

COOPERATIVE PURCHASE CONTRACT

Contract No. 2025-177

This Cooperative Purchase Contract is made and entered into this _____ day of _____, 20____ by and between the City of Flagstaff, Arizona, a political subdivision of the State of Arizona (“City”) and J Banicki Construction Inc, an Arizona C Corporation (“Contractor”).

RECITALS:

- A. Contractor is a fully authorized vendor of **Stormwater Asset Repairs**;
- B. The Coconino County Flood Control District conducted a competitive and open procurement process through Request for Quotes **RFQ 2023-105** that resulted in Contract No. **RFQ 2023-105** with Contractor (“Agency Contract”); and
- C. The City has authority to enter into a cooperative purchase contract with Contractor utilizing the Agency Contract.

AGREEMENT:

NOW THEREFORE, in consideration for the mutual promises contained herein, the Parties agree as follows:

1. Materials and or Services Purchased: Contractor shall provide to the City the materials and/or services, as specified in the Scope of Work attached as Exhibit A, and in accordance with the Agency Contract. A general description of materials and/or services being purchased is:

Stormwater Asset Repairs

2. Specific Requirements of City: Contractor shall comply with all specific purchase and delivery requirements and/or options of City, as specified in the Scope of Work attached as Exhibit A and incorporated by reference.
3. Terms and Conditions of Agency Contract Apply: All provisions of the Agency Contract documents attached as Exhibit B, including any amendments, are incorporated in and shall apply to this Contract as though fully set forth herein. Contractor is responsible for promptly notifying City in writing of any changes to the Agency Contract, including, specifically changes in price for materials and/or services.
4. Payment:
 - 4.1 Payment to Contractor for the materials and/or services not to exceed one hundred ninety-three thousand four hundred ninety-four dollars and twenty-eight cents (**\$193,494.28**) made in accordance with the price list and terms set forth in the Agency Contract.
 - 4.2 Any adjustment to the Payment amount must be approved by mutual written consent of the parties through a formal amendment. The City Manager or his/her designee may approve an amendment if the amendment price increase is less than \$100,000; otherwise, City Council approval is required.

5. Certificates of Insurance: All insurance provisions of the Agency Contract shall apply, including any requirement to name the City as an additional insured. Prior to commencing performance under this Contract, Contractor shall furnish City with a copy of the current Certificate of Insurance required by the Agency Contract.
6. Term and Renewal: This Cooperative Purchase Contract shall commence upon execution by the Parties and shall continue for a period of one (1)-year with an option for one (1), sixty (60)-day renewal period presuming that the underlying Agency Contract has not expired or been terminated.
7. Notice: Any formal notice required under the Contract shall be in writing and sent by certified mail and email as follows:

To the City:

Ed Schenk
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
Edward.Schnek@flagstaffaz.gov

To Contractor:

Lonnie Ferguson
J Banicki Construction
4720 E Cotton Gin Loop Suite 240
Phoenix, Az 85040
LFerguson@banicki.com

With a copy to:

Emily Markel
City of Flagstaff
211 W. Aspen Ave.
Flagstaff, AZ 86001
Emily.Markel@flagstaffaz.gov

(Remainder of Page Intentionally Blank)

9. Authority: Each Party warrants that it has authority to enter into the Contract and perform its obligations hereunder, and that it has taken all actions necessary to enter into the Contract.

J BANICKI CONSTRUCTION:

By: _____

Title: _____

CITY OF FLAGSTAFF

By: _____

Title: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

Notice to Proceed issued: _____, 20__

Last Updated January 6, 2025

Stormwater Asset Repairs Rev. #1



J Banicki Construction

4720 E. Cotton Gin Loop, Suite 240

Phoenix, Arizona 85040

Contact: Lonnie Ferguson

Phone: 602-469-3032

Email: LFerguson@Banicki.com

LIC#: A ROC091410

Quote To: City of Flagstaff, Water Services
Attention: Shannon Long
Address: 2323 N. Walgreens St.
City State Zip: Flagstaff, AZ 86004
Email: shannon.long@flagstaffaz.gov
Phone: 928-310-8593
Fax:

Job Name: Stormwater Asset Repairs
Owner: City of Flagstaff, Water Services
Address: 2323 N. Walgreens St.
City State Zip: Flagstaff, AZ 86004
Phone: 928-310-8593
Date: 01/29/2025

Revision #1

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
LOCATION 1-DODGE & EMPIRE					
100	Mobilization	1.00	LS	2,355.00	2,355.00
110	Quality Control	1.00	LS	900.00	900.00
120	Traffic Control	1.00	LS	802.00	802.00
130	Variable Pre-warner Message Board-Not Included	1.00	LS		
140	Flaggers-Not Included	1.00	LS		
150	Off-Duty Officer-Not Included	1.00	LS		
160	Remove and replace iron and concrete on catch basi	1.00	LS	19,548.00	19,548.00
	Location 1 Subtotal				23,605.00
170	Payment and Performance Bond	1.00	LS	236.05	236.05
180	Sales Tax-Flagstaff 9.181% X 65% = 5.968%	1.00	LS	1,422.83	1,422.83
	Location 1 Total				25,263.88
LOCATION 2-LAKE MARY RD					
200	Mobilization	1.00	LS	1,810.00	1,810.00
210	Quality Control	1.00	LS	900.00	900.00
220	Traffic Control	1.00	LS	7,468.00	7,468.00
230	Variable Pre-warner Message Board-Not Included	1.00	LS		
240	Flaggers-Not Included	1.00	LS		
250	Off-Duty Officer-Not Included	1.00	LS		
260	Remove fill to allow flow and replace missing scup	1.00	LS	18,540.00	18,540.00
	Location 2 Subtotal				28,718.00
270	Bond	1.00	LS	287.18	287.18
280	Sales Tax-Flagstaff 9.181% X 65% = 5.968%	1.00	LS	1,731.03	1,731.03
	Location 2 Total				30,736.21
LOCATION 5- SHULLENBARGER DR					
500	Mobilization	1.00	LS	2,355.00	2,355.00
510	Quality Control	1.00	LS	900.00	900.00

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
520	Traffic Control	1.00	LS	1,696.00	1,696.00
530	Variable Pre-warner Message Board-Not Included	1.00	LS		
540	Flaggers	1.00	LS	2,385.00	2,385.00
550	Off-Duty Officer-Not Included	1.00	LS		
560	Repair collapsing concrete pad and angle iron at c	1.00	LS	20,513.00	20,513.00
	Location 5 Subtotal				27,849.00
570	Bond	1.00	LS	278.49	278.49
580	Sales Tax-Flagstaff 9.181% X 65% = 5.968%	1.00	LS	1,678.65	1,678.65
	Location 5 Total				29,806.14
	LOCATION 6- HOLLAND RD				
600	Mobilization	1.00	LS	2,355.00	2,355.00
610	Quality Control	1.00	LS	900.00	900.00
620	Traffic Control	1.00	LS	1,696.00	1,696.00
630	Variable Pre-warner Message Board-Not Included	1.00	LS		
640	Flaggers	1.00	LS	2,386.00	2,386.00
650	Off-Duty Officer-Not Included	1.00	LS		
660	Replace missing concrete and angle iron at catch b	1.00	LS	20,116.00	20,116.00
	Location 6 Subtotal				27,453.00
670	Bond	1.00	LS	274.53	274.53
680	Sales Tax-Flagstaff 9.181% X 65% = 5.968%	1.00	LS	1,654.78	1,654.78
	Location 6 Total				29,382.31
	LOCATION 8- BUTLER AVE				
800	Mobilization	1.00	LS	2,900.00	2,900.00
810	Quality Control	1.00	LS	900.00	900.00
820	Traffic Control	1.00	LS	3,318.00	3,318.00
830	Variable Pre-warner Message Board	1.00	LS	3,191.00	3,191.00
840	Flaggers-Not Included	1.00	LS		
850	Off-Duty Officer	1.00	LS	7,455.00	7,455.00
860	Remove and replace warped scupper plates, inlet an	1.00	LS	29,121.00	29,121.00
	Location 8 Subtotal				46,885.00
870	Bond	1.00	LS	468.85	468.85
880	Sales Tax-Flagstaff 9.181% X 65% = 5.968%	1.00	LS	2,826.08	2,826.08
	Location 8 Total				50,179.93
	LOCATION 9- N FIRST ST				
900	Mobilization	1.00	LS	993.00	993.00
910	Quality Control-Not Included	1.00	LS		
920	Traffic Control	1.00	LS	560.00	560.00
930	Variable Pre-warner Message Board-Not Included	1.00	LS		
940	Flaggers-Not Included	1.00	LS		
950	Off-Duty Officer-Not Included	1.00	LS		
960	Remove and replace scupper	1.00	LS	10,183.00	10,183.00
	Location 9 Subtotal				11,736.00
970	Bond	1.00	LS	117.36	117.36
980	Sales Tax-Flagstaff 9.181% X 65% = 5.968%	1.00	LS	707.41	707.41
	Location 9 Total				12,560.77
	LOCATION 10- E APPALACHIAN RD				

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	AMOUNT
1000	Mobilization	1.00	LS	1,266.00	1,266.00
1010	Quality Control	1.00	LS	900.00	900.00
1020	Traffic Control	1.00	LS	710.00	710.00
1030	Variable Pre-warner Message Board-Not Included	1.00	LS		
1040	Flaggers-Not Included	1.00	LS		
1050	Off-Duty Officer-Not Included	1.00	LS		
1060	Replace missing scupper plate	1.00	LS	11,667.00	11,667.00
	Location 10 Subtotal				14,543.00
1070	Bond	1.00	LS	145.43	145.43
1080	Sales Tax-Flagstaff 9.181% X 65% = 5.968%	1.00	LS	876.61	876.61
	Location 10 Total				15,565.04

GRAND TOTAL

\$193,494.28

NOTES:

See Scope Clarifications and Assumptions.



J. Banicki Construction, Inc.
4720 E. Cotton Gin Loop, Ste. 240
Phoenix, AZ 85040
Lic # A ROC 091410
480-921-8016 (phone)
480-921-9456 (fax)

Date: 1/29/2025

Scope Clarifications and Assumptions City of Flagstaff – Stormwater Asset Repairs

General:

- J. Banicki Construction, Inc. (Banicki) proposes to furnish labor, equipment and materials in accordance with the City of Flagstaff – Stormwater Asset Repairs package. Package consists of 7 locations detailed in the 9-page document.
- All work, specified in the attached proposal will be completed in a workmanlike manner according to standard industry practices.
- Utility fees are not included in Banicki's pricing.
- MAG standard specifications and details are being used for this estimate. Concrete to be MAG A or MAG AA at contractor's option.
- ADOT details 15.20 page 2 and 15.40 page 2 have been referenced for some of the catch basin angle iron.
- This pricing is based upon the assumption that all locations in this proposal as outlined will be awarded to Banicki Construction.

Bid Items: 100, 200, 500, 600, 800, 900, 1000 Mobilization

- This item includes cost of equipment mobilization and de-mobilization for Banicki to each location.
- Includes cost of removing and returning from a central construction yard on a daily basis.

Bid Items: 110, 210, 510, 610, 810, 910, 1010 Quality Control

- Cost includes one set of cylinders per location.
- No QC at location 9. No concrete required at this location.

Bid Items: 120, 220, 520, 620, 820, 920, 1020 Traffic Control

- Shoulder closure only at location 1.
- Shoulder and sidewalk closure at locations 9 and 10.
- Daily single lane drop to move bike path southbound and sidewalk closure location 2.
- Daily flagger setup at locations 5 and 6.
- Daily lane closure and sidewalk closure at location 8. ADOT permits probably required.

Bid Items: 130, 230, 530, 630, 830, 930, 1030 Variable Message Board

- Variable message boards not included at locations 1, 2, 5, 6, 9 and 10.
- 3 variable pre-warner message boards are being utilized for 7 calendar days at location 8.

Bid Items: 140, 240, 540, 640, 840, 940, 1040 Flaggers

- No flaggers are included at locations 1, 2, 8, 9, 10.
- One flagger included while doing work at locations 5 and 6.

Bid Items: 150, 250, 550, 650, 850, 950, 1050 Off-Duty Officer

- No off-duty officer included at locations 1, 2, 5, 6, 9 and 10.
- One off-duty officer included at locations 8.

Bid Item: 160 Remove and replace iron and concrete on catch basin inlet

- Remove, haul off and dispose debris and replace iron and concrete on catch basin inlet.



J. Banicki Construction, Inc.
4720 E. Cotton Gin Loop, Ste. 240
Phoenix, AZ 85040
Lic # A ROC 091410
480-921-8016 (phone)
480-921-9456 (fax)

Bid Item: 260 Remove fill to allow flow and replace missing scupper plate

- Remove, haul off and dispose debris and replace two sidewalk panels for new scupper plate and angles.

Bid Item: 560 Repair collapsing concrete pad and angle iron at catch basin curb opening

- Remove, haul off and dispose debris. Repair collapsing concrete pad and radius.

Bid Item: 660 Replace missing concrete and angle iron at catch basin opening

- Replace missing concrete and angle iron at catch basin opening.

Bid Item: 860 Remove and replace warped scupper plates, inlet angle iron and surrounding concrete

- Remove, haul off and dispose debris and replace 20 LF of curb, gutter and sidewalk.
- Furnish and install new angle iron and scupper plates.
- ADOT permit included.

Bid Item: 960 Remove and replace scupper plate

- Furnish and install custom measured scupper plate to fit on existing angles.
- Excludes complete re-build of scupper.

Bid Item: 1060 Replace missing scupper plate

- Furnish and install scupper plate and angles.

Exclusions:

- Hazardous material removal.
- Environmental fees and testing.
- Unforeseen site conditions.
- Permits other than ADOT permit mentioned above.
- Cleaning storm sewers up stream or down stream of repair sites.

EXHIBIT B - AGENCY CONTRACT



AGENDA ITEM COVER SHEET

Agenda Key: 38357

DATE: June 2, 2023

Meeting Date: 06/06/2023

FROM: Lucinda Andreani, Deputy County Manager/Flood Control Director

SUBMITTER: SPOOYOUA

SUBJECT: Consideration and possible action to approve an Agreement with J. Banicki Construction, Inc., for Job Order Contracting (JOC) General Construction Services to the Flood Control District for projects up to \$2,000,000.00 for a five-year period from the date of approval through June 30, 2028. Flood Control District

NOTES:

RFQ 2023-105
JOC

J. Banicki
Construction

JOB ORDER CONTRACT

Between

Coconino County Flood Control District

and

J. Banicki Construction, Inc.

Effective From: June 6, 2023 To: June 30, 2028

[AWARDED PURSUANT TO REQUEST FOR QUALIFICATIONS RFQ 2023-105]

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JOB ORDER CONTRACT

THIS JOB ORDER CONTRACT is entered into and made effective June 6, 2023 (the "Effective Date") by and between the Coconino County Flood Control District, a political subdivision of the State of Arizona (the "District") and J. BANICKI CONSTRUCTION, INC., an Arizona corporation with offices at 4720 E. Cotton Gin Loop, Suite 240 Phoenix, Arizona 85040 (the "Contractor").

RECITALS

A. The District intends to contract to construct a number of Projects that will be constructed as Job Orders.

B. The Contractor has represented to the District the ability to provide or procure construction and design services and based on this representation the District engages the Contractor for these services.

AGREEMENT

NOW THEREFORE, for and in consideration of the introduction and recitals above, which are incorporated herein by reference, the mutual covenants and considerations hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and between the District and the Contractor as follows:

ARTICLE 1 - DEFINITIONS

1.1 "Construction Documents" means the plans, technical specifications and any approved Shop Drawings related to the Work.

1.2 "Contract" means this agreement including its attachments and all Job Orders that may be issued hereunder, and any modifications to this agreement, its attachments and its Job Orders.

1.3 "Contract Amendment" means a written modification to this Contract, executed by the District and the Contractor.

1.4 "Contract Documents" means the following items and documents in descending order of precedence executed by the District and the Contractor: (i) Job Orders, including any amendments thereto; (ii) Contract Amendments; (iii) this Contract, including all exhibits and attachments; (iv) the Request for Qualifications issued in conjunction with this Contract; (v) the Contractor's Proposal in response to the Request for Qualifications; and (vi) the Contractor Statement of Qualifications.

1.5 "Contract Services" means the services required of the Contractor by the Contract Documents.

1.6 “Contract Time” means the time set forth in Section 4 subject to Contract Amendments approved in accordance with this Contract.

1.7 “Contractor’s Representative” means the Contractor’s duly authorized representative specifically authorized to act for the Contractor by executing the Contract and any modifications thereto. The Contractor’s duties include administration of the Contract on behalf of the Contractor and performance of the Work.

1.8 “Cost of the Work” means the direct costs necessarily incurred by the Contractor in the proper performance of the Work. The Cost of the Work shall include direct labor costs, subcontract costs, costs of materials and equipment incorporated in the completed construction, costs of other materials and equipment, temporary facilities, permit and license fees, materials testing, and related items. The Cost of the Work shall not include the Contractor’s construction fee, general conditions costs, and taxes.

1.9 “Critical Path” means the time set forth in the Schedule (as described in Section 4.2) that represents the minimum time necessary to complete the sequence of dependent tasks in a Job Order.

1.10 “Day(s)” means calendar day(s) unless otherwise specifically noted in the Contract Documents.

1.11 “Differing Site Conditions” means concealed or latent physical conditions or subsurface conditions at the Site that: (i) materially differ from the conditions indicated in the Job Order; or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work.

1.12 “District’s Authorized Representative” means the firm or person or their properly authorized delegates designated by the District to oversee the Work.

1.13 “Engineer” means the architectural or engineering firm, if any, designated by the District to prepare plans and specifications for the Work and perform other design or submittal services as required by the District. If an Engineer is not designated, the Engineer’s duties will be performed by the person or entity designated by the District’s Authorized Representative.

1.14 “Final Acceptance” means the completion of a Job Order as prescribed in Section 3.7 below.

1.15 “Job Order” means a specific written agreement between the District and the Contractor for specified Work to be performed under this Contract, including a scope of Work, the Job Order Price, the Job Order Time and any special conditions that may apply. The Job Order includes the Construction Documents and any applicable special provisions included therein.

1.16 “Job Order Payment Request” means the District form used by the Contractor to request progress payments for Job Orders in accordance with Section 6 below.

1.17 “Job Order Price” means the sum of: (i) the maximum cost of the Work for a Job Order; (ii) the Contractor’s construction fee; (iii) the general conditions fee; (iv) taxes, bonds, insurances costs; (v) and contingency as proposed and approved.

1.18 “Job Order Time” means the time set forth in a Job Order specifying when the Contractor will perform the Work from the Job Order Notice-to-Proceed to Substantial Completion.

1.19 “Legal Requirements” means all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasigovernmental entity having jurisdiction over a Site or any Work, including, but not limited to: (i) requirements of the respective “Authority Having Jurisdiction” (Coconino County, the District or the City of Flagstaff or other jurisdiction depending on location and permitting); (ii) Coconino County’s Engineering Design & Construction Criteria and Construction Standards; (iii) ADOT Standards and Specifications, current edition(s); (iv) MAG Standards and Specifications, current editions/revisions; and (v) Manual of Uniform Traffic Control Devices (MUTCD), current edition.

1.20 “Project” means the Work as carried out at a particular Site pursuant to a Job Order.

1.21 “Purchase Order” means the written documentation from the District confirming the scope of Work and agreed-upon compensation for a Job Order.

1.22 “Shop Drawings” mean drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

1.23 “Site” means the land or premises upon which the Work pursuant to a Job Order is to be performed.

1.24 “Subcontract” as used herein means any Contract, including purchase orders (other than one involving an employer-employee relationship) entered into by the Contractor calling for equipment, supplies or services required for Contract performance, including any modifications thereto.

1.25 “Subcontractor” or “Subconsultant” means any person or entity retained by the Contractor as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

1.26 “Substantial Completion” means the Work has been completed in accordance with the Contract Documents to the extent that the District can use or occupy the entire Project, or the designated portion of the Project for the use intended without any outstanding, concurrent construction at the Site, except as may be required to complete or correct punch list items.

1.27 “Work” means any or all of the services that are set forth in any Job Order and all labor, services, incidental expenses and material necessary or incidental thereto.

ARTICLE 2 - CONTRACTOR’S SERVICES AND RESPONSIBILITIES

2.1 General Provisions.

A. General Information. This is a fixed unit price, indefinite quantity type Contract for the performance of a broad range of construction, repair and maintenance work on an as-needed basis as may be required by the District. The specific work requirements will be identified in Job Orders to be issued by the District. Contract Services will include, but are not limited to the following:

- Provide preconstruction services
- Serve as the general contractor during construction
- Coordinate and manage subcontractors during construction
- Coordinate with franchise utilities
- Attend public meetings and provide notifications (when required)
- Arrange for procurement of materials and equipment
- Schedule and manage Site operations
- Use a collaborative process
- Provide quality controls
- Bond and insure the construction of certain projects based on cost or risk
- Comply with all federal, state and local permitting requirements
- Maintain a safe work site for all project participants
- Provide commissioning
- Prepare and turn over record drawings (when required)
- Provide operations and maintenance manuals (when required)
- Provide repairs to existing District infrastructure and District assets

B. General Scope of Work. The District requires general contracting (flood control) construction services for minor and major construction projects, maintenance, renovations, repairs, additions, demolition, re-constructions and alteration services to District facilities, roadways, and District infrastructure. The Contractor will be required to furnish all materials, equipment and personnel necessary to manage and accomplish each project.

(1) All work performed by the Contractor shall meet all applicable state and local codes and the Contractor shall be required to obtain all required permits and inspections.

(2) Job Orders will include, but are not limited to tasks such as construction and repair of on-forest watershed restoration measures, construction and repair work in support of Forest Restoration, construction and repair of flood water detention & retention facilities, floodwater conveyance channels, box and other forms of culverts/crossings, storm drain systems and inlets, bridges, catch basins, rock riprap, gabion baskets, excavation, drainages, and associated roadway grading, surfacing, placement of aggregate base, millings, asphalt pavement, roadway striping, concrete work, tree removal, traffic control, and utility relocations.

(3) Job Order proposals shall include, unless waived by the District, a completed "JOC Task Matrix" in the form attached as Exhibit B hereto and incorporated herein by reference.

C. Work Authorization. Any Work required under this Contract shall be authorized by issuance of formal, written Job Orders, as follows:

(1) As the need exists (as determined by the District) for performance under the terms of this Contract, the District will notify the Contractor of an existing requirement.

(2) Upon the receipt of this notification, the Contractor shall respond within two working days, or as otherwise agreed, by: (a) visiting the proposed Site in the company of the District; or (b) establishing contact with the District to further define the scope of the requirement.

(3) After mutual agreement on the scope of the Work, the Contractor shall then prepare a proposal for accomplishment of the task unless the Contractor, in its sole discretion, elects not to undertake the Work. If the Work is declined, the Contractor will so notify the District in a timely manner.

(4) The Contractor's proposal shall be submitted within 10 Days unless otherwise agreed.

(5) Upon receipt of the Contractor's proposal, the District will review the proposal for completeness and will reach agreement with the Contractor on pricing, schedule, and all other terms, prior to issuance of a Job Order.

(6) In the event the District does not issue a Job Order after receipt of the Contractor's proposal, the District is not obligated to reimburse the Contractor for any costs incurred in the preparation of the proposal.

D. Scheduling of Work.

(1) For each Job Order, the District will issue a Notice to Proceed. The first day of performance under a Job Order shall be the effective date specified in the Notice to Proceed. Any preliminary work started or material ordered or purchased before receipt of the Notice to Proceed shall be at the risk and expense of the Contractor. The Contractor shall diligently prosecute the Work to completion within the Job Order Time. The period of performance includes allowance for mobilization, holidays, weekend days, normal inclement weather, and cleanup. Therefore, claims for delay based on these elements will not be allowed.

(2) Placement of materials and equipment on the Site shall be made with a minimum of interference to neighboring property and the District's operations and personnel.

(3) The Contractor shall take all precautions to ensure that no damage will result from its operations to private or public property. All damages shall be repaired or replaced by the Contractor at no cost to the District.

(4) The Contractor shall be responsible for providing all necessary traffic control, such as street blockages, traffic cones, flagmen, etc., as required for each Job Order. Proposed traffic control methods shall be submitted to the District for approval.

E. Quality Assurance/Quality Control Program. The Contractor shall submit, for the District approval, a quality assurance/quality control plan within 15 calendar days after issuance of the initial Job Order. This plan should address all aspects of quality control including responsibility for surveillance of work, documentation, trend analysis, corrective action and interface with the District's inspectors.

F. Shop Drawings. The Contractor's duties under the Contract include the preparation of Shop Drawings or sketches necessary to permit orderly construction of the District's design plans. The Contractor agrees to provide detailed design drawings and plans if requested by the District.

G. Commencement of the Work. Performance of the Work shall be undertaken only upon execution of a Job Order by both parties and delivery of a Purchase Order and Notice to Proceed by the District. In response to Job Orders that may be mutually agreed upon and issued periodically by the District, the Contractor shall, in accordance with the Contract Documents, except as may be specified elsewhere in the Contract Documents, furnish all necessary labor, materials, tools, supplies, equipment, transportation, supervision, management, and perform all operations necessary and required for survey, design and construction services related to the Work, which will be defined and further described as to specific project requirements in each Job Order. The Work shall be performed in accordance with the requirements set forth in each Job Order.

H. Quality Standards. The Work shall be performed in a good, workmanlike and substantial manner and to the satisfaction of the District and under the direction and supervision of the District's Authorized Representative, or the District's properly authorized agents within the care and skill of a qualified contractor in Flagstaff, Arizona.

I. Hours of Work.

(1) Standard hours of work will be from 7:00 AM to 4:00 PM, Monday through Friday, unless alternate standard hours are agreed to and adopted; all hours worked on Saturdays, Sundays and holidays will be considered nonstandard hours.

(2) Non-standard hours worked by the Contractor to regain schedule or for the Contractor's convenience shall not be entitled to additional compensation.

J. Minor Design by Contractor. Minor design services may be required for some Job Orders. For those Job Orders that may require design services, the Contractor shall seek the services of an Arizona registered design professional to prepare plans for permitting.

(1) The selected design professional shall maintain at least \$1,000,000 Professional Liability Coverage.

(2) All documents prepared by the selected design professional are subject to review by the District. Review by the District does not relieve any design professional from the professional liability associated with the documents they have prepared.

K. Contractor Supervisor. The Contractor's Representative shall be reasonably available to the District and shall have the necessary expertise and experience required to supervise

the Contract Services. A Contractor's Representative will be assigned for each Job Order. The Contractor's Representative shall communicate regularly with the District and shall be vested with the authority to act on behalf of the Contractor.

L. Federally Funded Project Requirements. For Projects designated by the District as being funded, in whole or in part, by federal funding, the Contractor shall adhere to the Federally Funded Project Requirements set forth in Exhibit A attached hereto and incorporated herein by reference.

M. No Guarantee of Job Orders. This Contract embodies the agreement of the District and the Contractor to terms and conditions that will govern any Work described under a Job Order that may be issued by the District and agreed to by the Contractor. Nothing herein shall be construed as requiring the District to issue any Job Order, nor requiring the Contractor to accept same, it being the intent that both parties must mutually agree to any specific Work before a Job Order may be issued.

2.2 Subcontractor Selection Plan. The Contractor must prepare and submit a Subcontractor selection plan with its response to the District's request for a Job Order.

A. Qualifications-Based Selection Required. The Subcontractor selection plan must provide a process to select Subcontractors based on qualifications alone or on a combination of qualifications and price and shall not select subcontractors based on price alone.

B. No Deviation from Approved Plan. The approved Subcontractor selection plan must be adhered to for the duration of the Contract. Deviation from or changes to the approved plan must be submitted to and approved by the District.

C. District Right to Object. The District reserves the right to reject the Contractor's selection of Subcontractors on individual projects. Failure to include the subcontractor list in the price proposal submitted for each Job Order shall be cause for rejection of the proposal as non-responsive.

2.3 Government Approvals and Permits.

A. Permit Responsibility. Unless otherwise provided in a Job Order, the Contractor shall obtain or assist the District 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. **The Contractor is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices.**

B. Copies of Permits. Copies of these permits and notices must be provided to the District's Authorized Representative prior to starting the permitted activity. This provision does not constitute an assumption by the District of an obligation of any kind for violation of said permit or notice requirements.

C. Temporary Utilities. The Contractor is responsible for the cost of water meter(s), water and sewer taps, fire lines and taps, and all water bills on the project meters until

Final Acceptance of the Project. Arrangements for construction water are the Contractor's responsibility.

2.4 Pre-Construction Conference.

A. Timing of Conference. After execution of a Job Order by the District and the Contractor, but prior to issuance of a Purchase Order and prior to issuance of a Notice to Proceed and the commencement of any Work pursuant to such Job Order, a pre-construction conference will be scheduled.

B. Purpose of Conference. The purpose of this conference is to establish a working relationship between the Contractor, utility firms, and other interested entities. The agenda will include: critical elements of the Work and Schedule; submittal schedule; access to Site and protocol for admission; hours of construction operation, if different from the standard hours set forth in this Contract; designation of a staging area; specific quality requirements for equipment and material; requirements for catalog cuts, technical data, samples, Shop Drawings and incidental design; the presence of hazardous materials; coordination with the involved utility firms regarding temporary services and shutoffs; safety issues/concerns and procedures; date on which price proposal is due; cost breakdown of major lump sum items; payment application and processing; level of record drawings required; and emergency telephone numbers for all representatives involved in the course of construction.

C. Mandatory Attendance. The Contractor shall ensure attendance by the Contractor's Representative, the job superintendent, and the Contractor's safety officer.

D. Notice to Proceed Established. The Job Order Notice to Proceed date will be established.

2.5 Control of Work.

A. Supervision; Inspection. Unless otherwise provided in the Job Order to be the responsibility of the District or a separate contractor, the Contractor shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities necessary to permit the Contractor to complete the Work according to the requirements in this Contract and the Job Order.

B. Requisite Skill. The Contractor shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Job Order. The Contractor shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

C. On-Site Supervision. The Contractor's superintendent, or suitable designee, shall be present at the Site at all times that construction activities are taking place.

(1) All elements of the Work, such as concrete work, pipe work, etc., shall be under the direct supervision of the Contractor's foreman or designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the Work.

(2) In the event of noncompliance of this subsection, the District may require the Contractor to stop or suspend the Work, in whole or in part, until the required supervision is provided.

D. Manufacturer Approval. Where the Job Order requires that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is the Contractor's responsibility to ensure the Subcontractor employed for such work is approved by the manufacturer.

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

F. Field Measurements. The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Job Order before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the District at once.

G. Construction Grades; Lines; Benchmarks. The Contractor shall establish and maintain all building and construction grades, lines, levels, and benchmarks, and shall be responsible for accuracy and protection of same. This work shall be performed or supervised by a licensed civil engineer or surveyor.

H. Unsuitable Personnel. Any person employed by the Contractor or any Subcontractor who, in the opinion of the District, does not perform work in a proper, skillful and safe manner or is intemperate or disorderly shall, at the written request of the District, be removed from the Project by the Contractor or Subcontractor employing such person, and shall not be employed again in any portion of Project without the written approval of the District. The Contractor or Subcontractor shall defend and hold the District harmless from damages or claims which may occur in the enforcement of this section.

I. Responsibility for Subcontractors. The Contractor assumes responsibility to the District for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between the District and any Subcontractor, including but not limited to any third-party beneficiary rights.

J. Coordination. The Contractor shall coordinate the activities of all Subcontractors. If the District performs other work on the Project or at the Site with separate contractors under the District's control, the Contractor agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.6 Control of Work Site.

A. Debris; Construction Waste. Throughout all phases of construction, including suspension of the Work, the Contractor shall keep the Site reasonably free from debris, trash and construction wastes to permit the 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, the Contractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit the District to occupy the Project or a portion of the Project for its intended use.

B. Dust Control. The Contractor shall take whatever steps, procedures or means to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the District and in accordance with the requirements of any governmental entity having jurisdiction over air quality of the Project.

C. Site Storage. Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Site by the Contractor. When equipment is no longer required for the Work, it shall 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 the Contractor.

D. Sanitary Facilities. During construction, the Contractor shall supply the Site with a minimum of one portable chemical toilet, or more as necessary or directed by the District for larger projects.

2.7 Specifications and Drawings.

A. Copy on Site; Order of Priority. The Contractor shall keep on the Work Site a copy of the drawings and/or specifications and shall at all times give the District's Authorized Representative access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of differences between drawings and specifications, the drawings shall govern. In case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the District's Authorized Representative, who shall promptly submit them to the District Engineer for a determination in writing. Any adjustment by the Contractor without such a determination shall be at its own risk and expense.

B. Term Usage. Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of the District or the District's Authorized Representative is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" the District or the District's Authorized Representative, unless otherwise expressly stated. Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying

the Contract unless stated otherwise. The word “provided” as used herein shall be understood to mean “provide complete in place,” that is “furnished and installed.”

C. Omissions. Omissions from the drawings or specifications or the mis-description of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted or mis-described details of the Work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

D. Contractor Obligation to Inspect. The Contractor shall check all District-furnished drawings immediately upon receipt and shall promptly notify the District’s Authorized Representative of any discrepancies. Figures marked on drawings shall be followed in preference to scale measurements. Large scale drawings shall govern small scale drawings. The Contractor shall compare all drawings and verify the figures before laying out the Work and will be responsible for any errors which might have been avoided thereby.

E. Ownership of Documents. All drawings (to include as-built drawings), sketches, designs, design data, specifications, note books, technical and scientific data provided to the Contractor or developed by the Contractor pursuant to the Contract and all photographs, negatives, reports, findings, recommendations, data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the Work or any part thereof, shall be the property of the District and may be used by the District without any claim by the Contractor for additional compensation, unless such material developed by the Contractor does not result in an issued Job Order. In such cases, the Contractor will receive reasonable reimbursement for the development of such materials before the District uses them in any manner whatsoever. In addition, the District agrees to hold the Contractor harmless to the extent permitted by law from any legal liability arising out of the District’s use of such materials.

2.8 Shop Drawings, Product Data and Samples.

A. Shop Drawing Approval. The Contractor shall coordinate all Shop Drawings, and review them for accuracy, completeness, and compliance with Contract requirements and shall indicate its approval thereon as evidence of such coordination and review. Shop drawings submitted to the District’s Authorized Representative without evidence of the Contractor’s approval may be returned for resubmission. The District will indicate its approval or disapproval of the Shop Drawings and if not approved as submitted shall indicate the District’s reasons therefore. Any work done before such approval shall be at the Contractor’s risk. Approval by the District shall not relieve the Contractor from responsibility for any errors or omissions in such drawings, nor from responsibility for complying with the requirements of the Contract and the applicable Job Order, except with respect to variations described and approved in accordance with Subsection 2.8(B) below.

B. Variations. If Shop Drawings show variations from the Job Order requirements, the Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If the District approves any such variation, the District shall issue an appropriate Job Order modification, including any necessary adjustments related to the variation. If the variation is minor and does not involve a change in price or in time of performance, a

modification need not be issued.

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

D. Timely Review. The Contractor shall review, approve, verify, and submit to the District copies of each Shop Drawing, product data, samples, and similar submittal required by the Job Order in accordance with the approved schedule as to cause no delay in the Work or in the activities of the District or of separate contractors. Submittals made by the Contractor that are not required by the Job Order may be returned without action.

E. No Work Prior to Approval. The Contractor shall 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 District. Such Work shall be in accordance with approved submittals.

F. Contractor Representations. By approving, verifying and submitting Shop Drawings, product data, samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Job Order.

G. Contractor Responsible. The Contractor shall not be relieved of responsibility for deviations from requirements of the Job Order by the District's approval of Shop Drawings, product data, samples or similar submittals unless the Contractor has specifically informed the District in writing of such deviation at the time of submittal and the District has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, product data, samples, or similar submittals by the District's approval thereof.

H. Highlighting Revisions. The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, product data, samples, or similar submittals, to revisions other than those requested by the District on previous submittals.

I. Information-Only Submittals. Informational submittals upon which the District is not expected to take responsive action must be so identified in the submittal.

J. Reliance on Professional Certification. When professional certification of performance criteria of materials, systems or equipment is required by the Job Order, the District shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

2.9 Quality Control, Testing and Inspection.

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

B. Materials Subject to Inspection. 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 District.

C. Sampling. The procedures and methods used to sample and test material will be determined by the District. Unless otherwise specified, samples and tests shall be made in accordance with the standard methods of AASHTO or ASTM.

D. Independent Testing. The District will select a pre-qualified District or Independent Testing Laboratory and will pay for initial District acceptance testing.

(1) When the first and subsequent tests indicate noncompliance with the Job Order, the cost associated with that noncompliance, including subsequent tests, will be paid for by the Contractor.

(2) When the first and subsequent tests indicate noncompliance with the Job Order, all retesting shall be performed by the same testing agency.

E. Contractor Cooperation. The Contractor will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the Work and shall provide them access to the Work at all times.

F. Material Approval at Source. At the option of the District, materials may be approved at the source of supply before delivery is started.

G. Compliance Testing. 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, shall be the responsibility of and shall be paid by the Contractor, unless otherwise provided in the Job Order.

H. Contractor's Sole Expense. The Contractor's convenience and quality control testing and inspections shall be the sole responsibility of the Contractor and paid by the Contractor.

2.10 Project Record Documents.

A. Required Documentation. At the pre-construction conference described above, the District's Authorized Representative will describe the required documentation for the record documents for each Job Order.

(1) During the construction period, the Contractor shall maintain at the jobsite a set of prints of the Construction Documents for record document purposes. The Contractor will mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents. The Contractor shall give particular attention to information on concealed elements that would be difficult to identify or measure and record later. Items to be marked may include but are not limited to:

- Dimensional changes to the Construction Documents.

- Revisions to details shown on the Construction Documents.
- 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 the original Construction Documents.

(2) The Contractor shall mark completely and accurately record document prints of Construction Documents. Where Shop Drawings are marked, show cross-references on the related other Construction Documents.

(3) The Contractor shall mark Project record drawing sets with red erasable colored pencil.

(4) The Contractor shall note RFI Numbers, ASI Numbers and change order numbers, etc., as required to identify the source of the change to the Construction Documents.

(5) The Contractor shall, at the time of Substantial Completion, submit record document prints and Shop Drawings to the District or the District's Authorized Representative for review and comment.

B. Corrections. Immediately upon receipt of the reviewed record documents from the District, the Contractor shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to the District:

(1) A complete set of electronic record documents prepared in AutoCAD format compatible with the District's CADD technology. If original Construction Documents were prepared by a separate design professional, the District shall ensure the design professional provides files of the original Construction Documents to the Contractor for the use of preparing these final record documents or the Contractor may contract with the design professional to revise and update the electronic drawing files. Each drawing shall be clearly identified as an "As-Built Document."

(2) If requested by the District, a complete set of reproducible mylars from the final AutoCAD drawings and five edge-bound blueline or blackline sets reproduced from these mylars.

(3) The original copy of the record documents (redline mark-ups).

2.11 Project Safety.

A. Scope of Safety Responsibilities. The 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 thereto. During the construction process, the Contractor shall comply with all applicable federal, state and county, and District health and safety laws and regulations including, but not limited to all applicable “OSHA Standards for the Construction Industry” shall be followed, including, but not limited to, 29 CFR Part 1926, Subpart P – Excavations. All construction equipment and materials shall be safely fenced off from public access during the entirety of the project. Knowing and following OSHA Safety Standards is the Contractor’s responsibility. The District may stop construction on a project until safety concerns have been corrected.

B. Responsibility for Safety Programs. The Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.

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

D. Inspections; Safety Meetings. The Contractor’s safety representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with the Contractor’s personnel, Subcontractors and others as applicable.

E. Compliance with Legal Requirements. The Contractor and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any District-specific safety requirements set forth in the Contract Documents; provided that such District-specific requirements do not violate any applicable Legal Requirement.

F. Reporting Obligation. The Contractor will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to the District’s Authorized Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

G. Subcontractor Safety Requirements. The Contractor’s responsibility for safety under this Section 2.11 is not intended in any way to relieve 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.

2.12 Warranty.

A. Only New Materials and Equipment. The Contractor warrants to the District that the construction, including all materials and equipment furnished as part of the construction, shall be new, unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.

B. Alterations or Damage by Others. The Contractor's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than the Contractor or anyone for whose acts the Contractor may be liable.

C. Duration of Construction Warranty. The Contractor's warranty obligation shall be for one year from the Final Acceptance date.

D. No Limitation on Other Warranties. Nothing in this warranty is intended to limit any manufacturer's warranty that provides the District with greater warranty rights than set forth in this Section 2.12 or the Contract Documents. The Contractor will provide the District with all manufacturers' warranties upon Substantial Completion.

2.13 Correction of Defective Work.

A. Contractor Responsible. The Contractor shall be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other work prepared or compiled as required by this Contract and shall correct its work, at the Contractor's sole expense. The fact that the District has accepted, approved or pays for the Contractor's work shall in no way relieve the Contractor of any of its responsibilities.

B. Contractor Corrections. The 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 Section 2.12 above, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by the Contract Documents. A progress payment, or partial or entire use or occupancy of the Project by the District shall not constitute acceptance of the Work not in accordance with the Contract Documents.

C. Time for Corrections: District Self-Help. During the Job Order Time, the Contractor shall take meaningful steps to commence correction of such nonconforming Work as notified by the District. 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 the Contractor fails to commence the necessary steps during the Job Order Time, the District, in addition to any other remedies provided under the Contract Documents, may provide the Contractor with written notice that the District will commence correction of such nonconforming Work with its own forces.

D. Time for Correction of Warranty Work: District Self-Help The Contractor shall take meaningful steps to commence correction of nonconforming Work subject to Section 2.12 above, within seven days of receipt of written notice from the District. 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 the Contractor fails to commence the necessary steps within such seven-day period, the District, in addition to any other remedies provided under the Contract Documents, may provide the Contractor with written notice that the District will commence correction of such nonconforming Work with its own forces.

E. Costs of District Self-Help to be Paid by Contractor. If the District performs corrective Work as described above, the Contractor shall be responsible for all reasonable costs incurred by the District in performing such correction.

F. Emergency Work. For Nonconforming Work that creates an emergency requiring an immediate response, the Contractor will respond and initiate corrections within 24 hours.

G. Warranty Not Limitations Period. The one-year period referenced in Subsection 2.12(B) above applies only to the Contractor's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies the District may have regarding the Contractor's other obligations under the Contract Documents.

2.14 Fair Treatment to Workers. The Contractor shall keep fully informed of all Federal and State laws, County and District ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority that in any way affect the conduct of the Work. The Contractor shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring fair and equal treatment for all employees and against unfair employment practices, including OSHA and the Fair Labor Standards Act (FLSA). The Contractor shall defend and indemnify the District and its representatives against any claim or liability arising from or based on the violation of such, whether by the Contractor or its employees.

ARTICLE 3 - CONTRACT TIME AND JOB ORDER TIME

3.1 Contract Time. The Contract Time shall be five years from the Effective Date. A Contract Amendment will be processed for any extension. This Contract will remain in full force and effect during the performance of any Job Order.

3.2 Job Order Time.

A. Documentation. Each Job Order will include the Work "Schedule" (as defined below) with the Job Order Time and a calculated Substantial Completion date.

B. Schedule. The Contractor will submit for approval with the Job Order a "Schedule" showing the sequence in which the Contractor proposes to perform the Work, and the dates on which the Contractor contemplates starting and completing the significant elements of the Work (including acquiring materials, plant and equipment). The Schedule may be a formal computerized schedule or a progress chart in a bar chart format of suitable scale to indicate appropriately the percentage of the Work scheduled for completion by any given date during the period. In either case the basic information should be the same and the Schedule chart must contain as a minimum:

- (1) A list of the different types of work activities or work elements.
- (2) The logical dependencies (ties) to indicate what Work shall be accomplished before other Work can begin.
- (3) Proposed start and complete dates or time frames for each work activity or work element.
- (4) The “weighting” or relative worth each work activity or work element is of the total project either as a percent or dollar amount. If the Contractor fails to submit a Schedule with the Job Order, the District may withhold issuance of a Notice to Proceed until the Contractor submits the required Schedule.

C. Adherence to Schedule. The Contractor shall prosecute the Work so that the portion of the Work completed at any point in time shall be not less than as required by the Schedule. The Contractor shall submit a progress report every 30 days, or as directed by the District’s Authorized Representative, and upon doing so shall immediately deliver a current Schedule to the District’s Authorized Representative. If the Contractor falls behind the approved Schedule, the Contractor shall take steps necessary to improve its progress, including those that may be reasonably required by the District’s Authorized Representative. If the delay is an Inexcusable Delay (as defined below), the Contractor shall prepare a recovery schedule for the District’s review and approval, showing how the Contractor will compensate for the delays and achieve Substantial Completion by the date shown on the Schedule. If the Contractor is unable to demonstrate how it will overcome Inexcusable Delays, the District may order the Contractor to employ such extraordinary measures as are necessary to bring the Work into conformity with the date of Substantial Completion set forth therein, the costs of which shall be included as part of the Cost of the Work. If the delay is an Excusable Delay (as defined below), the District shall either (1) authorize an equitable extension in the Schedule to account for such delay, and equitably adjust the Job Order Price on account of such delay, or (2) request that the Contractor prepare a recovery schedule showing how (if possible) the Contractor can achieve Substantial Completion by the date shown on the Schedule, and equitably adjust the applicable Job Order Price in accordance with the change order provisions of this Contract related to any extraordinary activities required of the Contractor on account of such recovery schedule.

D. Emergency Work. The Contractor will give top priority to any emergency work the District may have and will allocate all resources necessary to accomplish such work in accordance with the District’s Schedule requirements. To the extent the Contractor incurs additional cost, expense or schedule delay in performing the District’s emergency work, the District will equitably adjust the Contract.

E. District Requirements. Failure of the Contractor to comply with the requirements of the District or the District’s Authorized Representative under this article shall be grounds for a determination by the District that the Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Job Order. Upon making this determination, the District may terminate the Contractor’s right to proceed with the Work, or any separable part of it, in accordance with this Contract.

F. Progress Completion. The District and the Contractor agree the time limits stated in the Job Order, as the same may be amended and updated by the parties, are of the essence of this Contract.

G. Commencement of the Work. The Work shall commence on the Notice to Proceed date of the applicable Job Order, and shall proceed in general accordance with the Schedule for the Work set forth therein. Each Job Order shall establish a separate Notice to Proceed date, Substantial Completion date, and Job Order Time.

H. Critical Path Activities. To the extent the Contractor completes activities on the Critical Path earlier than scheduled, the savings in time on account thereof shall belong solely to the Contractor.

3.3 Extensions of Job Order Time.

A. Limitation on Extensions. An extension in the scheduled Substantial Completion date for a Job Order will only be granted in the event of Excusable Delays affecting Work activities on the Critical Path. The Contractor shall be entitled to general condition costs and extra costs related to the Excusable Delay for idle labor, equipment inefficiency, and lost productivity of the performance of the Work; however, the Contractor must submit evidence reasonably satisfactory to the District substantiating such costs. Such adjustment to the Job Order Price and Substantial Completion date shall be issued in an amendment to the applicable Job Order.

B. Excusable Delay. To the extent any of the following events results in an actual delay in the Work affecting activities on the Critical Path, such shall constitute an "Excusable Delay" (to the extent not set forth below, a delay will be considered an "Inexcusable Delay"):

(1) Delays resulting from Force Majeure events: The term "Force Majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, Force Majeure includes acts of God, acts of the public enemy, war, riots, strikes, mobilization, labor disputes, civil disorders, fire, floods, lockouts, injunctions, intervention, acts or failures or refusals to act by government authority, and other similar occurrences beyond the control of the party declaring Force Majeure which such party is unable to prevent by exercising reasonable diligence. The Force Majeure shall be deemed to commence when the party declaring Force Majeure notifies the other party, in accordance with Subsection 4.3(C), of the existence of the Force Majeure and shall be deemed to continue as long as the results or effects of the Force Majeure prevent the party from resuming performance in accordance with this Contract and the applicable Job Order. Force Majeure shall not include (1) late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, an oversold condition of the market, inefficiencies, or similar occurrences, or (2) late performance by a Subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Subsection 4.3(B)(1). Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by Force Majeure. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing. The time of Substantial Completion or Final Completion shall be extended by written

amendment for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with this Contract and the applicable Job Order.

(2) Differing, unusual, or concealed Site conditions that could not reasonably have been anticipated by the Contractor in preparing the Schedule, including, without limitation, archaeological finds and unusual soil conditions (including rock or other geological conditions), underground foundations, abandoned or not properly identified utility lines, and water conditions.

(3) Delays resulting from the existence or discovery of hazardous materials on the Site not brought to the Site by or on behalf of the Contractor.

(4) Delays resulting from changes in Legal Requirements occurring after the date of execution of this Contract.

(5) Delays occurring due to the acts or omissions of the District and those within the control of the District.

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

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

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

D. Determination of Delay. Within 10 Days after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the parties as to the then-current status of Excusable Delays and Inexcusable Delays, the Contractor shall request the District prepare a determination of the number and character of the delay days. The District will provide the Contractor with written notice of the District's determination of the number of Days of Excusable Delay and/or Inexcusable Delay within 10 Days after receipt by the District of the Contractor's written request for such determination. The Contractor shall not, however, deem an issuance by the District of such a determination to be a concurrence with any matters set forth in

the Contractor's request. The Contractor may invoke the dispute resolution procedures set forth below with respect to such determination.

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

3.5 Weather Delays. The Contractor shall include and clearly identify an appropriate number of Days of weather-related delays within the Schedule for the Work for the applicable Job Order. If the Contractor experiences additional weather-related delays beyond the number of Days set forth in the Schedule for the applicable Job Order, the Contractor shall be entitled to commensurate extension of time and reimbursement of costs associated with such delay; provided such requests for extensions of time are submitted and approved according to the process set forth in Subsection 4.3(C) above. If the Contractor fails to include an appropriate number of Days of weather-related delays within the applicable Job Order for any portion of the Project, the Contractor shall not be eligible for any extension of time or reimbursement of costs related to otherwise Excusable Delays relating to weather for the applicable Job Order.

3.6 Substantial Completion.

A. Notification. The Contractor shall notify the District when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is substantially complete. When the District determines the Work to be substantially complete, the District will issue a certificate of Substantial Completion with a list of items to be completed or corrected prior to final payment for the Job Order. The Contractor shall proceed promptly to complete and correct items on the list.

B. Punch List. Prior to notifying the District as set forth above, the Contractor shall inspect the Work and prepare and submit to the District a comprehensive list of items to be completed or corrected (a "Punch List"). The Contractor shall proceed promptly to complete and correct items on the Punch List. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The District may supplement the Punch List following its inspection of the Work.

C. Inspection. Within five days of the District's receipt of the Contractor's notice, the District and the Contractor will jointly inspect such Work to verify that it is substantially complete in accordance with the requirements of the Contract Documents.

D. Certificate of Substantial Completion. If such Work is substantially complete, the District shall prepare and issue a certificate of Substantial Completion that will set forth (1) the date of Substantial Completion of the Work or portion thereof, (2) the remaining items of the 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 District's and the Contractor's responsibility for the Project's security, maintenance, utilities and insurance pending Final Acceptance and (4) an acknowledgment that warranties commence to run

on the date of Substantial Completion, except as may otherwise be noted in the certificate of Substantial Completion.

E. Partial Use or Occupancy. The District, at its option, may use a portion of the Work which has been determined to be substantially complete; provided, however, that (1) a certificate of Substantial Completion has been issued for the portion of the Work addressing the items set forth in Subsection 3.6(B) above, (2) the Contractor and the District 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 District and the Contractor agree that the District's use or occupancy will not interfere with the Contractor's completion of the remaining Work.

3.7 Final Acceptance. Upon receipt of written notice that the Work or identified portions of the Work is ready for final inspection and acceptance, the District and the Contractor will jointly inspect to verify that the remaining items of the Work have been completed as set forth in Subsection 4.6(B). The District will issue a Final Acceptance letter for the Job Order.

3.8 Liquidated Damages.

A. Generally. The Contractor and the District acknowledge that in the event that the Contractor fails to achieve Substantial Completion or Final Acceptance of the Project by the dates established therefore in the applicable Job Order, as adjusted, the District will incur substantial damages and the extent of such damages shall be incapable of accurate measurement. Nonetheless, the parties acknowledge that on the date of this Contract, the amount of liquidated damages set forth below represents a good faith estimate as to the actual potential damages that the District would incur as a result of late Substantial Completion or Final Acceptance of the Project. Such liquidated damages shall be the sole and exclusive remedy of the District for late completion of the Project, and the District hereby waives all other remedies available at law or in equity with respect to losses resulting from late completion. The amount of the liquidated damages calculated hereunder does not include any penalty.

B. When Imposed. If the Contractor fails to achieve Substantial Completion of that portion of the Work applicable to a particular Job Order on or before the Substantial Completion date set forth in the applicable Job Order, as adjusted, for any reason other than Excusable Delays, the Contractor shall pay to the District liquidated damages in the amount per Day set forth below for each Day Substantial Completion is delayed beyond the Substantial Completion date set forth in the applicable Job Order.

(1) If the Contractor fails to achieve Final Acceptance of that portion of the Work applicable to a particular Job Order on or before the Final Acceptance date, as adjusted, for any reason other than Excusable Delays, the Contractor shall pay to the District liquidated damages in the amount per Day as set forth below for each Day Final Acceptance is delayed beyond the Final Acceptance date established according to the applicable Job Order.

(2) In no case may the amount of liquidated damages due under this Subsection 3.8(B) for any single Day of delay exceed the highest amount, as determined according

to the schedule below, that would be charged for any single Inexcusable Delay existing on such Day.

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

C. Amount. The following will be the liquidated damages for each Job Order unless a specific amount has been determined in the Job Order.

Schedule of Liquidated Damages			
Job Order Price		Liquidated Damages Per Day	
From More Than:	To and Including:	Calendar Day or Fixed Date:	Working Day:
\$0	\$100,000	\$350	\$500
100,000	500,000	490	700
500,000	1,000,000	840	1,200
1,000,000	2,000,000	910	1,300

D. District Right to Waive. The District may waive all or any portion of the liquidated damage assessment after the date the Work is substantially completed and is: (1) in condition for safe and convenient use by the travelling public; or (2) available for next-stage construction without restriction.

E. No Accrual During Authorized Suspension. No liquidated damages will accrue during periods of time when the District has authorized, in writing, suspension of the Work.

F. No Waiver. Permitting the Contractor to continue and finish the Work or any part of it after the time fixed for its completion shall not in any way operate as a waiver on the part of the District of any of its rights under this Contract. Neither by the act of taking over the Work nor by annulment of this Contract or any Job Order related hereto shall the District forfeit the right to recover liquidated damages from the Contractor or its Sureties.

ARTICLE 4 - COMPENSATION

4.1 Generally. A separate Purchase Order will be issued for each Job Order before the commencement of any work by the Contractor. The compensation to be paid to the Contractor for services performed pursuant to this Contract shall be based upon Purchase Orders prepared for each Job Order, each of which will establish the Job Order Price for the applicable Project.

4.2 Job Order Price.

A. Maximum Per Job Order. The District intends that each Job Order performed under this Contract will not exceed [\$2,000,000.]

(1) Each Job Order Price is subject to adjustments made in accordance with this Article 4.

(2) Unless otherwise provided in the Contract Documents, each Job Order price is deemed to include all sales, use, consumer and other taxes that are legally enacted when negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

(3) The Contractor guarantees to bring each Job Order within the Job Order Price or the Contractor alone will be required to pay the difference between the actual cost and the Job Order Price.

B. Price Based on Scope. The scope of Work will vary with each Job Order. At the beginning of each Job Order, a scope conference will be scheduled to define design and construction services required of the Contractor. The Job Order and related documents will be given to the Contractor. The Contractor will be asked to provide a proposal with Job Order Price and schedule indicating the Job Order Time for the proposed Job Order based on the scope meeting and the provided documents. The price proposal for a specific scope of Work shall include a complete list of quantities and prices of parts and materials to be utilized, total labor cost to be broken down by trade, hours for each trade, hourly cost per trade, total dollar cost and completion date. The project price proposal shall be all-inclusive with any cost overruns to be absorbed by the Contractor unless change orders are pre-approved by the District. The District will review the submitted proposal. The District and the Contractor shall negotiate in good faith and as expeditiously as possible an agreed upon Job Order Price and the Job Order Time. Upon reaching concurrence, the parties shall execute the Job Order reflecting the terms agreed upon.

C. Contractor Warranty Regarding Price Proposal. By executing a price proposal, the Contractor represents that it has visited the project site(s) and familiarized itself with the local conditions under which the Work is to be performed. The District does not undertake to represent or warrant the Site or local conditions.

D. Multiple Proposals. The District has the right to request Job Order proposals from more than one firm for competitive purposes. Pricing will be determined by Open Book Pricing consisting of firm subcontractor price quotes that are shared with and approved by the District.

4.3 Mark up for Changes. If the Job Order Price requires an adjustment due to changes in the Work, the cost of such changes is determined subject to Section 6. The markups that shall be allowed on such changes shall be no greater than the markups delineated in the Job Order proposal.

4.4 Differing Site Conditions.

A. Price and Time Adjustments. If the Contractor encounters a Differing Site Condition, the Contractor will be entitled to an adjustment in the Job Order Price and/or Job Order Times to the extent the Contractor's cost and/or time of performance are adversely impacted by the Differing Site Condition.

B. Notice to District. Upon encountering a Differing Site Condition, the Contractor shall provide prompt written notice to the District of such condition, which notice shall not be later than seven days after such condition has been encountered. The Contractor shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

4.5 Errors, Discrepancies and Omissions.

A. Contractor Request for Clarification. If the Contractor observes errors, discrepancies or omissions in the Contract Documents, he shall promptly notify the District and request clarification.

B. Contractor Bears Risk. If the Contractor proceeds with the Work affected by such errors, discrepancies or omissions, without receiving such clarifications, he does so at his own risk. Adjustments involving such circumstances made by the Contractor prior to clarification by the District shall be at the Contractor's risk.

4.6 District Requested Change in a Job Order.

A. The District reserves the right to make, at any time during the progress of a Job Order, such alterations as may be found necessary or desirable.

B. Such alterations and changes shall not invalidate this Contract or the Job Order nor release the surety and the Contractor agrees to perform the Job Order as altered, the same as if it has been a part of the original Contract Documents.

C. The District will request a proposal for a change in a Job Order from the Contractor, and an adjustment in the Job Order Price and/or Job Order Times shall be made based on a mutually agreed upon cost and time.

4.7 Legal Requirements. The Job Order Price and/or Job Order Times shall be adjusted to compensate the Contractor for the effects of any changes in the Legal Requirements enacted after the date of the Job Order affecting the performance of the Work, or the date of the Job Order Price. Such effects may include, without limitation, revisions required to be made to the Construction Documents because of changes in Legal Requirements.

4.8 Job Order Amendments.

A. Negotiation of Amendments. The District and the Contractor shall negotiate in good faith and as expeditiously as possible the appropriate adjustments to a Job Order. Upon reaching an agreement, the parties shall prepare and execute an appropriate Job Order Amendments reflecting the terms of the changes.

B. Contract Documents Govern. All changes to a Job Order authorized by change orders shall be performed under the conditions of the Contract Documents.

4.9 Minor Changes in a Job Order.

A. By District. The District has authority to order minor changes to a Job Order that do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Such changes shall be implemented by written order and shall be binding on the District and the Contractor. The Contractor shall carry out such written orders promptly.

B. By Contractor. The Contractor may make minor changes to a Job Order; provided, however, that the Contractor shall promptly inform the District, in writing, of any such changes and record such changes, if appropriate, on the Project Record Documents maintained by the Contractor.

C. No Price or Time Adjustments. Minor changes to a Job Order will not involve an adjustment in the Job Order Price and/or Job Order Time.

4.10 Job Order Price Adjustments.

A. Acceptable Methods. The increase or decrease in Job Order Price resulting from a change in the Work shall be determined by one or more of the following methods:

(1) Unit prices set forth in the Job Order or as subsequently agreed to between the parties.

(2) A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by the District.

(3) Costs, fees and any other markups set forth in Section 5.2.

B. Inability to Agree on Method. If an increase or decrease cannot be agreed to as set forth in items (1) through (3) above and the District issues a change order, the cost of the change of the Work shall 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 set forth in the Job Order. The Contractor shall maintain a documented, itemized accounting evidencing the expenses and savings associated with such changes.

C. Equitable Adjustment of Unit Prices. If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to the District or the Contractor because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

D. Dispute Resolution. If the District and the Contractor disagree upon whether the Contractor is entitled to be paid for any services required by the District, or if there are any other disagreements over the scope of a Job Order or proposed changes to a Job Order, the District and the Contractor shall resolve the disagreement pursuant to Article 6 hereof.

(1) As part of the negotiation process, the Contractor shall furnish the District with a good faith estimate of the costs to perform the disputed services in accordance with the District's interpretations.

(2) If the parties are unable to agree and the District expects the Contractor to perform the services in accordance with the District's interpretations, the Contractor shall proceed to perform the disputed services, conditioned upon the District issuing a written order to the Contractor (i) directing the Contractor to proceed and (ii) specifying the District's interpretation of the services that are to be performed.

4.11 Emergencies. In any emergency affecting the safety of persons and/or property, the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Job Order Price and/or Job Order Time resulting from emergency work under this Section 4.11 shall be determined as provided in Article 4.

ARTICLE 5 - PROCEDURE FOR PAYMENT

5.1 Job Order Payment Request.

A. Schedule of Values. At the pre-construction conference prescribed above, the Contractor shall submit for the District'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 the Contractor throughout the Work.

B. Progress of the Work. The Contractor shall invoices as Job Order Pay Requests for progress payments at the end of each calendar month. Invoices shall be submitted to the District's Business Manager who will be issuing the Purchase Order and submitting invoices for payment. Such invoice shall include a detailed breakdown of all charges and shall be based on completion of tasks. At least five working days prior to the date established for a progress payment, the Contractor shall meet with the District's Authorized Representative to review the progress of the Work as it will be reflected on the Job Order Payment Request.

C. Contractor Representation. The Job Order Payment Request shall constitute the 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 the District free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work.

5.2 Partial Payments.

A. When Allowed. Partial payment will be made for Job Orders with Job Order Time greater than 90 Days and may be made if Job Order Time is less than 90 Days.

B. Submittal Date. The Contractor shall submit a Job Order Payment Request to the District on the monthly anniversary of the Job Order Notice to Proceed beginning with the first month after the Job Order Notice to Proceed.

C. Incorporation of Equipment and Materials. The Job Order Payment Request may include payment for equipment and materials not yet incorporated into the Work if construction progress is in reasonable conformance with the approved Schedule.

(1) For equipment and material suitably stored at the Site, the equipment and materials shall be protected by suitable insurance and the District shall receive the equipment and materials free and clear of all liens and encumbrances.

(2) No material or equipment may be stored off the Site without the District's prior, written approval. The material and equipment must be stored within Coconino County and be accessible for the District's inspection, and title to such materials and equipment must protect the District's interest and shall include applicable insurance, bonding, storage and transportation to the Site.

(3) All bonds and insurance required for stored materials shall name the District as the loss payee to the extent of its interest in the stored materials.

5.3 Payment of Job Order.

A. Timing of Payment. The District shall make payment in accordance with A.R.S. § 34-609, as amended. Payment will be made no later than 14 calendar days after the Job Order Payment Request is certified and approved, but in each case less the total of payments previously made, and less amounts properly withheld under Section 5.5 below. The Contractor shall be paid 95% of the earned sum when payment is due, with not more than 5% being retained to ensure faithful performance of the Agreement. All amounts withheld may be included in the final payment.

B. Withholding Amounts. The District shall pay the Contractor all amounts properly due. If the District determines that the Contractor is not entitled to all or part of a Job Order Payment Request, it will notify the Contractor in writing within seven days after the date the Job Order Payment Request is received by the District. The notice shall indicate the specific amounts the District intends to withhold, the reasons and contractual basis for the withholding, and the specific measures the Contractor must take to rectify the District's concerns. The Contractor and the District will attempt to resolve the District's concerns. If the parties cannot resolve such concerns, the Contractor may pursue its rights under the Contract Documents.

5.4 Final Payment.

A. Conditions. After receipt of a final Job Order Payment Request, the District shall make final payment as prescribed in this Section 5.4, provided that the Contractor has completed all of the Work in conformance with the Contract Documents and a Final Acceptance Letter has been issued by the District.

B. Submittal Requirements. At the time of submission of its final Job Order Payment Request, the Contractor shall 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 District's interests.

(2) A general release executed by the Contractor waiving, upon receipt of final payment by the Contractor, all claims, except those claims previously made in writing to the District and remaining unsettled at the time of final payment.

5.5 Payments to Subcontractors or Supplier.

A. Timing of Payments. The Contractor shall pay its Subcontractors or suppliers within seven calendar days of receipt of each progress payment from the District. The Contractor shall pay for the amount of the Work performed or materials supplied by each Subcontractor or supplier as accepted and approved by the District with each progress payment. No contract between the Contractor and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment as provided herein.

B. District Actions. If the Contractor fails to make payments in accordance with these provisions, the Contractor agrees the District may take any one or more of the following actions:

(1) Hold the 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 District from the Contractor for a period not to exceed one year from Substantial Completion date of the Work contemplated by this Contract.

C. Disputes with Subcontractor. If the Contractor's payment to a Subcontractor or supplier is in dispute, the Contractor and Subcontractor or supplier agree to submit the dispute to any of one of the following dispute resolution processes within 14 calendar days from the date any party gives notice to the other: (1) binding arbitration; (2) a form of alternative dispute resolution (ADR) agreeable to all parties; or (3) a District-facilitated mediation. When a disputed claim is resolved through ADR or otherwise, the Contractor and Subcontractor or suppliers agree to implement the resolution within seven calendar days from the resolution date.

D. No Waiver. Should the District fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.

E. Required Contract Provisions. The Contractor shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Contract.

5.6 Record Keeping and Finance Controls.

A. Time Period Covered. Records of the Contractor's direct personnel payroll, reimbursable expenses pertaining to each Job Order and records of accounts between the District and the Contractor shall be kept on a generally recognized accounting basis and shall be available for three years after completion of the Project.

B. Audit Rights. The District, the District's Authorized Representative, and/or the appropriate federal agency, reserve the right to audit the Contractor's records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any Job Order.

C. Right to Reduce Job Order Price. In addition to any other remedies available at law or equity, the District reserves the right to decrease Job Order Price and/or payments made on this Contract if, upon audit of the Contractor's records, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data.

D. Inclusion in Other Agreements. The Contractor shall include a similar provision in all of its agreements with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the District, the District's Authorized Representative, and/or the appropriate federal agency, has access to the Subconsultants' and Subcontractors' records to verify the accuracy of cost and pricing data.

E. Reduction for Failure to Include. In addition to any other remedies available at law or equity, the District reserves the right to decrease Job Order Price and/or payments made on this Contract if the above provision is not included in Subconsultant's and Subcontractor's contracts, and one or more Subconsultants and/or Subcontractors do not allow the District to audit their records to verify the accuracy and appropriateness of pricing data.

ARTICLE 6 - CLAIMS AND DISPUTES

6.1 Requests for Contract Adjustments and Relief. If either the Contractor or the District believes that it is entitled to relief against the other for any event arising out of or related to Contract Services other than requests for extensions of Job Order Time as described above, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of the Contract. In the absence of any specific notice requirement set forth in a Job Order, written notice shall be given within a reasonable time, not to exceed 21 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. Such notice shall 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 such request.

6.2 Dispute Avoidance and Resolution. The parties are fully committed to working with each other and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, the Contractor and the District each commit to resolving such disputes or disagreements in an amicable, professional and

expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work. The Contractor and the District will first attempt to resolve disputes or disagreements at the field level through discussions between the Contractor's Representative and the District's Authorized Representative. If a dispute or disagreement cannot be resolved through the Contractor's Representative and the District's Authorized Representative, the Contractor's Senior Representative and the District's Senior Representative (each as defined below), upon the request of either party, shall meet as soon as conveniently possible, but in no case later than 30 days after such a request is made, to attempt to resolve such dispute or disagreement. Prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

6.3 Duty to Continue Performance. Unless provided to the contrary in the Contract Documents, the Contractor shall continue to perform the Work and the District shall continue to satisfy its payment obligations to the Contractor, pending the final resolution of any dispute or disagreement between the Contractor and the District.

6.4 Representatives of the Parties.

A. District's Representatives.

(1) The District designates the individual listed below as the "District's Senior Representative," which individual has the authority and responsibility for avoiding and resolving disputes as set forth above:

Lucinda Andreani
Flood Control District Administrator
5600 E. Commerce Ave. Flagstaff, AZ 86004
(928) 679-7166

(2) The District will designate an individual for each Job Order as the District's Authorized Representative. This person will manage the Job Order.

B. Contractor's Representatives.

(1) The Contractor designates the individual listed below as the "Contractor's Senior Representative," which individual has the authority and responsibility for avoiding and resolving disputes as set forth above:

Name: Mike Abraham
Title: President
Address: 4720 E. Cotton Gin Loop, Suite 240 Phoenix, AZ 85040
Telephone #: (602) 390-1243

(2) The Contractor will designate an individual for each Job Order as the Contractor's Representative.

ARTICLE 7 - SUSPENSION AND TERMINATION

7.1 District's Rights to Suspend Contract Services. The District may, at its discretion and without cause, order the Contractor in writing to stop and suspend the Work on a Job Order. Such suspension shall not exceed 180 consecutive Days. The Contractor may seek an adjustment of the Job Order Price and/or Job Order Time if its cost or time to perform the Contract Services has been adversely impacted by any suspension or stoppage of the Work by the District. If the District suspends the Work on any Job Order for 181 consecutive Days or more, such suspension shall be deemed a termination for convenience.

7.2 Termination for Convenience. Upon receipt of written notice to the Contractor, the District may, at its discretion and without cause, elect to terminate this Contract or any Job Order.

A. Contractor Duties. Upon receipt of written notice of termination of this Contract or any Job Order, the Contractor shall proceed with the following obligations:

- (1) Stop the Work as specified 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 District all rights, title and interest of the Contractor under the subcontracts terminated, in which case the District shall have the right, but not the obligation, to settle or to pay any termination settlement proposal arising out of those terminations.
- (5) Take any action that may be necessary for the protection and preservation of the property related to the Job Order that is in the possession of the Contractor and which the District has or may acquire an interest.

B. Termination Inventory. The Contractor shall submit complete termination inventory schedules no later than 120 Days from the date of the notice of termination.

C. District Payments. The District shall pay the 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 such termination.
- (3) The Contractor's profit and overhead on completed Work only; the Contractor shall not be entitled to anticipated profit or anticipated overhead for uncompleted Work. If it appears the Contractor would have sustained a loss on the entire Contract Services had they been completed, the Contractor shall not be allowed profit and the District shall reduce the settlement to reflect the indicated rate of loss.

D. Contractor Records Retention Period. The Contractor shall maintain all records and documents for three years after final settlement. These records shall be maintained and subject to auditing as prescribed above.

7.3 District's Right to Perform and Terminate for Cause.

A. For Contractor's Failure to Maintain Site. If the District provides the 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 the Contractor fails to comply in a time frame specified, the District may have work accomplished by other sources at the Contractor's expense.

B. For Contractor's Persistent Failures. If the Contractor persistently fails to (1) provide a sufficient number of skilled workers, (2) supply the materials required by the Contract Documents, (3) comply with applicable Legal Requirements, (4) timely pay, without cause, Subconsultants and/or Subcontractors, (5) execute the Contract Services with promptness and diligence to ensure that a Job Order is completed by the Job Order Time, as such times may be adjusted, or (6) perform material obligations under the Contract Documents, then the District, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth below.

C. District Notice. Upon the occurrence of an event set forth in Subsection 7.3(B) above, the District may provide written notice to the Contractor that it intends to terminate the Contract unless the problem cited is cured, or commenced to be cured, within seven days of the Contractor's receipt of such notice.

(1) If the Contractor fails to cure, or reasonably commence to cure, such problem, then the District may give a second written notice to the Contractor of its intent to terminate within an additional seven-day period.

(2) If the Contractor, within such second seven-day period, fails to cure, or reasonably commence to cure, such problem, then the District may declare the Contract terminated for default by providing written notice to the Contractor of such declaration.

D. District Possession of Materials and Equipment. Upon declaring the Contract terminated pursuant to Subsection 7.3(C)(2) above, the District may, for all Job Orders, enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which the Contractor hereby transfers, assigns and sets over to the District for such 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. Payments to Contractor. In the event of such termination, the Contractor shall not be entitled to receive any further payments under the Contract Documents until the Work on all Job Orders shall be finally completed in accordance with the Contract Documents. At such time, the Contractor will only be entitled to be paid for the Work performed and accepted by the District prior to its default.

F. Payments to District. If the District's cost and expense of completing the Work exceeds the unpaid balance of a Job Order Price or Job Order Prices, then the Contractor shall be obligated to pay the difference to the District. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by the District in connection with the procurement and defense of claims arising from the Contractor's default.

G. Conversion to Termination for Convenience. If the District terminates this Contract for cause and the determination is determined to have without legal right, the termination for cause shall be deemed to have been a termination for convenience in accordance with the provisions of Section 7.2.

ARTICLE 8 - INSURANCE

8.1 General.

A. Rating. Without limiting any obligations or liabilities of the Contractor, the Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to A.R.S. § 20-206, as amended, with an AM Best, Inc. rating of "A-" or above with policies and forms satisfactory to the District. Failure to maintain insurance as specified herein may result in termination of this Contract at the District's option.

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

C. Additionally Insured. All insurance coverage, except Workers' Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Contract, the District, its agents, representatives, officers, directors, officials, and employees as Additional Named Insured as specified under the respective coverage sections of this Contract.

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

E. Primary Insurance. The Contractor's insurance shall be primary insurance with respect to performance of this Contract and in the protection of the District as an Additional Insured.

F. Claims Made Extension. In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall extend, either by keeping

coverage in force or purchasing an extended reporting option, for three years past completion and Final Acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance and necessary endorsements citing applicable coverage is in force and contains the provisions as required herein for the three-year period.

G. Waiver of Subrogation. All policies, excluding Professional Liability but including Workers' Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the District, its agents, representatives, officials, officers, and employees for any claims arising out of the Work or services of the Contractor. The Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

H. Deductibles; Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the District. The Contractor shall be solely responsible for any such deductible or self-insured retention amount.

I. Subcontractor Insurance. If any work under this Contract is subcontracted in any way, the Contractor shall execute written agreements with its Subcontractors containing the indemnification provisions set forth below and insurance requirements set forth herein protecting the District and the Contractor. The Contractor shall be responsible for executing any agreements with its Subcontractors and obtaining certificates of insurance verifying the insurance requirements.

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

(1) The District, its agents, representatives, officers, directors, officials, and employees are Additional Insureds as follows:

(a) Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.

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

(c) Excess Liability – Follow Form to underlying insurance.

(2) The Contractor’s insurance shall be primary insurance with respect to performance of this Contract.

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

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

K. Endorsements. The Contractor shall provide the District with the necessary endorsements to ensure the District is provided the insurance coverage set forth in this Section.

8.2 Required Insurance Coverage.

A. Commercial General Liability. The Contractor shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury, and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Contract, the District, its agents, representatives, officers, officials, and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this Subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

B. Business Automobile Liability. The Contractor shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each occurrence on the Contractor’s owned, hired, and non-owned vehicles assigned to or used in the performance of the Contractor’s

work or services under this Contract. Coverage will be at least as broad as ISO coverage code "1" "any auto" policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Contract, the District, its agents, representatives, officers, directors, officials, and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this Subsection, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

C. Professional Liability Insurance. If this Contract is the subject of any professional services or work, or if the Contractor engages in any professional services or work in any way related to performing the Work under this Contract, the Contractor shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Contract Services performed by the Contractor, or anyone employed by the Contractor, or anyone for whose negligent acts, mistakes, errors, and omissions the Contractor is legally liable, with an unimpaired liability insurance limit of \$2,000,000 each claim and \$2,000,000 annual aggregate.

D. Worker's Compensation. The Contractor shall maintain Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over the Contractor's employees engaged in the performance of work or services under this Contract and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

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

8.3 Cancellation and Expiration Notice. The Contractor shall provide at least 30 Days' prior written notice to the District before insurance required herein expires, is canceled, or is materially changed.

ARTICLE 9 - INDEMNITY

9.1 Contractor Indemnity. To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the District and each council member, officer, employee, or agent thereof (the District and any such person being herein called an "Indemnified Party"), for, from, and against any and all losses, claims, damages, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees, court costs, and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever ("Claims") to the extent that such Claims (or actions in respect thereof) are caused by the negligent acts, recklessness, or intentional misconduct of the Contractor, its officers, employees, agents, or

any tier of subcontractor in connection with the Contractor's work or services in the performance of this Contract. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

9.2 Other Employee Claims. If an employee of the Contractor, Subconsultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against the District, its officers, directors, employees, or agents, the Contractor's indemnity obligation set forth in Section 9.1 above shall extend to such claims and the amount of such indemnity shall not be limited by any limitation on the amount of insurance coverage required herein.

9.3 Intellectual Property Claims. The Contractor shall pay all royalties and license fees associated with its performance of services herewith. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the District harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the applicable design professional.

ARTICLE 10 – PERFORMANCE AND PAYMENT BONDS

10.1 Performance Bond. This Agreement is subject to the provisions of A.R.S. § 34-610 *et seq.* After the District and the Contractor have agreed to a Job Order, but prior to commencing the Contract Services attributable to such Job Order, the Contractor shall furnish the District with an irrevocable security binding the Contractor to provide faithful performance of this Agreement in the amount of 100% of the percentage of the Job Order Price attributable to the construction, payable to the District, and shall not include the cost of any design services, preconstruction services, finance services, maintenance services, operations services, or any other related services. Performance security shall be in the form of a performance bond, certified check, or cashier's check. If the Contractor fails to execute the security document as required, the Contractor may be found in material default of this Contract, permitting the District to terminate this Contract for cause as set forth in Article 7 above. In case of default, the District reserves all rights. All performance bonds shall be executed on the form attached hereto as Exhibit C and incorporated herein by reference, duly executed by the Contractor as principal and having as surety thereon a surety company approved by the District and holding a Certificate of Authority issued by the Arizona Department of Insurance to transact surety business in the State of Arizona. Individual sureties are unacceptable. All insurers and sureties shall have at the time of submission of the proposal an A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

10.2 Payment Bond. This Agreement is subject to the provisions of A.R.S. § 34-610 *et seq.* After the District and the Contractor have agreed to a Job Order, but prior to commencing the Contract Services attributable to such Job Order, the Contractor shall furnish the District with an irrevocable security for the protection of all claimants supplying labor or materials to the Contractor or any Subcontractor in the prosecution of the construction and not for the protection of persons providing any design services, preconstruction services, finance services, maintenance

services, operations services, or other services related to the Contract. Payment security shall be in the amount of 100% of the applicable Job Order attributable to construction and be payable to the District. Payment security shall be in the form of a payment bond, certified check, or cashier's check. If the Contractor fails to execute the security document as required, the Contractor may be found in material default of this Contract, permitting the District to terminate this Contract for cause as set forth in Article 7 above. All payment bonds shall be executed on the form attached hereto as Exhibit D and incorporated herein by reference, duly executed by the Contractor as principal and having as surety thereon a surety company approved by the District and holding a Certificate of Authority issued by the Arizona Department of Insurance to transact surety business in the State of Arizona. Individual sureties are unacceptable. All insurers and sureties shall have at the time of submission of the proposal an A.M. Best's Key Rating Guide of "A-" or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

ARTICLE 11 - ADDITIONAL PROVISIONS

11.1 Confidential Information. The Contractor shall not disclose or permit the disclosure of any confidential information except to its agents, employees, and Subcontractors who need such confidential information in order to properly perform their duties relative to this Contract.

11.2 Assignment; Transfer. The District and the Contractor each bind themselves, their successors, assigns, and legal representatives to the terms of this Contract. Neither the District nor the Contractor shall assign or transfer its interest in this Contract without the written consent of the other, except that the Contractor may assign accounts receivable to a commercial bank for securing loans without approval of the District. Nothing contained in this Section shall prevent the Contractor from employing such consultants, associates, or Subcontractors as the Contractor may deem appropriate to assist in performance of the Contract Services hereunder.

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

11.4 Severability. If any provision of this Contract is held as a matter of law to be unenforceable by a court of competent jurisdiction, the remainder of this Contract shall be enforceable without such provision.

11.5 Internal References. References made in the singular shall include the plural and to one gender shall include all genders.

11.6 Notices. Other than notices to the parties' respective Senior Representatives for dispute resolution purposes as set forth above, any notice or other communication required or permitted to be given under this Contract shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail,

registered or certified, return receipt requested, to the address set forth below, or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the District: Coconino County Flood Control District
5600 E. Commerce Ave.
Flagstaff, AZ 86004
Attn: Lucinda Andreani

With a copy to: Gust Rosenfeld P.L.C.
One East Washington Street, Suite 1600
Phoenix, AZ 85004
Attn: Andrew McGuire

If to the Contractor: J. Banicki Construction, Inc.
4720 E. Cotton Gin Loop, Suite 240
Phoenix, AZ 85040
Attn: Mike Abraham

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

11.7 Governing Law; Venue. This Contract shall be governed by the laws of the State of Arizona and venue shall be in Coconino County.

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

11.9 Headings. The headings given to any of the provisions of this Contract are for ease of reference only and shall not be relied upon or cited for any other purpose.

11.10 Asbestos-Free Materials. The Project is to be constructed by the Contractor with asbestos-free materials. A written, notarized statement on company letterhead shall be submitted to the District by the Contractor with the final payment request certifying that the Contractor has incorporated no asbestos material into the Project. Final payment shall be withheld until such statement is submitted. The Contractor shall agree that if materials containing asbestos are subsequently discovered at any future time to have been included in the construction done by the Contractor or any of its Subcontractors or agents and were not specified in the design or required

by the Contract Documents, the Contractor shall be liable for all costs related to the abatement of such asbestos and damages or claims against the District notwithstanding any statute of limitations or other legal bar to any claim by the District.

11.11 Conflict of Interest Cancellation. This Contract may be cancelled by the District pursuant to A.R.S. § 38-511.

11.12 Endangered Wood Species. The Contractor shall ensure that products containing endangered wood species shall not be utilized in the construction of the Project unless exempted pursuant to A.R.S. § 34-201(J), as amended.

11.13 Employment Verification Records. The Contractor's and its Subcontractor's books, records, correspondence, accounting procedures, and practices, and any other supporting evidence relating to this Contract, including the papers of any of the Contractor's and its Subcontractors' employees who perform any work or Services pursuant to this Contract to ensure that the Contractor and its Subcontractors are complying with the warranty under Subsection 10.14 below (all the foregoing hereinafter referred to as "Records"), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the District, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on the Contractor's and its Subcontractors' actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of the Work under this Contract, and (B) evaluation of the Contractor's and its Subcontractors' compliance with the Arizona employer sanctions laws referenced in Subsection 10.14 below. To the extent necessary for the District to audit Records as set forth in this Subsection, the Contractor and its Subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the District shall have access to said Records, even if located at its Subcontractors' facilities, from the effective date of this Contract for the duration of the Work and until three years after the date of final payment by the District to the Contractor pursuant to this Contract. The Contractor and its Subcontractors shall provide the District with adequate and appropriate workspace so that the District can conduct audits in compliance with the provisions of this Subsection. The District shall give the Contractor or its Subcontractors reasonable advance notice of intended audits. The Contractor shall require its Subcontractors to comply with the provisions of this Subsection by insertion of the requirements hereof in any subcontract pursuant to this Contract.

11.14 E-Verify. To the extent applicable under A.R.S. § 41-4401, the Contractor and its Subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. § 23-214(A). The Contractor's or its Subcontractor's failure to comply with such warranty shall be deemed a material breach of this Contract and may result in the termination of this Contract by the District.

11.15 No Boycott of Israel. The Contractor certifies that it is not currently engaged in, and agrees for the duration of this Contract that it will not engage in, a "boycott" of Israel, as that term is defined in A.R.S. § 35-393.

11.16 Independent Contractor Status. The Contractor is and will be an independent contractor and whatever measure of control the District exercises over the Work or deliverable

pursuant to the Contract will be as to the results of the Work only. No provision in this Contract will give or be construed to give the District the right to direct the Contractor as to the details of accomplishing the Work or deliverable. These results will comply with all applicable laws and ordinances.

A. Acts and Omissions of Individuals. The Contractor will be solely responsible for the acts and omissions of its officers, agents, servants, and employees. As an independent contractor, the Contractor is responsible for the payment of all applicable income and employment taxes and for providing all workers' compensation insurance required by law.

B. Not District Employees. The Contractor will operate as an independent entity and none of the employees of the Contractor will be considered employees of the District. The Contractor's employees are not eligible for District group health insurance or other benefits.

C. Contractor Health Insurance. The Independent Contractor will be solely responsible for offering health insurance to its employees as required by the Affordable Care Act, and for any penalties charged to it by the Internal Revenue Service for noncompliance with the Affordable Care Act.

D. Control of Process of the Work. In performance of services within this contract, the Contractor shall determine its necessary hours of work; provided such hours must be within the standard work hours set forth in this Contract. The Contractor shall provide whatever tools; equipment, vehicles, and supplies the Contractor may determine to be necessary in performance of services hereunder. The Contractor may establish offices in such locations within or outside Arizona, as the Contractor may determine to be necessary for the performance of services hereunder, and shall be responsible for all expenses of operation of said office, including expenses incurred in hiring employees and assistants to the Contractor.

E. No Authority to Represent District. The Independent Contractor has no authority to enter into contracts or agreements on behalf of the District. This Contract does not create a partnership between the parties.

11.17 Annual Appropriations. The District is obligated only to pay its obligations set forth in this Contract as may lawfully be made from funds appropriated and budgeted for that purpose during the District's then-current fiscal year. The District's obligations under this Contract are current expenses subject to the "budget law" and the unfettered legislative discretion of the District concerning budgeted purposes and appropriation of funds. Should the District elect not to appropriate and budget funds to pay its Contract obligations, this Contract and any related Job Orders shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the District shall be relieved of any subsequent obligation under this Contract. The parties agree that the District has no obligation or duty of good faith to budget or appropriate the payment of the District's obligations set forth in this Contract in any budget in any fiscal year other than the fiscal year in which this Contract is executed and delivered. The District shall be the sole judge and authority in determining the availability of funds for its obligations under this Contract. The District shall keep the Contractor informed as to the availability of funds for this Contract. The obligation of the District to make any payment pursuant to this Contract is not a general obligation or indebtedness of the District.

The Contractor hereby waives any and all rights to bring any claim against the District from or relating in any way to the District's termination of this Contract pursuant to this Section.

11.18 No Forced Labor of Ethnic Uyghurs. To the extent applicable under A.R.S. § 35-394, the Contractor warrants and certifies that it does not currently, and agrees for the duration of this Contract that it will not use the forced labor, any goods or services produced by the forced labor, or any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If the Contractor becomes aware that it is not in compliance with this paragraph, the Contractor shall notify the District of the noncompliance within five business days of becoming aware of it. If the Contractor fails to provide a written certification that the Contractor has remedied the noncompliance within 180 days after that, this Contract shall terminate unless the termination date of this Contract occurs before the end of the remedy, in which case this Contract terminates on the Contract termination date.

[Signatures on following page.]

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

“Coconino County”

COCONINO COUNTY FLOOD CONTROL
DISTRICT,
An Arizona political subdivision

By: 
Patrice Horstman, Chair, Flood Control District
Board of Directors

ATTEST:


Clerk of the Board

APPROVED AS TO FORM:


Gust Rosenfeld P.L.C., District Attorneys

“Contractor”

J. BANICKI CONSTRUCTION, INC.,
a(n) Arizona Corporation

By: 

Name: Mike Abraham

Title: President

EXHIBIT A
TO
JOB ORDER CONTRACT
BETWEEN
COCONINO COUNTY FLOOD CONTROL DISTRICT
AND
J. BANICKI CONSTRUCTION, INC.

[Federally Funded Project Requirements]

See following pages.

Federally Funded Project Requirements

Cancelation or termination for breach

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

Equal Employment Opportunity:

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action 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 contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

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

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

(4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order

11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

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

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

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

(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance:

Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant

orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

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

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

Davis Bacon Act

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

compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

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

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

Compliance with the Copeland Anti-Kickback Act:

- a. Contractor. The contractor shall comply with 18 U.S.C. §874, 40 U.S.C. §3145, and the requirements of 29 C.F.R. pt.3 as may be applicable, which are incorporated by reference into this contract.
- b. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the contract clauses above may be grounds for termination of the contract and for debarment as a contractor and subcontractor as provided in 29 C.F.R §5.12.

Compliance with the Contract Work Hours and Safety Standards Act.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the

case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

- (3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section. (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the Coconino County Flood Control District and understands and agrees that Coconino County Flood Control District will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the Coconino County Flood Control District and understands and agrees that the Coconino County Flood Control District

will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.

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

Suspension and Debarment

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

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

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

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

Procurement of Recovered Materials

i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –

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

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

iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

Access to Records

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

DHS Seal, Logo and Flags

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

Compliance with Federal Law, Regulations, and Executive Orders

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

No Obligation by Federal Government

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

Program Fraud and False or Fraudulent Statements or Related Acts

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

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

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

If applicable, contractors must sign and submit the following certification:

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

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

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

The Contractor, BANICKI, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands

and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Mike R

Signature of Contractor's Authorized Official

MIKE ABRAHAM - PRESIDENT

Name and Title of Contractor's Authorized Official

7/20/2023

Date

Karen Sampson



EXHIBIT B
TO
JOB ORDER CONTRACT
BETWEEN
COCONINO COUNTY FLOOD CONTROL DISTRICT
AND
J. BANICKI CONSTRUCTION, INC.

[JOC Task Matrix]

See following pages.



Independent Contractor Information Form


Independent Contractor Information

RFQ 2023-105

J. Banicki Construction, Inc.
Company Name

4720 E. Cotton Gin Loop, Ste. 240
Address

Phoenix, AZ 85040
City / State / Zip


Authorized Signature

Mike Abraham, President
Printed Name and Title

(602) 390-1243
Telephone

2-15-23
Date

mabraham@banicki.com
e-mail Address

ROC 091410
Contractor License(s)

**JOC Task Matrix
Exhibit "B"**

SERVICES	SELF- Performed	SUB- Contract
Grading		
• Mass Excavation	Yes	
• Geogrid Installation	Yes	
○ Slope Stabilization	Yes	
○ Drainage Channel Reinforcement	Yes	
• Placement of Aggregate base	Yes	
• Soil Stabilization of subgrade	Yes	
○ Lime Treated		Yes
○ Cement Treated		Yes
○ Geogrid	Yes	
○ SWPP / NOI / NOT	Yes	
Asphalt Pavement		
• Preservation		Yes
○ Chip Seal		Yes
○ Crack Filling		Yes
○ Fog Seal		Yes
○ Cape Seal		Yes
○ Slurry Seal		Yes
○ Rubber Chip Seal		Yes
○ Micro Seal		Yes
○ Micro Seal with fiberglass		Yes
• Rehabilitation		Yes
Asphalt Milling and micro surfacing		Yes
Hot Mix Asphalt overlay 2"		Yes
Hot Mix Asphalt overlay 2" with geogrid underlayment		Yes
○ Fiber Reinforced Hot Mix Asphalt		Yes
• Reconstruction		Yes
○ Hot Mix Asphalt full depth		Yes
○ Cold Mix Asphalt		Yes
○ RAP Asphalt		Yes
Drainage Systems		
• Installing Culverts and Catch Basins	Yes	

**JOC Task Matrix
Exhibit "B"**

SERVICES	SELF-Performed	SUB-Contract
<ul style="list-style-type: none"> • Storm Sewer 36" to 60" 	Yes	
<ul style="list-style-type: none"> ○ Manhole 	Yes	
<ul style="list-style-type: none"> ○ Head wall 	Yes	
Drainage Systems - Continued		
<ul style="list-style-type: none"> • Open Channel conveyance ditches 	Yes	
<ul style="list-style-type: none"> • Gabion Baskets 	Yes	
<ul style="list-style-type: none"> • Rock Riprap 	Yes	
<ul style="list-style-type: none"> • Detention Ponds 	Yes	
Forest restorations		
<ul style="list-style-type: none"> • Construction of Fans 	Yes	
<ul style="list-style-type: none"> • Rock Chutes 	Yes	
<ul style="list-style-type: none"> • Log rundown 	Yes	
<ul style="list-style-type: none"> • Rock cluster 	Yes	
<ul style="list-style-type: none"> • Tree Removal 	Yes	
<ul style="list-style-type: none"> • Clear and Grubb 	Yes	
<ul style="list-style-type: none"> • Gabion Basket 	Yes	
<ul style="list-style-type: none"> • Trash rack for headwalls 	Yes	
<ul style="list-style-type: none"> • Archeological Monitoring 		Yes
Bridge Construction / Reconstruction		
<ul style="list-style-type: none"> • New Bridge Construction 	Yes	
<ul style="list-style-type: none"> • Existing Bridge Repair 	Yes	
<ul style="list-style-type: none"> ○ Bridge deck 	Yes	
<ul style="list-style-type: none"> ▪ Replacement 	Yes	
<ul style="list-style-type: none"> ▪ Surface Treatments and repair 	Yes	
<ul style="list-style-type: none"> ○ Abutments and Diaphragms 	Yes	
<ul style="list-style-type: none"> ○ Approach Slabs 	Yes	
<ul style="list-style-type: none"> ○ CIP guard rail 	Yes	
<ul style="list-style-type: none"> ○ Footing and Scour Repair 	Yes	
<ul style="list-style-type: none"> • Box Culverts precast and CIP 	Yes	
Roadway Support Infrastructure		
<ul style="list-style-type: none"> • Stripe 		Yes
<ul style="list-style-type: none"> • Signage 		Yes
<ul style="list-style-type: none"> • Installation of New Guard rail and repair and Damaged Guardrail 		Yes

**JOC Task Matrix
Exhibit "B"**

SERVICES	SELF-Performed	SUB-Contract
• Cattle guards	Yes	
• Seeding		Yes
• Installation of Landscaping		Yes
Utilities		
• Waterline Adjustment		Yes
• Water Valve Replacement and Installation		Yes
• Dry Utility Installation and replacement		Yes
• Sewer/Wastewater Construction & Repair		Yes
• Street Light		Yes
• Traffic Signals and Control Devices		
Emergency Services		
• Snow plow services		
• Snow removal	Yes	
• Set jersey Barriers for flood diversion	Yes	
• Sand bags manufacture and deployment		
• Temporary Drainage Structures		
Specialty Services		
• Rock Crushing	Yes	
• Blasting		Yes
• Roadway Striping		Yes

EXHIBIT C
TO
JOB ORDER CONTRACT
BETWEEN
COCONINO COUNTY FLOOD CONTROL DISTRICT
AND
J. BANICKI CONSTRUCTION, INC.

[Performance Bond]

See following page.

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS:

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

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

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

PROVIDED, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 6, Article 1, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 6, Article 1, Arizona Revised Statutes, to the extent as if it were copied at length in this agreement.

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

Witness our hands this _____ day of _____ 20____.

Principal Seal

By: _____

Surety Seal

By: _____

Agency of Record

EXHIBIT D
TO
JOB ORDER CONTRACT
BETWEEN
COCONINO COUNTY FLOOD CONTROL DISTRICT
AND
J. BANICKI CONSTRUCTION, INC.

[Payment Bond]

See following page.

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

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

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

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

PROVIDED, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 6, Article 1, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 6, Article 1, Arizona Revised Statutes, to the same extent as if they were copied at length in this agreement.

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

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

Principal Seal

By: _____

Surety Seal

By: _____

Agency of Record