article 3.5.

“Must” and “will” as used in this Contract are mandatory.

“Notice to Proceed,” (NTP) means a written notice given by the City to Contractor fixing the date on which Contractor will start to perform Contractor’s obligations under that individual Job Order.

“Owner Agent,” “City’s Agent” or “Owner Representative” see “City’s Senior Representative.”

“Payment Request” means a monthly progress payment request that is based on a monthly estimate of the dollar value of the Work completed.

“Product Data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor to illustrate materials or equipment for some portion of the Work.

“Professional Certification” – Professional certification is a designation which indicates that a person is qualified to perform a job or task. Professional certification can be trade certification or professional designation.

“Project Record Documents” means the documents created pursuant to Article 1.9.

“Project Record Drawing Prints” – Set of current design drawings used by construction contractor for reference during construction. These drawings are typically marked up during the construction process, and are used to develop the subsequent “as-built” drawings.

“Punch List” means those minor items of Work to be completed before Final Acceptance which do not prevent the Project from being used for the purpose for which it is intended and which will not prevent the issuance of a Certificate of Occupancy.

“Samples” means physical examples, which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

“Schedule of Values (SOV)” means the Document specified in the construction phase, which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price. The SOV may or may not be output from the Progress Schedule depending on whether the Progress Schedule is cost-loaded or not.

“Shop Drawings” means drawings, diagrams, schedules and other data specially prepared for the Work by Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor

to illustrate some portion of the Work.

“Site” means the land or premises on which a Job Order is located. Contractor will require all subcontractors to include the street address of the Job Order in their contracts.

“Specifications” means those sections of the Contract Documents for the construction phase consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain applicable administrative details.

“Subcontractor” or “Sub consultant” means any person or entity retained by Contractor as an independent contractor to perform a portion of the Contract Services and must include material men and suppliers. All Subcontractors must be selected in accordance with the selection plan stated in Article 1.13.

“Substantial Completion” means when the Work, or when an agreed upon portion of the Work is sufficiently complete so that the City can occupy and use the Project or a portion of it for its intended purposes. This may include, but is not limited to: (1) approval by the City Fire Marshall and local authorities (Certificate of Occupancy); (2) issuance of elevator permit; (3) demonstration to the City that all systems are in place, functional, and displayed to the City or its representative; (4) installation of all materials and equipment; (5) City review and acceptance of all systems; (6) City review and acceptance of draft O&M manuals and record documents; (7) City operation and maintenance training completed; (8) HVAC test and balance completed [provide minimum 30 days before projected substantial completion]; (9) completed landscaping and site work; and (10) final cleaning.

“Supplier” means a manufacturer, fabricator, supplier, distributor, material man or vendor having a direct contract with Contractor or any Subcontractor to furnish materials or equipment to be incorporated in the construction phase work by Contractor or any Subcontractor.

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

CITY OF SCOTTSDALE, ARIZONA

CONTRACT NO. 2025-007-COS

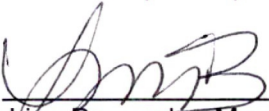
CONTRACT



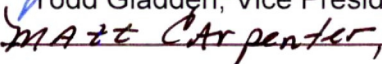
This Contract has been properly executed by the parties above named, on the date and year written above, to be retained by the City Clerk.

Contractor agrees that this Contract, as awarded, is for the stated Work and understands that payment for the Work will be made on the basis of the indicated amount, per the terms and conditions of this Contract.

CITY OF SCOTTSDALE, an  
Arizona municipal corporation

CONTRACTOR:  
OMNI Electric, LLC

By:   
Lisa Borowsky, Mayor

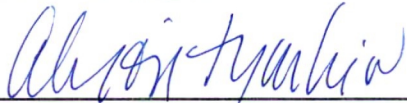
By:   
Todd Gladden, Vice President   


ATTEST:

  
Ben Lane, City Clerk

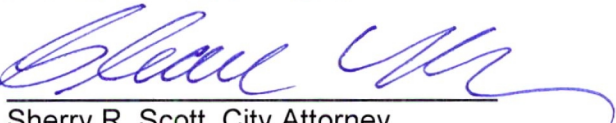


RECOMMENDED:

  
Alison Tymkiw, P.E.  
City Engineer

  
George Woods  
Risk Management Director

APPROVED AS TO FORM:

  
Sherry R. Scott, City Attorney  
By: Shane C. Morrison, Assistant City Attorney

**EXHIBIT A**

**STATUTORY PERFORMANCE BOND  
PURSUANT TO TITLE 34, CHAPTER 6,  
OF THE ARIZONA REVISED STATUTES  
(Penalty of this bond must be 100% of the Contract Amount)**

KNOW ALL MEN BY THESE PRESENTS:

That, \_\_\_\_\_ (hereinafter called the Principal) as Principal, and \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_ with its principal office in the City of \_\_\_\_\_, (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Scottsdale, County of Maricopa, State of Arizona 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 City of Scottsdale, dated the \_\_\_\_\_ day of \_\_\_\_\_, 2025, for Bid No. (bid number), Project No. (project number), (project name), 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 faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and Contracts 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 Contracts 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 6, Arizona Revised Statutes, and all liabilities on this Bond will be determined in accordance with the provisions of Title 34, Chapter 6, Arizona Revised Statutes, to the extent as if it were copied at length in this Contract. 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. The performance under this bond is limited to the construction to be performed under the contract and does not include any design services, preconstruction services, financial services, maintenance services, operations services or any other related services included in the contract.

WITNESS our hands the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
PRINCIPAL

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

\_\_\_\_\_  
SURETY (SEAL)

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

\_\_\_\_\_  
AGENCY ADDRESS

**EXHIBIT B**

**STATUTORY PAYMENT BOND**

PURSUANT TO TITLE 34, CHAPTER 6,  
OF THE ARIZONA REVISED STATUTES

(Penalty of this bond must be 100% of the Contract Amount)

KNOW ALL MEN BY THESE PRESENTS:

That, \_\_\_\_\_ (hereinafter called the Principal), as Principal, and \_\_\_\_\_ a corporation organized and existing under the laws of the State of \_\_\_\_\_, with its principal office in the City of \_\_\_\_\_ (hereinafter called the Surety), as Surety, are held and firmly bound unto the City of Scottsdale, County of Maricopa, State of Arizona, 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 City of Scottsdale dated the \_\_\_\_\_ day of \_\_\_\_\_, 2025, for Bid No. (bid number), Project No. (project number), (project name), 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 6, of the Arizona Revised Statutes, and all liabilities on this bond will be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 6, 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 the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
PRINCIPAL

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

\_\_\_\_\_  
SURETY (SEAL)

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

\_\_\_\_\_  
AGENCY ADDRESS

**COPY**

**RESOLUTION NO. 13319**

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING CONSTRUCTION SERVICES JOB ORDER CONTRACT (JOC) CONTRACT NO. 2025-005-COS WITH B&F CONTRACTING, INC., CONTRACT NO. 2025-006-COS WITH C S CONSTRUCTION, INC., AND CONTRACT NO. 2025-007-COS WITH OMNI ELECTRIC, LLC FOR CITYWIDE ELECTRICAL (CIVIL) CONSTRUCTION AND MAINTENANCE SERVICES.

WHEREAS, the City desires services for electrical (Civil) construction and maintenance services throughout the City on an as-needed basis; and

WHEREAS B&F Contracting, Inc., C S Construction, Inc., and OMNI Electric, LLC are qualified to render the services desired by the City.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the City of Scottsdale, Maricopa County, Arizona as follows:

Section 1. The City Council hereby authorizes and directs the Mayor to execute, on behalf of the City, Construction Services Job Order Contract (JOC) Contract No. 2025-005-COS with B&F Contracting, Inc., Contract No. 2025-006-COS with C S Construction, Inc., and Contract No. 2025-007-COS with OMNI Electric, LLC, each in an amount not to exceed six million dollars (\$6,000,000) for the initial two year term of each contract.

Section 2. The City Manager or designee is hereby authorized to execute such other documents and take such other actions as necessary to carry out the intent of this Resolution.

**PASSED AND ADOPTED** by the Council of the City of Scottsdale this 28 day of January, 2025.

ATTEST:

CITY OF SCOTTSDALE, an  
Arizona municipal corporation

By: Ben Lane  
Ben Lane, City Clerk

By: Lisa Borowsky  
Lisa Borowsky, Mayor

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

Sherry R. Scott  
Sherry R. Scott, City Attorney  
By: Shane C. Morrison, Assistant City Attorney