

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
J. BANICKI CONSTRUCTION, INC.**

THIS LINKING AGREEMENT (this "Agreement") is entered into as of this _____ day of _____, 20____, between the City of Glendale, an Arizona municipal corporation (the "City"), and J. Banicki Construction, Inc., an Arizona corporation authorized to do business in Arizona ("Contractor"), collectively, the "Parties."

RECITALS

- A. On July 3, 2019 under S.A.V.E Cooperative Purchasing Agreement, Valley Metro Regional Public Transportation Authority entered into a contract with Contractor to purchase the goods and services described in the Contract No. 20017 Supplemental Contract for JOC Construction Service ("Cooperative Purchasing Agreement"), which is attached hereto as Exhibit A. The Cooperative Purchasing Agreement permits its cooperative use by other governmental agencies including the City.
- B. Section 2-149 of the City's Procurement Code permits the Materials Manager to procure goods and services by participating with other governmental units in cooperative purchasing agreements when the best interests of the City would be served.
- C. Section 2-149 also provides that the Materials Manager may enter into such cooperative agreements without meeting the formal or informal solicitation and bid requirements of Glendale City Code Sections 2-145 and 2-146.
- D. The City desires to contract with Contractor for supplies or services identical, or nearly identical, to the supplies or services Contractor is providing other units of government under the Cooperative Purchasing Agreement. Contractor consents to the City's utilization of the Cooperative Purchasing Agreement as the basis of this Agreement, and Contractor desires to enter into this Agreement to provide the supplies and services set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated by reference, and the covenants and promises contained in this Linking Agreement, the parties agree as follows:

- 1. Term of Agreement. The City is purchasing supplies and/or services from Contractor pursuant to the Cooperative Purchasing Agreement. According to the Cooperative Purchasing Agreement, purchases can be made by governmental entities from the date of award, which was January 6, 2020, until the date the contract expires on January 6, 2023 unless the term of the Cooperative Purchasing Agreement is extended by the mutual agreement of the original contracting parties. The Cooperative Purchasing Agreement, however, may not be extended beyond January 6, 2025. The initial period of this Agreement, therefore, is the period from the Effective Date of this Agreement until January 6, 2023. The City may renew the term of this Agreement for two (2) additional one (1) year periods until the Cooperative

Purchasing Agreement expires on January 6, 2025. Glendale renewals are not automatic and shall only occur if the City gives the Contractor notice of its intent to renew. The City may give the Contractor notice of its intent to renew this Agreement 30 days prior to the anniversary of the Effective Date to effectuate such renewal.

2. Scope of Work; Terms, Conditions, and Specifications.
 - A. Contractor shall provide City the supplies and/or services identified in the Scope of Work attached as Exhibit B.
 - B. Contractor agrees to comply with all the terms, conditions and specifications of the Cooperative Purchasing Agreement. Such terms, conditions and specifications are specifically incorporated into and are an enforceable part of this Agreement.
3. Compensation.
 - A. City shall pay Contractor compensation at the same rate and on the same schedule as provided in the Cooperative Purchasing Agreement, which is attached hereto as Exhibit C.
 - B. The total purchase price for the supplies and/or services purchased under this Agreement shall not exceed one hundred thousand dollars (\$100,000) for the entire term of the Agreement (initial term plus any renewals).
4. Cancellation. This Agreement may be cancelled pursuant to A.R.S. § 38-511.
5. Non-discrimination. Contractor must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, national origin, age, marital status, sexual orientation, gender identity or expression, genetic characteristics, familial status, U.S. military veteran status or any disability. Contractor will require any Sub-contractor to be bound to the same requirements as stated within this section. Contractor, and on behalf of any subcontractors, warrants compliance with this section.
6. Insurance Certificate. A certificate of insurance applying to this Agreement must be provided to the City prior to the Effective Date.
7. E-verify. Contractor complies with A.R.S. § 23-214 and agrees to comply with the requirements of A.R.S. § 41-4401.
8. No Boycott of Israel. To the extent A.R.S § 35-393 through § 35-393.03 are applicable, the parties hereby certify that they are not currently engaged in, and agree for the duration of the Agreement to not engage in, a boycott of goods or services from Israel, as that term is defined in A.R.S § 35-393.
9. Attestation of PCI Compliance. When applicable, the Contractor will provide the City annually with a Payment Card Industry Data Security Standard (PCI DSS) attestation of compliance certificate signed by an officer of Contractor with oversight responsibility.

10. Notices. Any notices that must be provided under this Agreement shall be sent to the Parties' respective authorized representatives at the address listed below:

City of Glendale
c/o Michael A. Johnson, Engineering Project Manager
5850 W. Glendale Avenue, Suite 315
Glendale, AZ 85301
and

J. Banicki Construction, Inc.
c/o Mike Abraham, President
4720 E. Cotton Gin Loop, Suite 240
Phoenix, AZ 85040
480-921-8016

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year set forth above.

“City”

“Contractor”

City of Glendale, an Arizona
municipal corporation

J. Banicki Construction, Inc.,
an Arizona Corporation

By: _____
Kevin R. Phelps
City Manager

By: Mike Abraham
Name: Mike Abraham
Title: President

ATTEST:

Julie K. Bower (SEAL)
City Clerk

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
AND
J. BANICKI CONSTRUCTION, INC.**

EXHIBIT A

PARTICIPATING ADDENDUM TO MASTER AGREEMENT NO. 20017

MASTER AGREEMENT NO. 20017-SUPPLEMENTAL CONTRACT FOR JOB ORDER
CONTRACTING CONSTRUCTION SERVICES



Participating Addendum

J. Banicki Construction, Inc. (hereinafter “Contractor”)

And

City of Glendale (hereinafter “Participating Entity”)

Master Agreement

Valley Metro Contract (hereinafter “Master Agreement”) No: 20017

Supplemental Contract for Construction Service – JOC

Administered by Valley Metro (hereinafter “Agency”)

1. Scope

This Participating Addendum (PA) covers the Supplemental Contract for Construction Services contract led by Valley Metro for use by Eligible Agencies. This PA is based on the award of a competitively solicited procurement with federal language.

The original solicitation contains the requirements and definitions establishing the following Construction Services allowed on the Master Agreement. The Master Agreement identifies the administrative fee percentage the Contractor may charge for renovation, repair, replacement, alterations and other minor construction projects for various facilities and real property.

2. Participation

Use of specific Valley Metro cooperative contracts by Eligible Agencies are subject to the prior approval of Valley Metro procurement. Paragraph 21 of Exhibit C – Special Terms and Conditions defines the cities eligible to utilize the contract.

3. Order of Precedence

A Participating Entity’s PA shall not diminish, change, or impact the rights of Valley Metro with regard to Valley Metro’s contractual relationship with the Contractor under the Terms of Valley Metro’s Master Agreement.

3.1 Participating Entity Participating Addendum

3.2 Valley Metro Master Agreement (includes negotiated Terms and Conditions)

3.3 The Solicitation including all Addendums; and

3.4 Contractor’s response to the Solicitation

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this

Master Agreement are only those that are expressly accepted by Valley Metro and must be in writing and attached to the Master Agreement as an Exhibit or Attachment. The solicitation language prevails unless a mutually agreed exception has been negotiated.

4. Participating Entity Modifications or Additions to Master Agreement

The Participating Entity's PA shall include the following mandatory additions that are hereby attached; Linking Agreement between The City of Glendale and J. Banicki Construction, Inc.

5. Primary Contacts

The primary contact for this Participating Addendum are as follows:

Contractor:

Name:	Don R. Davis
Address:	4720 E. Cotton Gin Loop, Ste. 240 Phoenix, AZ 85040
Telephone:	480-921-8016
Email:	ddavis@banicki.com

Participating Entity:

Name:	Michael A. Johnson
Address:	5850 W. Glendale Avenue, Ste. 315
Telephone:	623-930-3628
Email:	mjohnson@glendaleaz.com

6. Terms

The Participating Entity is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with applicable law.

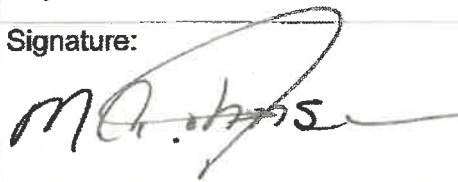

7. Disputes/Corrective Actions

The Participating Entity shall be responsible for any and all disputes or corrective actions to the Scope of Work assigned to the Contractor. By signing this PA, the Participating Entity agrees to administer any corrective contract actions. Valley Metro shall not be responsible for any dispute resolution or corrective action for work completed under the PA.

8. Insurance Requirements

The Contractor shall list the Participating Entity as additional insured on the Certificate of Insurance. The Participating Entity shall be responsible for reviewing and approving the Certificate of Insurance to ensure it meets the Participating Entity's requirements.

IN WITNESS WHEREOF, the parties have executed this Participating Addendum as of the date of execution by both parties below:

Participating Entity: City of Glendale	Contractor: J. Banicki Construction, Inc.
Signature: 	Signature: 
Name: Michael A. Johnson	Name: Don R. Davis
Title: Engineering Project Manager	Title: APDM Manager
Date: 3-8-2021	Date: March 8, 2021

Please email fully executed PDF copy of this document to kking@valleymetro.org to support documentation of participation.



101 N. 1st Ave. Suite 1400
Phoenix, AZ 85003
valleymetro.org
602.253.5000

January 6, 2020

Mike Abraham
J. Banicki Construction, Inc.
4720 E. Cotton Gin Loop, Ste. 240
Phoenix, AZ 85040

RE: **CONTRACT NO. 20017**
SUPPLEMENTAL CONTRACT FOR CONSTRUCTION SERVICE - JOC

NOTICE TO PROCEED

Dear Mr. Abraham:

We are very pleased to begin our new contractual relationship with you and your team. This letter constitutes Valley Metro's Notice to Proceed (NTP) to J. Banicki Construction, Inc. effective immediately. By this letter, J. Banicki Construction, Inc. is authorized to proceed with all work in accordance with the terms and conditions of the attached Contract No. 20017.

Please find enclosed for your records, the fully executed contract document.

Should you have any questions or concerns, I may be reached at shernandez@valleymetro.org or 602-495-8218.

Sincerely,


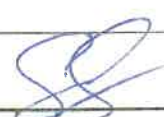
A handwritten signature in blue ink, appearing to read 'SH' followed by a large flourish and 'CPPB'.

Susanna Hernandez, CPPB
Procurement Manager
Contracts and Procurement

cc: CPS File



**VALLEY METRO
SOLICITATION OFFER AND AWARD FORM**

SOLICITATION INFORMATION Request for Qualifications (RFQ)	
1. SOLICITATION NO: SH-19007 2. ISSUE DATE: July 3, 2019 3. FOR INFORMATION CONTACT: NAME: Susanna Hernandez, CPPB Senior Contracts Administrator E-MAIL: shernandez@valleymetro.org	4. BRIEF DESCRIPTION: <p align="center">REQUEST FOR QUALIFICATIONS NO. SH-19007 SUPPLEMENTAL CONTRACT FOR JOC CONSTRUCTION SERVICES</p>
5. PRE-SUBMITTAL CONFERENCE LOCATION: Valley Metro 101 N 1 st Ave, Conference Room: 10A Phoenix, Arizona 85003	DATE: Wednesday July 17, 2019 TIME: 9:00 AM local Phoenix time
6. SUBMIT OFFER TO: https://valleymetro.procurement.com	7. OFFER SUBMISSION DUE DATE AND TIME: DATE: Wednesday August 7, 2019 TIME: 3:00 P.M. (local Phoenix time)
8. SUBMIT WITH OFFER: See page 2, block 22	
9. Offers submitted in response to an RFQ <u>will not</u> be publicly opened.	
10. FIRM OFFER PERIOD: Offers submitted shall remain firm for a period of 180 calendar days from the date specified in Block 7.	
11. This solicitation and any resulting contract, respectively, consist of this Valley Metro form and the exhibits and documents designated on Page 2 of this form.	
OFFER (To be completed by Offeror)	
CAUTION: A false statement in any offer (bid, submittal or proposal) submitted to Valley Metro may be a criminal offense in violation of Arizona Revised Statute ARS 13-2407.	
12. In compliance with the above, the undersigned agrees, if this offer is accepted within the period specified in Block 10, above, to furnish any or all items, or provide the service(s), upon which prices are offered in the Schedule at the price set opposite each item or service, and to deliver the item(s) and or perform the service(s) at the designated location(s) within the time specified.	
13. OFFEROR'S NAME & ADDRESS: (Type or Print) J. Banicki Construction, Inc. 4720 E. Cotton Gin Loop, Ste. 240 Phoenix, AZ 85040 TELEPHONE: 480-921-8016 E-MAIL: mabraham@banicki.com CELL PHONE: 602-390-1243 FAX: 480-921-9456	14. NAME & TITLE OF PERSON AUTHORIZED TO SIGN THE OFFER: (Type or Print) Mike Abraham - President
	15. OFFEROR'S SIGNATURE & DATE:  8-7-19
AWARD (To be completed by Valley Metro)	
16. DBE: The DBE participation for this contract is as follows based on: <input checked="" type="checkbox"/> Percentage of the total contract amount % _____ or <input type="checkbox"/> Other _____	
17. ACCEPTED AS TO: NTP	18. TOTAL AMOUNT OF AWARD: \$6,000,000.00
19. TERM OF CONTRACT 3 year base- 2 (1) year options	20. CONTRACT NUMBER: 20017
21. CHIEF EXECUTIVE OFFICER SIGNATURE & DATE OF AWARD:	
Name: Scott W. Smith	Signature: 
	Date: 1/16/20



CONTRACT No. 20017

SUPPLEMENTAL CONTRACT FOR CONSTRUCTION
SERVICES – JOB ORDER CONTRACTING

PRICE SCHEDULE

OFFEROR NAME: J. Banicki Construction Inc.

Failure to provide the requested pricing information below may result in the SOQ being determined non-responsive and removed from further consideration.

Having carefully examined the solicitation documents, Submitter agrees to enter into a contract to perform the Scope of Work as identified in Exhibit G under the terms and conditions contained herein for the term of the contract, including the options to extend the period of performance, as described in Exhibit C, Special Terms and Conditions. The selected Contractor will provide indefinite delivery, indefinite quantity (IDIQ) construction services for renovation, repair, replacement, alterations and other minor construction projects for various facilities and real property.

INDIRECT COST OF THE WORK	<\$50,000	\$50,001 to \$250,000	\$250,001 to \$500,000	\$500,0001 to \$1,000,000	\$1,000,001 to \$2,500,000
Job Order Contractors Fee (<i>Professional Svcs</i>)	7.50%	7.00%	6.50%	6.00%	5.50%
Job Order Contractor's Fee (<i>Construction</i>)	12.00%	11.00%	10.00%	9.00%	8.00%
Labor Burden Multiplier (Percentage)	47.00%	47.00%	47.00%	47.00%	47.00%
(<i>on employee's base hourly wage rate</i>)					



EXHIBIT C – SPECIAL TERMS AND CONDITIONS

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1. TERM OF CONTRACT

The term of this contract shall be three (3) year base term with two (2) 1-year options to extend services and shall be subject to the annual review and recommendation of Valley Metro's Board of Directors, the satisfactory negotiation of terms, and the annual funding appropriation for this purpose. Contract term shall not exceed five (5) years.

2. CONTRACT ORDER OF PRECEDENCE

In the event of a conflict in the provisions of the Contract, as accepted by Valley Metro and as they may be amended, the following shall prevail in the order set forth below:

- Master Agreement
- Scope of Work or Technical Specifications
- Special Terms and Conditions
- General Terms and Conditions
- Federal Terms and Conditions
- Other Provisions of the Contract, whether incorporated by reference or otherwise

In the event the parties hereto cannot resolve a dispute or conflict, the final decision-making authority shall reside with Valley Metro Chief Executive Officer.

3. TIME

Time is of the essence in the performance of this Contract. Contractor shall proceed with performance of the Work under this Contract immediately after receipt of the Notice to Proceed, Task Order or Change Order and shall continuously and diligently prosecute the Work and specified portions thereof to completion on or before the time or times set forth in the Scope of Services. Contractor shall not commence work until it receives the Notice to Proceed, Task Order or Change Order except as otherwise required by this Contract.

4. METHOD OF COMPENSATION

A not-to-exceed amount shall be allotted for each task order issued by Valley Metro relative to this Contract. Contractor shall not exceed the executed task order amount without Valley Metro's prior approval.

Deviations from Contract or Budget Amount

If the Contractor's notice states that the Scope of Work cannot be completed within Contract/Task Order amount, Valley Metro may issue a request for change. Until there is a Change Order or Task Order amendment revision, the Contractor shall proceed with the Scope of Work until the cumulative amount of reimbursable costs incurred by the Contractor equals the Contract/Task Order amount.

If it becomes necessary to modify the Scope of Work to eliminate work that would allow the Scope of Work to be completed within the Contract/Task Order amount, the Contractor's fee may be renegotiated accordingly, pursuant to the Contract. In no event is the Contractor authorized to incur costs which exceed each Contract/Task Order amount without prior written amendment/revision to the Contract. Any such costs incurred without prior written Amendment to the Contract shall not be considered reimbursable costs hereunder.



5. INVOICING

Valley Metro shall review each Progress Billing to determine whether the Progress Billing satisfies the requirements of each Task Order and this Contract.

If the Progress Billing satisfies the requirements of the specified Task Order and the Contract, Valley Metro shall approve the Progress Billing for payment.

If the Progress Billing does not satisfy the requirements of the specified Task Order and this Contract, Valley Metro shall promptly notify the Contractor and return the Progress Billing for clarification or correction.

If Valley Metro disputes any item or item invoiced in a Progress Billing, Valley Metro shall pay all items not in dispute. Valley Metro and Contractor shall seek to promptly resolve such dispute and upon its resolution Valley Metro shall pay the amount agreed to be paid to Contractor with the next succeeding payment.

6. RETENTION

No retention shall be held against Progress Billings.

7. PROMPT PAYMENT

Valley Metro adheres to the prompt payment provisions of ARS 34-221. A prompt payment clause will be included in every Valley Metro contract or subcontract on projects funded either in whole or in part by USDOT. Valley Metro's prompt payment clause reads as follows:

"Contractor shall pay to its subcontractors or material suppliers and each subcontractor shall pay to its subcontractor or material supplier, within seven (7) days of receipt of each progress payment, the amounts attributable to the Contractor, subcontractor or material supplier for work performed or materials supplied. In addition, any reduction of retainage to the Contractor must also result in a like reduction to subcontractors for their work successfully completed within fourteen (14) days of the reduction of the retainage to the Contractor. No contract between Contractor and its Contractors, subcontractors and material suppliers may materially alter the rights of any Contractor, subcontractor or material supplier to receive prompt and timely payment as provided herein. Any diversion by Contractor, or any subcontractor, of payments received for work performed on a contract, or failure to reasonably account for the application or use of such payments, constitutes sufficient grounds for Valley Metro to take any one or more of the following actions: (1) withhold future payments including retainage until proper disbursement has been made; (2) refusal of all future Bidders or offers from the Contractor for a period not to exceed one year; or, (3) cancellation of the contract.

Inclusion of This Provision in Subcontracts. Contractor shall include the provisions of these paragraphs in every subcontract, including procurement of materials and leases of equipment. Further, as a means of enforcing such provisions, Contractor shall take such action with respect to any subcontract or procurement as Valley Metro may direct; provided, however, that, in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Contractor may request METRO to enter into such litigation to protect the interests of Valley Metro.

No Subcontractor Claim. Nothing contained in this section shall provide a basis for any subcontractor to assert any claim against Valley Metro for its administration, enforcement or waiver of the provisions of this Prompt Payment provision.



8. SUB-CONTRACTOR PAYMENTS

The Contractor agrees to pay each sub-Contractor under this Contract for satisfactory performance of its Contract no later than seven (7) calendar days from receipt of each payment the prime receives from Valley Metro. The Contractor agrees further to release retainage payments (if applicable) to each sub-Contractor no later than thirty (30) calendar days after the sub-Contractor's work is satisfactorily completed and final payment has been issued by Valley Metro. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval from Valley Metro.

9. CONTRACT CLOSEOUT

At the end of the contract period, Valley Metro will review the service to ensure all required deliverables have been met. This includes, but is not limited to submission and acceptance of all reports and inspection and inventory of all Valley Metro equipment and facilities provided to the Contractor for the execution of the contract. Contractor shall resolve any or all outstanding issues within 30 days of contract expiration at which time Valley Metro will issue a Notice of Final Acceptance to the Contractor to finalize the Contract Closure between both parties.

Upon receipt of such notice, Contractor shall incur no further costs hereunder, unless otherwise specified in the Notice of Final Acceptance. Contractor may request issuance of a Notice of Final Acceptance when, in its opinion, it has satisfactorily completed all Services required under the terms of this Agreement.

Contractor shall keep all records pertaining to the service for a minimum of three (3) years after the contract expiration and make available said records to Valley Metro or its agents for audit, with advance notice. In the event of litigation or claims, all records will be maintained until disposition of the litigation or claim.

Contractor shall cooperate with Valley Metro and its agents in the contract closeout process, during the contract and after the contract expiration date. Final payment or part thereof may be withheld by Valley Metro until the Contractor completes or resolves all outstanding issues and contract closeout process is complete

10. NOTICES AND COMMUNICATIONS

All notices and other communications concerning this Contract shall be written in English and shall bear the number assigned to this Contract by Valley Metro. Notices and other communications may be delivered personally, by telegram, by telephone facsimile, or by regular, certified, or registered mail. Notices and communications are effective when received.

Prior to issuance of the Notice to Proceed, a notice to Valley Metro will be effective only if it is delivered to Valley Metro's Contracts and Procurement Manager, 101 N. 1st Avenue, Suite 1300 Phoenix, Arizona 85003. All correspondence shall reference the Contract number.

Prior to commencement of Work on the Project, a notice to the Contractor will be effective if it is delivered to the individual who signed this Contract on behalf of Contractor at the address shown with that signature, to a corporate officer if Contractor is a corporation, to a general partner if Contractor is a partnership, or to another individual designated by Contractor in this Contract or in a written notice to Valley Metro.

All notices and other communications required or permitted by this Contract shall be in writing and (i) delivered in person, (ii) sent by first class mail, (iii) sent by certified first class mail, return receipt requested, postage prepaid,



or (iv) by commercial or United States Postal Service overnight delivery service, to the following addresses or to such other addresses as the Parties may hereafter designate by written notice. All such notices or other communications shall be deemed delivered immediately if delivered in person, three (3) days after deposit in the United States Postal Service first class mail if mailed, upon receipt as indicated on signed certified mail receipt and on the following Business Day if sent by overnight delivery service.

Christian Jonson, Contracts & Procurement
Valley Metro
101 North First Avenue, Suite 1400
Phoenix, AZ 85003

11. NOTICE OF LABOR DISPUTES

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Contract, the Contractor immediately should give notice, including all relevant information, to the Valley Metro Project Manager and the Valley Metro Contracts and Procurement Manager.

The Contractor agrees to insert the substance of this clause, including this paragraph in any subcontract under which a labor dispute may delay the timely performance of this Contract; except that each subcontract should provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Sub-Contractor should immediately notify the next higher tier Sub-Contractor or the Contractor, as the case may be, of all relevant information concerning the dispute.

12. COMMUNICATIONS WITH CONTRACTOR'S STAFF

In order to ensure efficient communication of operational needs, Valley Metro staff shall be permitted to communicate directly with Contractor's staff regarding day to day issues for the purpose of inquiry as to factual performance issues. The Valley Metro will not give Contractor's staff directions concerning performance under the Contract. Issues which affect the Contract will be communicated through the Project Manager and Procurement Department.

13. PROJECT KEY PERSONNEL

The Contractor shall appoint an individual acceptable to Valley Metro to serve as the full time Project Manager for project from NTP through Contract Closeout. The individual shall be responsible for the day to day activities for management and supervision of the Contract shall serve as the primary contact to Valley Metro. The Project Manager shall have a minimum of ten (10) years experience managing similar general contracting project management type size of projects.

No substitution of any personnel who are critical to providing the Services ("Key Personnel") may be made by the Contractor without the prior written consent of Valley Metro. In the event any such Key Personnel are terminated or otherwise become unavailable, the Contractor shall notify the Valley Metro of such termination or unavailability and temporarily replace such terminated or unavailable Key Personnel within ten (10) Business Days after such termination or unavailability. The Contractor shall use its best efforts to provide a replacement of such terminated or unavailable Key Personnel within thirty (30) days after such termination or unavailability. Valley Metro shall have the right to approve or disapprove the proposed replacement of such Key Personnel in advance and in



writing, such approval to be exercised at the sole and absolute discretion of Valley Metro, but shall not unreasonably be withheld.

All Key Personnel shall be available to provide the Services for which such Key Personnel are responsible at the level of effort and during the contract period to assist the Contractor in the performance of its duties hereunder.

The Contractor was chosen to perform the Services based upon its qualifications and experience, and the qualifications and experience of the Key Personnel. Therefore assignment or transfer of any Services to any third party is expressly prohibited unless approved in writing by Valley Metro prior to such assignment or transfer of such Services. The Contractor shall not assign all or any part of its interest in or obligations under this Contract without Valley Metro's prior written approval, which approval will not be unreasonably withheld. The Parties acknowledge that Valley Metro may disapprove a proposed assignment if, as a result of the proposed assignment, the Key Personnel are not acceptable to Valley Metro. Any assignment in violation of this shall constitute an Event of Default and is grounds for termination of this Contract, at the reasonable discretion of Valley Metro. Any such termination shall be effective upon ten (10) days' prior written notice. In no event shall any putative assignment create a contractual relationship between Valley Metro and any putative assignee.

14. REMOVAL OF CONTRACTOR'S PERSONNEL

The Contractor acknowledges that any person assigned to work under this Contract must perform their duties so as to not unduly impair contract performance. By assigning a person to work under this Contract, the Contractor agrees to be responsible for the behavior of that person during contract performance.

The Contractor acknowledges that Valley Metro has the right to require the removal of any Contractor employee that Valley Metro determines at its sole discretion to be negatively effecting performance of work under the contract. Examples of such behavior include: (1) conduct which poses a threat to the safety of anyone working under the contract; (2) conduct which is disruptive to contract performance; (3) careless work; (4) conduct which is not appropriate when transporting participants under this Contract.

Upon receipt of written notice from Valley Metro that a person's behavior is unduly impairing contract performance, the Contractor agrees to remove that person from doing any further work on the Contract, and to cause that person to be removed from providing service under this Contract. The Contractor agrees that it is not entitled to any additional costs it may incur as a result of the removal of the person named by Valley Metro.

15. POST AWARD MEETING (OR RESERVED)

Contractor shall attend a post-award kick-off meeting with Valley Metro staff for discussion of the terms and conditions of Contract. Valley Metro project manager will coordinate this meeting.

16. REPORTING

Contractor shall provide weekly Status Reports to Valley Metro's Capital Design Manager or his/her designee, as requested.

17. RISK OF LOSS

The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized Valley Metro personnel at the location designated in the Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.



18. ANTI-KICKBACK AND GRATUITIES

The Contractor is prohibited from receiving any kickbacks, gratuities, payments, merchandise, equipment, supplies, services or favors in exchange for directing additional billable services to any Sub-Contractor.

19. BONDS

A blanket bond amount of \$5,000,000 will be provided to be utilized for any and all task orders during the fiscal year. Bond shall be renewed before the expiring fiscal year for the use in the next preceding fiscal year. Language identifying the term of use date shall be listed on the bond documents.

Separate bonds may be required if the cumulative total of all task orders excluding next task order issuance exceeds more than 75% of blanket bond amount.

20. FEDERALLY FUNDED – TASK ORDERS

The following requirements apply to task orders identified with federal funds only:

- Contractor shall follow outreach requirements per Exhibit E - Disadvantaged Business Enterprise (DBE) Program of the contract documents.
- All labor wages shall be in accordance with Exhibit D.1 Federal Department of Labor Prevailing Wage Requirements.
- All materials shall adhere to Buy America requirements identified in Attachment L – Buy America Certificate and shall provide documentation when requested.

21. ELIGIBLE AGENCIES

The following Member Agencies may elect to enter into a Participating Addendum during the duration of the contract term:

1. City of Phoenix
2. City of Mesa
3. City of Tempe
4. City of Chandler
5. City of Glendale
6. City of Avondale
7. City of Buckeye
8. City of Goodyear
9. City of Peoria
10. City of Scottsdale
11. City of Surprise
12. City of Tolleson
13. City of El Mirage
14. Town of Fountain Hills
15. Town of Gilbert
16. Town of Wickenburg
17. Town of Youngtown
18. Maricopa County



22. MASTER AGREEMENT STATEMENT

Master Agreement(s) will constitute the final agreement except for terms and conditions specific to a Member Agency's Participating Addendum. The Master Agreement will include, but not be limited to, Valley Metro's Special and General Terms and Conditions required to execute a master agreement, the scope of work and selected portions of the awarded SOQ(s).

23. RIGHTS

Except to the extent modified by a Participating Addendum, each Member Agency shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their contracted services as Valley Metro has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their contracted services.

24. DISPUTE PROCESS

During the contract term, Member Agencies that have entered into a Participating Addendum with the Contractor(s) shall bear all responsibility to resolve disputes and/or claims directly with the Contractor(s).

-- End --



EXHIBIT D – GENERAL TERMS AND CONDITIONS

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1. FUNDING

Offeror is hereby notified that any contract resulting from this RFQ is contingent upon funds appropriated by the cities or by Agencies' Board of Directors and that may be appropriated in the future by federal or other sources. In the event that funding is eliminated or decreased, Agencies reserve the right to terminate any such contract or modify it accordingly.

2. PAYMENTS

After Notice of Preliminary Selection, the selected Contractor shall submit a current W-9 form and electronic payment information to the Agency's Designated Point of Contact.

3. CONTRACT ADMINISTRATION

To ensure Contract compliance, a contract administration process will be an integral part of Contract. Valley Metro employees will be assigned as contract monitors. The contract administration process is an audit and feedback system and will be in addition to any of the other policies and procedures contained in the RFQ. The contract administration process is a total quality management tool that empowers Valley Metro to monitor and assure Contract compliance. No additional cost is anticipated to be incurred by Contractor by the presence of the contract administration process as long as Contract compliance is maintained. Except for the more formalized feedback of findings, the normal contractor/user relationship will exist per Contract terms, and the contract administration process should be transparent.

4. COOPERATION WITH OTHER CONTRACTORS/SUBCONTRACTORS

The Contractor shall fully cooperate with other Valley Metro Contractor(s)/subcontractors and shall assign and carefully plan and perform its work to accommodate the work of other Valley Metro Contractor(s). The Contractor shall not intentionally commit or permit any act that will interfere with the performance of work by any other Valley Metro Contractor(s)

5. CONTRACT CLOSEOUT

At the end of the Contract period, Valley Metro will review the service to ensure all required deliverables have been met. This includes, but is not limited to submission and acceptance of all reports and inspection and inventory of all Valley Metro equipment and facilities provided to Contractor for the execution of the Contract. Contractor shall resolve any or all outstanding issues within 30 days of Contract expiration at which time Valley Metro will issue a Notice of Contract Closure to finalize the Contract Closure between both parties. Contractor shall keep all records pertaining to the service for a minimum of three (3) years after the Contract expiration and make available said records to Valley Metro or its agents for audit, with advance notice. In the event of litigation or claims, all records will be maintained until disposition of the litigation or claim.

Contractor shall cooperate with Valley Metro and its agents in the Contract closeout process, during the Contract and after the Contract expiration date. Final payment or part thereof, may be withheld by Valley Metro until the Contractor completes or resolves all outstanding issues and Contract closeout process is complete

6. GOVERNING LAW

The contract shall be governed by the laws of the State of Arizona without reference to conflict of law's provisions.



All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated November 1, 2008, and subsequent modifications, clarifications or amendments are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the contract. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Valley Metro requests that would cause Valley Metro to be in violation of the FTA terms and conditions.

This contract is funded by local government and federal transit administration funds. Contractor shall conform to all applicable FTA regulations and requirements as if all funds involved were FTA funds.

To the extent applicable, Valley Metro and Contractor each warrant compliance with any and all applicable governmental restrictions, regulations and rules of duly constituted authorities having jurisdiction via the contract, and all applicable employment laws, rules and regulations, including to the extent applicable, the Fair Labor Standards Act, the Walsh-Healey Act, Arizona Executive Order No. 99-4, and the Arizona Fair and Legal Employment Act, along with all laws, rules and regulations attendant thereto. Parties acknowledge that a breach of this warranty is a material breach of the contract and parties are subject to penalties for violation(s) of this provision, including termination of the contract. Contractor and Valley Metro each retain the right to inspect the documents of any and all Contractors, subcontractors and sub-subcontractors performing work and/or services relating to the contract to ensure compliance with this warranty. Any and all costs associated with inspections are the sole responsibility of the party subject to inspection. Valley Metro and Contractor each hereby agree to indemnify, defend and hold each other harmless for, from and against all losses and liabilities arising from any and all violations thereof. In addition, the parties each certify that it does not have a scrutinized business operation in either Iran or Sudan.

7. COMPLIANCE WITH LAWS AND REGULATIONS

The Contractor shall comply with all Federal, State and City laws, statutes, regulations, administrative requirements, executive orders and ordinances.

Contractor shall adhere to all applicable federal, state, and local laws, regulations, executive orders, and ordinances applicable to the Work under this Contract.

If any discrepancy or inconsistency is discovered in the Contract in relation to any such requirements of law, the Contractor shall immediately report the facts to Valley Metro, in writing.

Should changes to any such applicable federal, state, and local laws, regulations, executive orders, and ordinances occur after the date of execution of this Contract which in the Contractor's opinion require a change in the Contract Amount or time required for the performance of the Work hereunder, the Contractor shall provide written notification to Valley Metro.

8. CONTRACTOR LICENSE REQUIREMENT

Contractor shall procure all permits and licenses, and pay all charges and fees necessary and incidental to the lawful conduct of their business. Contractor shall keep themselves fully informed of existing and future Federal, State, and Local laws, ordinances and regulations, which in any manner affect the fulfillment of Contract and shall comply with the same. Contractor is advised to contact the Arizona Registrar of Contractors, Chief of Licensing to



ascertain licensing requirements for a particular contract. Contractor shall identify which license(s), if any, the Registrar of Contractors requires for performance of the contract.

9. SEVERABILITY

Should one or more of the provisions contained in the Contract be determined to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remainder of the Contract shall be unaffected. The affected provision shall be amended or interpreted, if possible, so as to correct the deficiency and give effect to the intent of the parties.

10. AUTHORIZED REPRESENTATIVES AND NOTICES

Contractor shall designate a representative to represent its organization and act on its behalf. This agent shall have the authority to make binding and enforceable decisions in the name of Contractor and to accept all notices that Valley Metro desires to serve, or that are required by the Contract to be served, on the Contractor. At the start of the work, Contractor shall advise Valley Metro, in writing, of the name, address, and telephone number (both day and night) of such designated agent. Contractor shall notify Valley Metro promptly of any changes in this designation.

All notices and other communications concerning the contract shall be written in English and shall bear the number assigned to the contract by Valley Metro. Notices and other communications may be delivered personally, by telegram, by telephone facsimile, or by regular, certified, or registered mail. Notices and communications are effective when received.

Prior to issuance of the Notice to Proceed, a notice to Valley Metro will be effective only if it is delivered to Valley Metro's Contract Administrator, 101 N. 1st Avenue, Suite 1400 Phoenix, Arizona 85003. All correspondence shall reference the Contract number.

Prior to commencement of Work on the Project, a notice to the Contractor will be effective if it is delivered to the individual who signed the contract on behalf of Contractor at the address shown with that signature, to a corporate officer if Contractor is a corporation, to a general partner if Contractor is a partnership, or to another individual designated by Contractor in the contract or in a written notice to Valley Metro.

All notices and other communications required or permitted by the contract shall be in writing and (i) delivered in person, (ii) sent by first class mail, (iii) sent by certified first class mail, return receipt requested, postage prepaid, or (iv) by commercial or United States Postal Service overnight delivery service, to the following addresses or to such other addresses as the Parties may hereafter designate by written notice. All such notices or other communications shall be deemed delivered immediately if delivered in person, three (3) days after deposit in the United States Postal Service first class mail if mailed, upon receipt as indicated on signed certified mail receipt and on the following Business Day if sent by overnight delivery service.

Manager, Contracts & Procurement
Valley Metro
101 North First Avenue, Suite 1400
Phoenix, AZ 85003

CONTRACTOR:
(TBD)



11. DILIGENCE AND STANDARD OF CARE

The Contractor represents that it shall perform the Services with the standard (the “Standard”) of care, skill and diligence expected, at the time and place of performance, of recognized professional engineering firms performing services of a similar type and nature.

Opportunity to Cure

Valley Metro may provide Contractor a reasonable opportunity to cure, at Contractor’s expense, all errors and omissions which may be disclosed during Project implementation. Should Contractor fail to make such correction in a timely manner, such correction may be made by Valley Metro, and the cost thereof charged to Contractor.

12. APPROVALS

As called for in the Contract, Contractor will provide documents for approval by the Valley Metro. Any approval or conditional approval with comment signifies permission to Contractor to proceed with the work and indicates, but does not warrant, that Valley Metro has seen nothing in the document at variance with the Contract. The Contractor's proceeding with the work prior to this approval is at the Contractor's own risk. Neither approval nor conditional approval with comment shall relieve Contractor of any of his/her responsibilities under the Contract.

13. CHANGES

Valley Metro may, at any time make changes in the Work within the general scope of the Contract, including but not limited to changes:

- In the Scope of Work/Specifications;
- In the method or manner of performance of the Work;
- In Valley Metro furnished facilities, equipment, Materials, services, or Work Site; or
- In the performance period for the Work.

Within 14 calendar days after Contractor’s receipt of the written change order request for modification of the Contract, Contractor shall submit to the Valley Metro Senior Contract Administrator a detailed price schedule proposal for the work to be performed. This proposal shall be accepted or modified by negotiation between Contractor and the Valley Metro Manager of Contracts and Procurement. At the time both parties shall execute a detailed Contract modification in writing. Disagreements that cannot be resolved within negotiations shall be resolved in accordance with the contract disputes clause.

It is distinctly understood and agreed that no claim for payment for work done or materials furnished by the Contractor outside of these parameters shall be paid by Valley Metro. Any such services or materials furnished by Contractor without such written order shall be at the risk, cost and expense of the Contractor, and no claim for compensation for any such services or materials shall be made.

The Contractor, for each, shall maintain separate accounts, of all incurred separable costs allocable to the change. The Contractor shall maintain such accounts until the Parties agree to an equitable adjustment for the changes ordered by Valley Metro.

Acceptance of a Change Order by the Contractor shall constitute a full accord and satisfaction for any and all claims and costs of any kind, whether direct or indirect, including but not limited to impact, delay or acceleration



damages, arising from the subject matter of the Change Order. Each Change Order shall be specific and final as to prices and extensions of time, with no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the change order. The execution of a Change Order by the Contractor shall constitute conclusive evidence of the Contractor's agreement to the ordered changes in the Work. This Contract, as amended, forever releases any claim against the Valley Metro for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. This release applies to claims related to the cumulative impact of all Change Orders and to any claim related to the effect of a change on unchanged Work.

14. VERBAL AGREEMENTS

Verbal change orders to the Contract are not permitted. No changes in the scope, specifications, character, or complexity of work shall be made by the Contractor without first receiving written approval by the Valley Metro Chief Executive Officer or his designee properly defining and limiting any such change. Contractor shall be liable for all costs resulting from and/or for satisfactorily correcting any specification change not properly ordered by written modification to the Contract and signed by the Valley Metro Chief Executive Officer or his designee.

The Contractor shall promptly notify Valley Metro in writing when the Contractor has received direction, instruction, interpretation or determination from any source which the Contractor believes may cause any change in cost or time required for the performance of the Work. Such written notification shall state.

The date, circumstances, and source of the order and

The reasons why the Contractor regards the order or action as a change. Such notice of Change shall be given to the Valley Metro before the Contractor acts on said direction, instruction, interpretation or determination and Valley Metro shall make written reply within seven (7) Days after its receipt.

If notification is not provided to the Valley prior to commencing work, the Contractor assumes all risks and responsibility for any additional costs incurred and related schedule impacts

15. LEGAL WORKER REQUIREMENTS

Contractor agrees that: Contractor and each Sub-Contractor it uses warrants their compliance with all federal immigration laws and regulations that relate to their employees and their compliance with § 23-214, subsection A.

Under the provisions of A.R.S. § 41-4401, each party hereby warrants to the other that each party and all of its subcontractors (if any) will comply with, and are contractually obligated to comply with, all Federal Immigration laws and regulation that relate to their employees and A.R.S. § 23-214 (A) (hereinafter "Contractor Immigration Warranty")

A Breach of the Contractor Immigration Warranty shall constitute a material breach of the contract and shall subject the breaching party to penalties up to and including termination of the contract at the sole discretion of the non-breaching party.

Each party retains the legal right to inspect the papers of any Contractor or subcontractor employee of the other party who works on this contract to ensure that the Contractor or subcontractor is complying with the Contractor Immigration Warranty. Each party agrees to assist the other party in regard to any such inspections.



Each party may, at its sole discretion, conduct random verification of the employment records of the other party and any of its subcontractors to ensure compliance with Contractor's Immigration Warranty. Each party agrees to assist the other party in regard to any random verification performed.

A party will not be considered in materially breach of the contract or the Contractor Immigration Warranty if the party establishes that it has complied with the employment verification provision prescribed by sections 274A and 274B of the Federal Immigration and Nationality Act and the E-Verify requirements prescribed by A.R.S. § 23-214, Subsection A.

The foregoing provisions of subparagraphs 1-6 of this article must be included in any contract that a party enters into with any and all its subcontractors who provide service under this contract or any subcontract.

Pursuant to A.R.S. §§ 35-391.06 and 35-393.06, each party certifies that it does not have a scrutinized business operation as defined in A.R.S. §§ 35-391 and 35-393 in either Sudan or Iran.

16. IMMIGRATION REFORM AND CONTROL ACT OF 1986 (IRCA) REQUIRED

Contractor understands and acknowledges that the IRCA applies to it. Contractor agrees to comply with the IRCA on performing under the Contract and to permit Valley Metro inspection of their personnel records to verify such compliance.

17. CONFLICTS OF INTEREST

The Contractor shall not engage the services in connection with the contract of any present or former employee of Valley Metro or any Contractor thereto who was involved as a decision maker in the selection or approval processes or who negotiated and/or approved billings or contract modifications for the contract. The Contractor agrees that, to the best of its knowledge, no public or private interest exists and none shall be acquired directly or indirectly which would conflict in any manner with the performance of this contract.

Without limiting the generality of A.R.S. § 38-501 et seq., no member, officer, employee of Valley Metro or member of its governing body during his/her tenure or for three years thereafter, shall have any interest, direct or indirect, in the contract or the proceeds thereof. The contract is subject to termination pursuant to A.R.S. §38-511.

18. EQUAL EMPLOYMENT OPPORTUNITY

In connection with this procurement, the Contractor will take affirmative action to ensure that all applicants are considered for employment and that employees are treated during an application process and through employment without regard to their race, color, religion, sex, sexual orientation or domestic partnership, national origin, age, marital status, being disabled or disadvantaged, or any war-era veteran status. 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 will furnish all necessary information and reports and will permit access to its books, records, and accounts by Valley Metro for the purposes of investigation to ascertain compliance with the nondiscrimination/disadvantaged business provisions of any resultant Contract.



19. NON-DISCRIMINATION

Valley Metro has agreed to abide by the assurance found in 49 CFR Part 26.13(a) and required by the U. S. Department of Transportation. As a condition of this Contract, Valley Metro shall require each contract signed by Valley Metro with Contractor, and each subcontract signed by the Contractor with a subcontractor, to include the following assurance:

“The Contractor, subcontractor, or sub-recipient shall not discriminate on the basis of race, color, national origin, sex or creed in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR Parts 21 and 26 in the award and administration of USDOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract which may result in the termination of this Contract or such other remedy as Valley Metro deems appropriate.”

20. AFFIRMATIVE ACTION IN EMPLOYMENT

Any Offeror performing under this Contract shall not discriminate against any worker, employee, or any member of the public because of race, creed, color, religion, sex or national origin, nor otherwise commit an unfair employment practice. The Offeror will take affirmative action to ensure that applicants are employed and that employees are dealt with during employment without regard to their race, creed, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrade, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Offeror further agrees that this clause will be incorporated in all subcontracts entered into with suppliers of materials or services, and all labor organizations furnishing skilled, unskilled, and union labor, or who may perform any such labor or services in connection with this Contract.

21. AMERICANS WITH DISABILITIES ACT

Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Valley Metro through contracts with outside Contractors.

The Contractor shall be responsible for and agrees to indemnify and hold harmless the Valley Metro from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Valley Metro as a result of the Contractor's failure to comply with the provisions of subparagraph an above.

22. NONCOMPLIANCE

In the event of the Contractor's noncompliance with the nondiscrimination/disadvantaged business provisions of any resultant Contract, Valley Metro shall impose such Contract sanctions as it may determine to be appropriate, including but not limited to:

Withholding payments under the Contract until the Contractor complies; and/or,

Cancellation, termination, or suspension of the Contract in whole or in part.



23. PROHIBITED INTEREST

Without limiting the generality of ARS 38-501 et. seq., no member, officer, employee of Valley Metro, or member of its governing body during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any resultant contract or the proceeds thereof.

24. BREACHES AND DISPUTE

Applicability to Contracts

This section contains provisions or conditions, which will allow for administrative, contractual, or legal remedies in instances where Contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down

The Breaches and Dispute Resolutions requirements in this section flow down to all tiers.

Disputes

Disputes arising in the performance of contract, which are not resolved by agreement of the parties, shall be decided in writing by the authorized representative of the Valley Metro Chief Executive Officer. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, Contractor mails or otherwise furnishes a written appeal to Valley Metro Chief Executive Officer. In connection with any such appeal, Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of Valley Metro Chief Executive Officer shall be binding upon Contractor and Contractor shall abide by the decision.

Performance During Dispute

Unless otherwise directed by Valley Metro Chief Executive Officer, Contractor shall continue performance under Contract while matters in dispute are being resolved.

Claims for Damages

Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his/her employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage and in any event in accordance with A.R.S. Title 12.

Remedies

Unless Contract provides otherwise, all claims, counterclaims, disputes and other matters in question between Valley Metro and Contractor arising out of or relating to this Contract or its breach will be decided in a court of competent jurisdiction within the State of Arizona.



Rights and Remedies

The duties and obligations imposed by the Contract documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by Valley Metro or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

Confidentialty

Any proceeding initiated under this Section shall be deemed confidential to the maximum extent allowed by State Law and no Party shall make any disclosure related to the disputed matter or the outcome of any proceeding except to the extent required to seek interim equitable relief or to enforce an agreement reached or an award made hereunder. Notwithstanding the above, the Parties understand that Valley Metro is subject to Arizona's public records laws.

Additional Requirement

If at any time during the Contract period, the Contractor fails to render services of reasonably proper quality or has substantially failed to perform, keep and observe any of the terms, covenants, or conditions herein contained on the part of the Contractor to be performed, the Valley Metro may give the Contractor written notice to correct such conditions or cure such default and if such condition or default shall continue for ten (10) days after receipt of said written notice, then and in that event, Contract shall cease and expire. In the event of such termination, the Contractor shall immediately return that portion of the advance not applied as a credit against reimbursable expenses.

25. TERMINATION FOR CONVENIENCE

Performance under the contract may be terminated by Valley Metro in accordance with this clause in whole or, in part, whenever Valley Metro shall elect. Any such termination shall be effected by delivery to Contractor of a Notice of Termination specifying the extent to which performance under the contract is terminated, and the date upon which such termination becomes effective. Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise:

- incur no further obligations in connection with the terminated work, and,
- on the date set forth in the notice of termination, the contractor will stop work to the extent specified.
- terminate outstanding orders and subcontracts as they relate to the terminated work.
- settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work.

Valley Metro may direct the Contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to Valley Metro. The Contractor must still complete the work not terminated by the notice of termination and may incur such obligations as are necessary to do so.

Valley Metro may require the Contractor to transfer title and deliver to Valley Metro in the manner and to the extent directed by Valley Metro:



- any completed supplies; and
- such partially completed supplies and materials, parts, as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The Contractor shall, upon direction of Valley Metro, protect and preserve property in the possession of the Contractor in which Valley Metro has an interest.

Valley Metro shall be liable only for payment under the payment provisions of the Contract for services rendered before the effective date of termination.

Contractor shall put a similar clause in all of its Sub-Contractor agreements.

26. TERMINATION FOR DEFAULT

Valley Metro may, by written Notice of Default to the Contractor, terminate the whole or any part of contract, if Contractor fails to perform the services within the time specified herein or any extension thereof; or if Contractor fails to perform any of the other material provisions of the contract or so fails to make progress as to materially endanger performance of contract in accordance with its terms and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Chief Executive Officer may authorize in writing) after receipt of notice from the Chief Executive Officer specifying such failure.

If the contract is terminated in whole or in part for default, Valley Metro may procure, upon such terms and in such manner as it may deem appropriate, supplies or services similar to those so terminated. Contractor shall be liable to the Valley Metro for any excess costs for such similar supplies or services and shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

Except with respect to defaults of subcontractor, Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor and if such default arises out of causes beyond the control of both Contractor and subcontractor and without the fault or negligence of either of them, Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Contractor to meet the required delivery schedule.

Payment for completed services delivered to and accepted by Valley Metro, shall be at the contract price. Valley Metro may withhold from amounts otherwise due Contractor for such completed deliveries/services such sum as the Valley Metro determines to be necessary to protect itself against loss because of outstanding liens or claims of former lien holders.

If, after notice of termination of contract under the provisions of this clause, it is determined for any reason that Contractor was not in default under the provisions of this clause or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to termination for the convenience of the Valley Metro.

The rights and remedies of Valley Metro provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under contract.



27. OWNERSHIP OF WORK

All reports, drawing plans, specifications and other materials prepared, or in the process of being prepared, for the services to be provided by the proposer shall be and are the property of Valley Metro Rail and the Regional Public Transportation Authority (RPTA), and Valley Metro and RPTA shall be entitled access to, and copies of during the progress of the work.

28. CONFIDENTIALITY

The contract creates an exclusive and perpetual license for Valley Metro to copy, use, modify, reuse, or sub-license any and all copyrights and designs embodied in plans, specifications, studies, drawings, estimates, work product, data and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Contractor under the contract (“Documents & Data”).

Contractor shall require all subcontractors to agree in writing that Valley Metro is granted an exclusive and perpetual license for any Documents & Data the subcontractor prepares under the contract.

Contractor represents and warrants that Contractor has the legal right to grant the exclusive and perpetual license for all such Documents & Data. Contractor makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Contractor or provided to Contractor by Valley Metro.

Valley Metro shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by the contract shall be at Valley Metro’s sole risk.

29. INTELLECTUAL PROPERTY

In addition, Valley Metro shall have and retain all right, title and interest (including copyright, patent, trade secret and other proprietary rights) in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents, and any and all works of authorship fixed in any tangible medium or expression, including but not limited to, physical drawings or other data magnetically or otherwise recorded on computer media (“Intellectual Property”) prepared or developed by or on behalf of Contractor under the contract as well as any other such Intellectual Property prepared or developed by or on behalf of Contractor under the contract.

Valley Metro shall have and retain all right, title and interest in Intellectual Property developed or modified under the contract whether or not paid for wholly or in part by Valley Metro, whether or not developed in conjunction with Contractor, and whether or not developed by Contractor. Contractor will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of Valley Metro.

Contractor shall also be responsible to obtain in writing separate written assignments from any subcontractor or agents of Contractor of any and all right to the above referenced Intellectual Property. Should Contractor, either during or following termination of the contract, desire to use any of the above-referenced Intellectual Property, it shall first obtain the written approval of Valley Metro.

All materials and documents which were developed or prepared by the Contractor for general use prior to the execution of the contract and which are not the copyright of any other party or publicly available and any other



computer applications, shall continue to be the property of the Contractor. However, unless otherwise identified and stated prior to execution of the contract, Contractor represents and warrants that it has the right to grant the exclusive and perpetual license for all such Intellectual Property as provided herein.

Valley Metro further is granted by Contractor a non-exclusive and perpetual license to copy, use, modify or sub-license any and all Intellectual Property otherwise owned by Contractor which is the basis or foundation for any derivative, collective, insurrectional, or supplemental work created under the contract.

Valley Metro and its agents reserve the right to reproduce any and all documentation produced by the Contractor, whether such documentation is the Contractor's standard documentation or such documentation is prepared specifically for the work covered by the Contract, for distribution at Valley Metro's will, despite any notice to the contrary appearing on the documentation.

30. PUBLICITY AND ADVERTISING

The Contractor, its Sub-Contractors and suppliers shall not publish, nor cause to be published any advertisement or other material, including news releases and technical papers, regarding the subject matter of the contract at any time without the prior written authorization of Valley Metro. The Contractor shall not display any signs, posters, or any other advertising matter in or on the Work or on or around the Work Site other than those prescribed by the Agreement or by law without the prior written authorization of Valley Metro. In addition, advertising or other copy mentioning Valley Metro or quoting the opinions of any of its employees shall not be released before such copy is approved in writing by Valley Metro before release. Any material proposed for publication must be factual and not state or imply endorsement by Valley Metro of any firm, service, or product.

31. CODE OF ETHICS AND WRITTEN STANDARDS OF CONDUCT

The Contractor understands that Valley Metro is governed by its Code of Ethics. Copies of Code of Ethics can be obtained from Valley Metro.

Valley Metro maintains its own written code of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, agent, immediate family member, or Board member of Valley Metro will participate in the selection, award, or administration of a contract supported by FTA funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award: (1) The employee, officer, agent, or Board member, (2) Any member of his immediate family, (3) His partner, or (4) An organization that employs, or is about to employ, any of the above. Valley Metro's officers, employees, agents, or Board members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from Contractor, potential Contractor, or parties to sub agreements. Valley Metro has minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards of conduct provide for penalties, sanctions, or other disciplinary action for violation of such standards by Valley Metro's officers, employees, or agents, or by Contractor or their agents.

32. SUBSTANCE ABUSE

If specified within the scope of work the Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its



compliance with Parts 655 et. seq., and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Arizona, or the City of Phoenix, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The Contractor agrees further to certify annually its compliance with Parts 655 and to submit the Management Information System (MIS) reports before March 15 to Valley Metro. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

33. INDEPENDENT CONTRACTOR

Under the terms of the contract, the Contractor is an independent Contractor and has and retains full control and supervision of the services performed by and full control over the employment and direct compensation and discharge of all persons, other than Valley Metro employees, assisting in the performance of its services hereunder. The Contractor agrees to be solely responsible for all matters relating to wages, hours of work, working conditions and payment of employees, including compliance with social security, all payroll taxes and withholdings, unemployment compensation, and all other requirements relating to such matters.

The Contractor agrees to be responsible for its own acts and those of its subordinates, employees and any and all Sub-Contractors, if any, during the life of the contract.

If the Contractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

Valley Metro and the Contractor acknowledge that although Valley Metro shall oversee and monitor the Contractor, Valley Metro will not control the day-to-day operations of the Contractor or any of its Sub-Contractors. Valley Metro shall not determine means, methods, techniques, procedures or safety precautions and programs in connection with the Contractor's and Sub-Contractor performance under the contract, which shall solely be the responsibility and obligation of the Contractor.

Improper Exercise of Authority. It is further understood and agreed that the Contractor shall not in any way exercise any portion of the authority or powers of Valley Metro and shall not make a contract or commitment, or in any way represent itself as an agent of Valley Metro beyond the scope of the contract unless expressly authorized, in writing, by Valley Metro.

Covenants Against Contingent Fees. The Contractor warrants that it has not employed or retained any company or person, to solicit or secure the contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of the contract. The preceding sentence does not apply to Contracts entered into with Sub-Contractors for the performance of Professional Services as permitted under the contract. For breach or violation of this warranty, Valley Metro shall have the right to annul the contract without liability, or in its discretion, to deduct from the Contract Price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.



34. PRIME CONTRACTOR RESPONSIBILITIES

The selected Contractor will be required to assume responsibility for all services offered in their SOQ whether or not they produce them. Further, Valley Metro will consider the selected Contractor to be the sole point of contact with regard to contractual matters.

35. INSPECTION OF WORK

All work (which term in this section includes services performed, and material utilized in the performance of services) shall be subject to inspection and test by the Valley Metro to the extent practicable at all times and places during the term of the contract. The Valley Metro shall have the right to enter the Contractor's premises for the purpose of inspecting and auditing all data and records which pertain to the Contractor's performance under the contract. The Valley Metro, the City of Phoenix (as federal designated recipient of FTA funds) and agents of their choice shall also have the right to enter the Contractor's premises for the purpose of inspecting vehicles owned by the Contractor that are used to provide service under the contract.

If any work performed hereunder is not in conformity with the requirements of the contract, the Valley Metro shall have the right to require the Contractor to perform the work again in conformity with such requirements at the Contractor's expense. When the work to be performed is of such a nature that the defect cannot be corrected by re performing the work, the Valley Metro shall have the right to (1) require the Contractor to immediately take all necessary steps to ensure future performance of the work in conformity with the requirements of the contract; and (2) reduce the contract price to reflect the reduced value of the work performed. In the event the Contractor fails promptly to perform the work again or take necessary steps to ensure future performance of the work in conformity with the requirements of the contract, the Valley Metro shall have the right to have the work performed in conformity with the contract requirements and charge the Contractor any costs to the Valley Metro that are directly related to the performance of such work, or to terminate this contract for default.

No completion of any audit or inspection by the Valley Metro constitutes a representation that operations or equipment are in compliance with any federal, state or local laws. Such responsibility is uniquely that of the Contractor.

36. AUDIT AND INSPECTION OF RECORDS

The Contractor shall permit the authorized representative of the United States Department of Transportation and of the Comptroller General of the United States to inspect and audit all data and records of the Contractor relating to its performance and its subcontracts, if any, under this contract with which Federal funds are used from the date of the contract through and until the expiration of three years after completion of the contract. The inspection and audit provided in this section does not include an audit of the manufacturer's cost and/or profit, with the exception of single bid or sole source situations.

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. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until Valley Metro, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.42(b).



37. FORCE MAJEURE

Neither party shall be responsible for delays or failures in performance resulting from events beyond their control. Such events shall include, but not be limited to, acts of God, riots, acts of war, epidemics, unusual and unavoidable delays in delivery, unusually severe weather, governmental acts or omissions of governmental entities, fire, communication line failures, or power failures. Based upon any such event, Contractor may be entitled to a Change Order for extra time and cost, but shall not be entitled to an increase in Fee.

38. LOBBY PROHIBITION

Pursuant to Arizona Revised Statutes 41-1233 and Valley Metro Policy, no person, Contractor, or entity of any sort, public or private shall:

Retain or employ another person to promote or oppose legislation for compensation contingent in whole or in part upon the passage or defeat of any legislation, or the approval or veto of any legislation by the governor, and

Accept employment or render service for compensation on a contingent basis.

Lobby the legislature, the Valley Metro Board, or any other public body or official for compensation within one year after the person ceases to be a member of the Senate or House of Representatives.

In any manner seek to improperly influence the vote or decision of any member of the legislature, Valley Metro Board or Committee, or any other public body, official, or Valley Metro employee, through any means.

39. HEADINGS

The subject headings of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any provisions of this Agreement.

40. INTERPRETATIONS

To the extent permitted by the context in which used, (a) words in the singular number shall include the plural, words in the masculine gender shall include the feminine and neuter, and vice versa; (b) reference to “persons” or “parties” in this Agreement shall be deemed to refer to natural persons, corporations, general partnerships, limited partnerships, trusts and other entities; (c) (unless specified otherwise) references to paragraphs, sections or Sections are to paragraphs, sections or Sections of this Agreement; and (d) any reference to “day” in this Agreement shall be deemed to refer to calendar days unless this Agreement expressly requires Business Days.

-- End --



EXHIBIT D.1

FEDERAL DEPARTMENT OF LABOR (DOL)

PREVAILING WAGE REQUIREMENTS

RFQ NO. SH-19007

CONTRACT NO. 20017



EXHIBIT D.1
FEDERAL DEPARTMENT OF LABOR (“DOL”)
PREVAILING WAGE REQUIREMENTS
DAVIS BACON - CONSTRUCTION PHASE

Davis Bacon and Related Acts

The prevailing basic hourly wage rates and fringes benefit payments, as determined by the Secretary of Labor pursuant to the provisions of the Davis Bacon Act, shall be the minimum wages paid to the described classes of laborers and mechanics employed, or working on the site, to perform the contract.

The Contractor/Consultant shall include in all subcontractors’ contracts the effective wage determination and the 29 CFR Parts 3 and 5.

Payrolls, including subcontractor’s payrolls, must be submitted weekly no later than seven (7) days after each pay period ending date. The Contractor/Consultant shall upon request, clarify discrepancies between hourly wages paid individual workers and the minimum hourly wages required by the applicable federal wage decision for the project. Failure to provide payrolls or clarification of discrepancies may affect the timely release of payments and cause the withholding payment to the Contractor/Consultant in accordance with Title 29, CFR Part 5.

Wage decision follows.

Also reference 29 CFR Parts 3, 5.



General Decision Number: AZ190017 02/08/2019 AZ17

Superseded General Decision Number: AZ20180018

State: Arizona

Construction Type: Heavy

HEAVY CONSTRUCTION, Includes Water and Sewer Lines, Heavy Construction on Treatment Plant Sites and Pipeline Construction

County: Maricopa County in Arizona.

HEAVY CONSTRUCTION PROJECTS (DOES NOT INCLUDE DAM CONSTRUCTION)

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.60 for calendar year 2019 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.60 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2019. If this contract is covered by the EO and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must pay workers in that classification at least the wage rate determined through the conformance process set forth in 29 CFR 5.5(a)(1)(ii) (or the EO minimum wage rate, if it is higher than the conformed wage rate). The EO minimum wage rate will be adjusted annually. Please note that this EO applies to the above-mentioned types of contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but it does not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60). Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Modification Number	Publication Date
0	01/04/2019
1	02/08/2019

BOIL0627-004 10/01/2017

	Rates	Fringes
BOILERMAKER.....	\$ 35.30	28.41

BRAZ0003-010 07/01/2018

	Rates	Fringes
BRICKLAYER.....	\$ 26.06	7.28



ZONE PAY:

(Radius miles from the intersection of Central Ave. and Washington St., Phoenix, AZ)

- Zone A: 0-60 miles- Base Rate
- Zone B: 61-75 miles- Base Rate plus \$2.00 per hour
- Zone C: 75-100 miles- Base Rate plus \$3.00 per hour
- Zone D: 101-200 miles- Base Rate plus \$3.50 per hour
- Zone E: Over 200 miles- Base Rate plus \$6.50 per hour

 ELEC0640-006 07/01/2018

	Rates	Fringes
ELECTRICIAN.....	\$ 28.30	10.30

ELEC0769-002 07/29/2018

	Rates	Fringes
Line Construction:		
Lineman.....	\$ 46.40	21%+5.94

* ENGI0428-008 06/01/2018

	Rates	Fringes
POWER EQUIPMENT OPERATOR		
Group 1.....	\$ 24.84	10.86
Group 2.....	\$ 28.11	10.86
Group 3.....	\$ 29.19	10.86
Group 4.....	\$ 30.22	10.86

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

- GROUP 1: Small Self-Propelled Compactor (with blade), Bobcat/Skidsteer/Skid Loader, Oiler
- GROUP 2: Self-Propelled Compactor (with blade), Grader/Blade (rough), Scraper, Tractor, Crane (less than 15 tons)
- GROUP 3: Grade/Blade (Finish), Crawler-Type Tractor, Crane (over 15 tons & less than 100 ton), Tower Crane
- GROUP 4: Crane (100 ton)



 * ENGI0428-015 06/01/2018

Rates Fringes

POWER EQUIPMENT OPERATOR:
 (PIPELINE)

Group 1.....	\$ 24.84	10.86
Group 3.....	\$ 29.19	10.86

Group 1: Backhoe, Boring Machine, Boom Operator, Bulldozer, Trackhoe

Group 3: Oiler

 IRON0075-009 08/01/2018

Rates Fringes

IRONWORKER, STRUCTURAL.....\$ 26.90 18.95

- Zone 1: 0 to 50 miles from City Hall in Phoenix or Tucson
- Zone 2: 050 to 100 miles - Add \$4.00
- Zone 3: 100 to 150 miles - Add \$5.00
- Zone 4: 150 miles & over - Add \$6.50

 PAIN0086-002 04/01/2017

Rates Fringes

PAINTER (Brush Only).....\$ 19.58 6.40

 PLUM0469-004 07/01/2016

Rates Fringes

PLUMBER.....\$ 40.80 17.00

 SUAZ2012-006 05/17/2012

Rates Fringes

CARPENTER (Form Work Only).....\$ 20.80 4.07

CARPENTER, Excludes Form Work....\$ 21.98 5.38



CEMENT MASON/CONCRETE FINISHER...\$ 18.76	2.12
INSTALLER - SIGN.....\$ 25.42	0.00
IRONWORKER, REINFORCING.....\$ 20.66	13.59
LABORER: Asphalt Raker/Shoveler/Spreader.....\$ 15.76	4.42
LABORER: Common or General.....\$ 14.36	3.97
LABORER: Concrete Saw (Hand Held/Walk Behind).....\$ 17.00	4.55
LABORER: Fence Erection.....\$ 10.32	2.24
LABORER: Grade Checker.....\$ 18.14	4.55
LABORER: Landscape & Irrigation.....\$ 11.01	0.37
LABORER: Mason Tender - Brick...\$ 14.55	4.20
LABORER: Mason Tender - Cement/Concrete.....\$ 15.34	4.20
LABORER: Pipelayer.....\$ 14.94	3.51
LABORER: Power Tool Operator....\$ 16.57	4.20
LABORER: Railroad Construction Laborer.....\$ 16.80	4.20
OPERATOR: Backhoe/Excavator/Trackhoe.....\$ 19.37	3.59
OPERATOR: Bulldozer.....\$ 20.57	6.16
OPERATOR: Drill.....\$ 20.57	4.78
OPERATOR: Forklift.....\$ 20.38	4.75
OPERATOR: Grade Checker.....\$ 21.68	6.31
OPERATOR: Loader (Front End)....\$ 20.31	3.84
OPERATOR: Mechanic.....\$ 22.23	5.78



OPERATOR: Paver (Asphalt, Aggregate, and Concrete).....	\$ 17.07	3.20
OPERATOR: Roller.....	\$ 21.34	8.36
OPERATOR: Rotomill.....	\$ 21.88	6.39
OPERATOR: Screed.....	\$ 16.82	2.52
OPERATOR: Trencher.....	\$ 14.21	0.94
OPERATOR: Broom/Sweeper.....	\$ 15.40	2.45
PAINTER: Pavement Marking/Parking Lot Striping.....	\$ 19.94	4.10
PAINTER: Roller and Spray.....	\$ 20.65	4.45
PIPEFITTER.....	\$ 23.97	6.78
TRUCK DRIVER: 3 Axle Truck.....	\$ 27.53	1.16
TRUCK DRIVER: Dump Truck.....	\$ 14.37	1.16
TRUCK DRIVER: Flatbed Truck.....	\$ 12.50	1.48
TRUCK DRIVER: Hydroseeder.....	\$ 17.32	0.00
TRUCK DRIVER: Water Truck.....	\$ 16.46	3.42

 WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).



The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of "identifiers" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than "SU" or "UAVG" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the "SU" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:



- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION



**Disadvantaged Business Enterprise (DBE) Program
Race- and Gender-Neutral - JOC Task Order Contract Clause**

SECTION I DEFINITIONS

Agency means Valley Metro for purposes of this Contract.

Arizona Unified Certification Program (AZUCP) means a consortium of government agencies organized to provide reciprocal DBE certification within Arizona pursuant to 49 Code of Federal Regulations (CFR) Part 26. The official DBE database containing eligible DBE firms certified by AZUCP can be accessed at: www.azutracs.com. The certification system is called the Arizona Unified Transportation Registration and Certification System (AZ UTRACS).

Commercially Useful Function means that a DBE is responsible for executing the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the DBE is presumed not to be performing a Commercially Useful Function.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including construction and professional services) and the buyer to pay for them.

DBE stands for disadvantaged business enterprise. In this context, DBE means a Small Business Concern that has successfully completed the DBE certification process and has been granted DBE status by an AZUCP member pursuant to the criteria contained in 49 CFR Part 26.

DBE Compliance Specialist means an Agency employee responsible for compliance with this DBE Contract Clause.

EOD means the City of Phoenix Equal Opportunity Department.

Joint Venture (JV) means an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity. The JV is limited in scope and duration to this Contract. The resources, asset and labor of the participants must be combined in an effort to accrue profit.

Outreach Efforts means the diligent and good-faith efforts demonstrated by a Submitter to solicit participation from interested and qualified DBEs and other Small Businesses. Submitter shall identify and document potential business opportunities for DBEs and other Small Businesses, describe what efforts were undertaken to solicit DBE and Small Business participation, disclose results of negotiations with DBEs and Small Businesses, communicate and record Submitter's selection decisions relating to DBE and Small Business participants.

Race- and Gender-Neutral (RGN) Measures means a measure or program that is, or can be, used to assist all Small Businesses.

Small Business means, with respect to firms seeking to participate in contracts funded by the U.S. Department of Transportation (US DOT), a Small Business Concern as defined in section 3 of the Small Business Act and Small Business Administration regulations implementing the Act (13 CFR part 121), which Small Business Concern does



not exceed the cap on average annual gross receipts specified in 49 CFR § 26.65(b). “Small Business” and “Small Business Concern” are used interchangeably in this DBE Contract Clause.

Subcontract means a contract at any tier below the prime contract, including a purchase order.

Subcontractor means an individual, partnership, JV, corporation or firm that holds a contract at any tier below the prime contract, including a vendor under a purchase order.

Submitter means an individual, partnership, JV, corporation or firm that tenders a submittal to the Agency to perform services requested by a solicitation or procurement. The submittal may be direct or through an authorized representative.

Successful Submitter means a firm that has been selected by the Agency to perform services or furnish supplies requested by a solicitation or procurement.

SECTION II GENERAL REQUIREMENTS

- A. **Applicable Federal Regulations.** This Contract is subject to DBE requirements issued by USDOT in 49 CFR Part 26. Despite the lack of a race- and gender-conscious DBE participation goal for this Contract, the Agency must track and report DBE participation that occurs as a result of any procurement, JV, goods/services, or other arrangement involving a DBE. For this reason, the Successful Submitter shall provide all relevant information to enable the required reporting.
- B. **DBE Participation.** For this solicitation, the Agency has not established a race- or gender-conscious DBE participation goal. The Agency extends to each individual, firm, vendor, supplier, contractor, and subcontractor an equal economic opportunity to compete for business. The Agency uses race- and gender-neutral measures to facilitate participation by DBEs and Small Businesses. The Agency encourages each Submitter to voluntarily subcontract with DBEs and Small Businesses to perform part of the work—a Commercially Useful Function—that Submitter might otherwise perform with its own forces.
- C. **Counting DBE Participation.** The Agency will count DBE participation as authorized by federal regulations. A summary of these regulations can be found at phoenix.gov/eod.
- D. **DBE Certification.** Only firms (1) certified by the Agency or another AZUCP member, and (2) contracted to perform a Commercially Useful Function on scopes of work for which they are certified, may be considered to determine DBE participation resulting from RGN measures on this Contract. This DBE determination affects the Agency’s tracking and reporting obligations to USDOT.
- E. **Civil Rights Assurances.** As a recipient of USDOT funding, the Agency has agreed to abide by the assurances found in 49 CFR Parts 21 and 26. Each Contract signed by the Agency and the Successful Submitter, and each Subcontract signed by the Successful Submitter and a Subcontractor, must include the following assurance verbatim:

“The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, national origin, sex, or creed in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Parts 21 and 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the City of Phoenix deems appropriate.”



Note: For purposes of the required Contract and Subcontract language above, Successful Submitter is the “contractor.”

SECTION III PRE-AWARD SUBMITTAL REQUIREMENTS

Documentation due with initial qualifications-based submittal.

Each Submitter shall complete and submit Attachment A (Statement of Outreach Commitment) with its initial qualifications-based submittal. Submittals that do not have this form completed and signed will be deemed nonresponsive. A nonresponsive submittal will be disqualified from further evaluation.

SECTION IV REQUIRED OUTREACH EFFORTS

The Agency has implemented outreach requirements for this Contract. Specifically, Successful Submitter shall: (1) identify small-business-participation opportunities, including Commercially Useful Functions; (2) actively solicit proposals from small businesses; (3) evaluate small-business proposals; and (4) communicate selection decisions to small businesses, including each rejection of a small-business proposal. If Successful Submitter fails to conduct these Outreach Efforts or fails to submit the required documentation of Successful Submitter's Outreach Efforts as indicated in Section IV, Parts A and B below, the Agency may determine that the Successful Submitter is noncompliant.

SECTION V POST-AWARD SUBMITTAL REQUIREMENTS

A. Documentation due prior to the execution of each Task Order.

1. **Attachment B (Documentation of Outreach Efforts).** Successful Submitter shall complete and submit Attachment B documenting its diligent, earnest outreach efforts for services in **trade areas in each Task Orders** (if applicable) of the contract, as described in Section VII of this clause.

a) Successful Submitter shall list in Attachment B all DBEs and Small Businesses contacted by Successful Submitter. Successful Submitter shall also provide the following minimum information to document its Outreach Efforts. The DBE Compliance Specialist will consider this information to determine whether Successful Submitter has demonstrated the required Outreach Efforts:

- 1) Each business’s full legal name and contact information;
- 2) Business status (DBE, Small Business, SBE, or unknown);
- 3) Scope of work solicited (brief description, percentage of contract value);
- 4) Solicitation method (personal contact, telephone, fax, e-mail, other);
- 5) Selection process; and
- 6) Communication of selection outcome to each participant.*

*Successful Submitter shall provide supporting documentation that shows Submitter has communicated its final selection decisions and outcomes to all DBEs and Small Businesses, including those not chosen to participate in this Contract.

b) Successful Submitter shall complete Attachment B in accordance with the following instructions.



- 1) Successful Submitter shall actively contact DBEs or Small Businesses for each scope of work or business opportunity selected for Outreach Efforts (Columns A and C).
 - 2) Successful Submitter's contacts with DBEs and Small Businesses should occur well before the execution of each Task Order to afford the firms contacted a reasonable opportunity to prepare a proposal and participate in the Contract.
 - 3) Successful Submitter shall ask each firm to indicate the number of its employees (Column A).
 - 4) For each DBE's or Small Business's annual gross receipts, Successful Submitter shall ask the firm to indicate the gross-receipts bracket into which it fits (e.g., less than \$500,000; \$500,000 – \$1 million; \$1 – 2 million; \$2 – 5 million; etc.) rather than requesting an exact figure from the firm (Column A).
 - 5) If Successful Submitter does not select a DBE or Small Business to participate in the Contract, Successful Submitter shall explain the reason why (Column E).
 - 6) Successful Submitter shall notify each DBE or Small Business contacted whether or not Successful Submitter selected the firm. Successful Submitter shall notify all firms of their selection outcome, and Successful Submitter shall state when (date) and how (method) the selection outcome was communicated to each firm (Column F).
2. **Attachment B Supporting Documentation.** Successful Submitter shall complete and submit supporting documentation of its Outreach Efforts related to Attachment B.
- a) Successful Submitter shall submit with Attachment B—on the due date for Attachment B—all supporting documentation of Successful Submitter's contacts with DBEs or Small Businesses for each scope of work or business opportunity selected for Outreach Efforts.
 - b) This documentation must include: (1) descriptions of scopes of work and business opportunities identified for DBE and Small Business participation, and (2) a copy of the actual solicitation sent to interested DBEs and Small Businesses. The solicitation may be in the form of a letter, attachment to an e-mail, advertisements in newspapers and trade papers, or written communications with chambers of commerce.
 - c) Successful Submitter shall submit documentation that establishes how Submitter communicated its selection decisions and outcomes to each DBE and Small Businesses selected or not selected for this Contract. This documentation may be in the form of a letter, e-mail, or a telephone log and must show the name of the person contacted and date.
 - d) For all of the above documentation, if Successful Submitter uses a blast e-mail or fax format, the documentation submitted must include the a copy of the e-mail or fax, and Successful Submitter must disclose all e-mail addresses and fax numbers to which the solicitation or outcome notification was sent and the date and time of the transmission. For telephone contacts, Successful Submitter shall document the date and time of the



call and the names of the respective persons representing Successful Submitter and the DBE or Small Business.

3. **Attachment C (Small Business Utilization Commitment).** The Successful Submitter shall sign and submit Attachment C, which commits Successful Submitter to the Agency as follows:
 - 1) The firms indicated as “Selected” in Attachment B will participate in the Contract;
 - 2) The Successful Submitter will comply with the Race- and Gender-Neutral post-award requirements as stated in Sections VI and VII below;
 - 3) Any and all changes or substitutions will be authorized by the DBE Compliance Specialist before implementation; and
 - 4) The proposed total Small Business participation dollar value is true and correct.

Successful Submitter shall ensure that the dollars proposed for Small Business participation on Attachment B equal the total dollar value proposed in Attachment C.

- B. **Failure To Meet Outreach Requirements.** The DBE Compliance Specialist will determine, in writing, whether Successful Submitter has satisfied all outreach requirements. If the DBE Compliance Specialist determines that Successful Submitter has failed to satisfy the outreach requirements (specified in Section V, Parts A & B), then the DBE Compliance Specialist may determine that the submittal is noncompliant. The Agency shall send written notice to Successful Submitter stating the basis for DBE Compliance Specialist’s decision. Failure to fulfill the Outreach Requirements is considered a breach of contract.

SECTION VI POST-AWARD COMPLIANCE REQUIREMENTS

- A. **Subcontracting Commitment.** Within 30 days after Contract award and prior to each Task Order, the Successful Submitter shall submit to Agency a list of all subcontractors and copies of all executed contracts, purchase orders, subleases, JV agreements, and other arrangements formalizing agreements between Successful Submitter and any DBE or Small Business.

The Successful Submitter shall not terminate any DBE or Small Business Subcontracts, and the Successful Submitter shall not alter the scope of work or reduce the Subcontract amount, without the DBE Compliance Specialist’s prior written approval. Any request to alter a DBE or Small Business Subcontract must be submitted in writing to the DBE Compliance Specialist before any change is made. If the Successful Submitter fails to do so, the Agency may declare Successful Submitter in breach of contract.

- B. **Relief from Proposed DBE Utilization.** After Contract award, the Agency will not grant relief from the proposed DBE or Small Business utilization except in extraordinary circumstances. The Successful Submitter’s request to modify DBE or Small Business participation must be in writing to the DBE Compliance Specialist. The DBE Compliance Specialist has final discretion and authority to determine if the request should be granted.

Submitter’s written request must set forth the amount of relief sought, evidence that demonstrates why relief is necessary, and any additional relevant information that the DBE Compliance Specialist should consider. The Successful Submitter shall include with the request all documentation of Submitter’s attempts to subcontract with the DBE or Small Business and any other action taken to locate and solicit a replacement DBE or Small Business.



If an approved DBE allows its DBE certification to expire, or the certification is revoked during the course of the Subcontract, the Agency will consider all work performed by the DBE under the original contract to count as DBE participation. No increased scope of work negotiated after expiration or revocation of the DBE's certification may be counted. Likewise, any work performed under a Contract extension granted by the Agency may not be counted as DBE participation.

- C. **DBE Substitutions.** If the DBE or Small Business was approved by the Agency, but the firm subsequently loses its DBE or Small Business status before execution of a contract, the DBE Compliance Specialist will consider whether or not the Successful Submitter has exercised diligent and good-faith efforts to find another DBE or Small Business as a replacement. The Successful Submitter shall notify the DBE Compliance Specialist in writing of the necessity to substitute a DBE or Small Business and provide specific reason(s) for the substitution or replacement. Actual substitution or replacement of a DBE or Small Business may not occur before the DBE Compliance Specialist's written approval has been obtained.

Prompt Payment of Subcontractors. The Successful Submitter must promptly pay its subcontractors, subconsultants, or suppliers within 30 calendar days of receipt of each progress payment from the Agency. For projects governed by Title 34 of the Arizona Revised Statutes, payment must be made within seven (7) calendar days. If the Successful Submitter diverts any payment received for a DBE's, Small Business's, or other Subcontractor's work performed on the Contract or fails to reasonably account for the application or use of the payment, the Agency may declare the Successful Submitter in breach of contract.

Under the prompt-payment provisions of 49 CFR Part 26, the Successful Submitter must ensure prompt and full release of retentions to Subcontractors and suppliers when their scope of work is complete, the Agency has accepted the work, and the Agency has paid Successful Submitter for the work. The Successful Submitter shall pay each Subcontractor's and supplier's retention no later than 30 days after the Agency has accepted and paid for the scope(s) of work, regardless if there's outstanding retention held against the Successful Submitter. If the Agency reduces the Successful Submitter's retention, the Successful Submitter shall correspondingly reduce the retentions of Subcontractors and suppliers that have performed satisfactory work.

Nothing in this section prevents the Successful Submitter from enforcing its Subcontract with a Subcontractor or supplier for defective work, late performance, and other claims arising under the Subcontract.

- D. **Sanctions and Penalties.** If the Successful Submitter fails to comply with these contract provisions and the requirements set forth in 49 CFR Part 26, the Agency may take any one or more of the following actions:
1. Declare the Successful Submitter in breach of contract;
 2. Withhold future payments, including retention, until proper payment has been made to all Subcontractors and suppliers;
 3. Reject the Successful Submitter's future bids on Agency contracts for a period not to exceed one (1) year from the substantial-completion date of this Contract; and/or
 4. Terminate the Contract.



SECTION VII RECORDS & REPORTING REQUIREMENTS

- A. **Records.** During performance of the Contract, the Successful Submitter shall keep all records necessary to document DBE and Small Business participation. The Successful Submitter shall provide the records to the Agency within 72 hours of the Agency's request and at final completion of the Contract. The Agency will prescribe the form, manner, and content of reports. The required records may include but not limited to:
1. A complete listing of all Subcontractors and suppliers on the project;
 2. Each Subcontractor's and supplier's scope performed;
 3. The dollar value of all subcontracting work, services, and procurement;
 4. Copies of all executed Subcontracts, purchase orders, and invoices: and
 5. Copies of all payment documentation.
- B. **Reports.** At the beginning of each month, the Successful Submitter must enter payment information and the following documentation into the Agency's web-based Certification and Compliance System.
1. The total of all payments received from the Agency during the previous month.
 2. The first two pages of each payment application submitted for those payments.
 3. All payments made to Subcontractors during the previous month.

The reporting system can be found at <https://phoenix.diversitycompliance.com>

Before the Agency processes the Successful Submitter's final payment and/or outstanding retention held against the Successful Submitter, the Successful Submitter shall submit to the Agency a final certification of full and final payment to each Subcontractor in the form prescribed by the Agency. The form must be completed and certified by the Successful Submitter's and each Subcontractor's duly authorized agents.



EXHIBIT F - FEDERAL REQUIREMENTS FOR CONSTRUCTION

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1. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

Valley Metro and CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation of this underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Valley Metro, CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

2. FALSE OR FRAUDULENT STATEMENTS OR CLAIMS – CIVIL AND CRIMINAL FRAUD

The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.

The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(I) on the CONTRACTOR, to the extent the Federal Government deems appropriate.

The CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

3. ACCESS TO THIRD PARTY CONTRACT RECORDS

- A. Record Retention - The CONTRACTOR will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- B. Retention Period - The CONTRACTOR agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. The CONTRACTOR shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto.



- C. Access to Records - The CONTRACTOR agrees to provide sufficient access to FTA and its contractors to inspect and audit records and information related to performance of this contract as reasonably may be required.
- D. Access to the Sites of Performance - The CONTRACTOR agrees to permit FTA and its contractors access to the sites of performance under this Contract as reasonably may be required.

4. CHANGES TO FEDERAL REQUIREMENTS

The CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the FTA Master Agreement between Valley Metro (through the City of Phoenix) and FTA, as they may be amended or promulgated from time to time during the term of this contract. CONTRACTOR's failure to so comply shall constitute a material breach of this contract.

5. CIVIL RIGHTS LAWS AND REGULATIONS

Valley Metro is an Equal Opportunity Employer. As such, Valley Metro agrees to comply with all applicable Federal civil rights laws and implementing regulations. Apart from inconsistent requirements imposed by Federal laws or regulations, Valley Metro agrees to comply with the requirements of 49 U.S.C. § 5323(h) (3) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

Under this Contract, the CONTRACTOR shall at all times comply with the following requirements and shall include these requirements in each subcontract entered into as part thereof.

- A. Nondiscrimination - In accordance with Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the CONTRACTOR agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Race, Color, Religion, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e et seq., and Federal transit laws at 49 U.S.C. § 5332, the CONTRACTOR agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. chapter 60, and Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note. The CONTRACTOR agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, or sex (including sexual orientation and gender identity). Such action shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.
- C. Age - In accordance with the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act," 29 C.F.R. part 1625, the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101 et seq., U.S. Health



and Human Services regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” 45 C.F.R. part 90, and Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

- D. Disabilities - In accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq., the Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., and Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR agrees that it will not discriminate against individuals on the basis of disability. In addition, the CONTRACTOR agrees to comply with any implementing requirements FTA may issue.

6. TERMINATIONS (APPLICABLE TO CONTRACTS GREATER THAN \$10,000)

Termination for Convenience - Valley Metro, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, Valley Metro shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

If this contract is terminated while the CONTRACTOR has possession of Valley Metro goods, the CONTRACTOR shall, upon direction of Valley Metro, protect and preserve the goods until surrendered to Valley Metro or its agent. The CONTRACTOR and Valley Metro shall agree on payment for the preservation and protection of goods. Failure to agree on an amount will be resolved under the Dispute clause.

Termination for Default - If the CONTRACTOR fails to pick up the commodities or to perform the services, including delivery services, within the time specified in this contract or any extension or if the CONTRACTOR fails to comply with any other provisions of this contract, Valley Metro may terminate this contract for default. Valley Metro shall terminate by delivering to the CONTRACTOR a Notice of Termination specifying the nature of default. The CONTRACTOR will only be paid the contract price for services performed in accordance with the manner of performance set forth in this contract.

If it is later determined by Valley Metro that the CONTRACTOR had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the CONTRACTOR, Valley Metro, after setting up a new delivery of performance schedule, may allow the CONTRACTOR to continue work, or treat the termination as a termination for convenience.

Opportunity to Cure - Valley Metro in its sole discretion may, in the case of a termination for breach or default, allow the CONTRACTOR [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions

If CONTRACTOR fails to remedy to Valley Metro's satisfaction the breach or default of any of the terms, covenants, or conditions of this Contract within [ten (10) days] after receipt by CONTRACTOR of written notice from Valley Metro setting forth the nature of said breach or default, Valley Metro shall have the right to terminate the Contract without any further obligation to CONTRACTOR. Any such termination for default shall not in any way operate to preclude Valley Metro from also pursuing all available remedies against CONTRACTOR and its sureties for said breach or default.



Waiver of Remedies for any Breach - In the event that Valley Metro elects to waive its remedies for any breach by CONTRACTOR of any covenant, term or condition of this Contract, such waiver by Valley Metro shall not limit Valley Metro's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

7. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F and are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the contract. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any requests of Valley Metro that would cause Valley Metro to be in violation of the FTA terms and conditions.

8. DEBARMENT AND SUSPENSION (APPLICABLE TO CONTRACTS GREATER THAN \$25,000)

The CONTRACTOR shall comply and facilitate compliance with U.S. DOT regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government-Wide Debarment and Suspension (Non-procurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the CONTRACTOR shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Valley Metro. If it is later determined by Valley Metro that the CONTRACTOR knowingly rendered an erroneous certification, in addition to remedies available to Valley Metro, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The CONTRACTOR agrees to comply with the requirements of 2 C.F.R. part 180, subpart C, as supplemented by 2 C.F.R. part 1200, while this offer is valid and throughout the period of any contract that may arise from this offer. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions.

9. BUY AMERICA

The CONTRACTOR agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. part 661 which provide that Federal funds may not be obligated unless all steel, iron, and manufactured products used in FTA funded projects are produced



in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. § 661.11.

CONTRACTOR, as a condition of responsiveness, shall complete and submit the Buy America Certification Form with their submittal.

10. RESOLUTION OF DISPUTES, BREACHES, OR OTHER LITIGATION (APPLICABLE TO CONTRACTS GREATER THAN \$100,000)

- A. Dispute Resolution: Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of Valley Metro's Chief Executive Officer. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the CONTRACTOR mails or otherwise furnishes a written appeal to the Chief Executive Officer. In connection with any such appeal, the CONTRACTOR shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Chief Executive Officer shall be binding upon the CONTRACTOR and the CONTRACTOR shall abide by the decision.
- B. Performance During Disputes: Unless otherwise directed by Valley Metro, CONTRACTOR agrees that notwithstanding the existence of any dispute between the parties, insofar as is possible, under the terms of the contract, the CONTRACTOR will continue to perform the obligations required of the CONTRACTOR during the continuation of any such dispute unless enjoined or prohibited by an Arizona Court of competent jurisdiction.
- C. Rights and Remedies: The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by Valley Metro or CONTRACTOR shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

11. LOBBYING (APPLICABLE TO CONTRACTS GREATER THAN \$100,000)

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." 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 the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

CONTRACTOR, as a condition of responsiveness, shall complete and submit the Lobbying Certification Form with their submittal.



12. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (APPLICABLE TO CONTRACTS GREATER THAN \$100,000)

The CONTRACTOR agrees:

- It will not use any violating facilities;
- It will report the use of facilities placed on or likely to be placed on the U.S. EPA “List of Violating Facilities;”
- It will report violations of use of prohibited facilities to FTA; and
- It will comply with the inspection and other requirements of the Clean Air Act, as amended, (42 U.S.C. §§ 7401 – 7671q); and the Federal Water Pollution Control Act as amended, (33 U.S.C. §§ 1251-1387).

The CONTRACTOR shall also include these requirements in each subcontract exceeding \$150,000 financed in whole or part with federal assistance provided by FTA.

13. CARGO PREFERENCE

Cargo Preference – use of United States-Flag Vessels - The CONTRACTOR agrees:

- A. To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;
- B. To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to Valley Metro (through the CONTRACTOR in the case of a subcontractor's bill-of-lading.)
- C. To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

14. FLY AMERICA

A. Definitions. As used in this clause--

“International air transportation” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-flag air carrier” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.

B. When Federal funds are used to fund travel, Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires CONTRACTORS, recipients,



and others use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

- C. If available, the CONTRACTOR, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- D. In the event that the CONTRACTOR selects a carrier other than a U.S.-flag air carrier for international air transportation, the CONTRACTOR shall include a statement on vouchers involving such transportation essentially as follows:

Statement of Unavailability of U.S. - Flag Air Carriers - International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons. See FAR § 47.403. [State reasons]:

End of Statement

- E. The CONTRACTOR shall include the substance of this clause, including this paragraph (E), in each subcontract or purchase under this contract that may involve international air transportation.

15. PREVAILING WAGE AND ANTI-KICKBACK

For all prime construction, alteration or repair contracts in excess of \$2,000 awarded by FTA, the Contractor shall comply with the Davis-Bacon Act and the Copeland “Anti-Kickback” Act. Under 49 U.S.C. § 5333(a), prevailing wage protections apply to laborers and mechanics employed on FTA assisted construction, alteration, or repair projects. The Contractor will comply with the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144, and 3146-3148 as supplemented by DOL regulations at 29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction.” In accordance with the statute, the Contractor shall 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, the Contractor agrees to pay wages not less than once a week. The Contractor shall also comply with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by DOL regulations at 29 C.F.R. 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 Contractor is 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.

16. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (APPLICABLE TO CONTRACTS GREATER THAN \$100,000)

For all contracts in excess of \$100,000 that involve the employment of mechanics or laborers, the CONTRACTOR shall comply with the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by the DOL regulations at 29 C.F.R. part 5. Under 40 U.S.C. § 3702 of the Act, the CONTRACTOR shall compute the wages of every mechanic and laborer, including watchmen and guards, on the basis of a standard work week of



40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or to contracts for transportation or transmission of intelligence.

In the event of any violation of the clause set forth herein, the CONTRACTOR and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, the 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 this clause in the sum of \$10 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 this clause.

The FTA 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 this section.

The CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in 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 this agreement.

Contract Work Hours and Safety Standards for Awards Not Involving Construction - The CONTRACTOR shall comply with all federal laws, regulations, and requirements providing wage and hour protections for non-construction employees, in accordance with 40 U.S.C. § 3702, Contract Work Hours and Safety Standards Act, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. part 5.

The CONTRACTOR shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

Such records maintained under this paragraph shall be made available by the CONTRACTOR for inspection, copying, or transcription by authorized representatives of the FTA and the Department of Labor, and the CONTRACTOR will permit such representatives to interview employees during working hours on the job.



The CONTRACTOR shall require the inclusion of the language of this clause within subcontracts of all tiers.

17. SEISMIC SAFETY

The CONTRACTOR agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation (DOT) Seismic Safety Regulations 49 C.F.R. part 41 and will certify to compliance to the extent required by the regulation. The CONTRACTOR also agrees to ensure that all work performed under this Contract, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety regulations and the certification of compliance issued on the project.

18. BONDING FOR CONSTRUCTION (APPLICABLE TO CONTRACTS GREATER THAN \$100,000)

The CONTRACTOR will adhere to the following FTA bonding requirements:

- A. Bid Guarantee - Both FTA and the Common Grant Rules generally require each bidder to provide a bid guarantee equivalent to 5 percent of its bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid to ensure that the bidder will honor its bid upon acceptance.
- B. Performance Bond - Both FTA and the Common Grant Rules generally require the third party contractor to obtain a performance bond for 100 percent of the contract price. A “performance bond” is obtained to ensure completion of the obligations under the third party contract.
- C. Payment Bond - The Common Grant Rules generally require the third party contractor to obtain a standard payment bond for 100 percent of the contract price. A “payment bond” is obtained to ensure that the contractor will pay all people supplying labor and material for the third party contract as required by law. FTA, however, has determined that payment bonds in the following amounts are adequate to protect FTA’s interest and will accept a local bonding policy that meets the following minimums:
 - Fifty percent (50%) of the contract price if the contract price is less than \$1 million.
 - Forty percent (40%) of the contract price if the contract price is more than \$1 million but not more than \$5 million.
 - Two and one half million dollars (\$250,000) if the contract price is more than \$5 million.

19. SAFE OPERATION OF MOTOR VEHICLES

Seat Belt Use - The CONTRACTOR is encouraged to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company- rented vehicles, or personally operated vehicles. The terms “company-owned” and “company-leased” refer to vehicles owned or leased either by the CONTRACTOR or Valley Metro.

Distracted Driving - The CONTRACTOR agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Contactor owns, leases, or rents, or a privately-owned vehicle when on official business in connection with the work performed under this agreement.



20. ENERGY CONSERVATION

The CONTRACTOR shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

21. RECYCLED PRODUCTS (APPLICABLE TO EPA SELECTED ITEMS GREATER THAN \$10,000)

The CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

22. COMPLIANCE WITH ITS NATIONAL ARCHITECTURE (APPLICABLE FOR ITS PROJECTS)

The CONTRACTOR agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture requirements of 23 U.S.C. § 517(d), unless it obtains an exemption from those requirements, and follow FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 Fed. Reg. 1455, January 8, 2001, and all other applicable federal guidance.

23. VETERANS EMPLOYMENT

CONTRACTOR shall give a hiring preference, to the extent practicable, to veterans (as defined in U.S.C. Section 2108 of Title 5) who have the requisite skills and abilities to perform the construction work required under the contract. This requirement shall not be understood, construed or enforced in any manner that would require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee

24. DISADVANTAGED BUSINESS ENTERPRISE

- A. Policy - Valley Metro has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. As Valley Metro has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, Valley Metro has signed an assurance that it will comply with 49 CFR Part 26. It is the policy of Valley Metro to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted Contracts.
- B. CONTRACTOR and Subcontractor Obligation - CONTRACTOR and/or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The CONTRACTOR shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted Contracts. Failure by the CONTRACTOR to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as Valley Metro deems appropriate.

25. PRIVACY ACT

The CONTRACTOR agrees to comply with, and assures the compliance of its employees with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, CONTRACTOR agrees to obtain the express consent of the Federal Government before CONTRACTOR or its employees operate a system of records on behalf of the Federal Government. CONTRACTOR understands that the



requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

The CONTRACTOR also agrees to include these requirements in each subcontract to administer any system records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

26. NOTIFICATION OF FEDERAL PARTICIPATION

This contract is funded by local government and federal transit administration funds. CONTRACTOR shall conform to all applicable FTA regulations and requirements as if all funds involved were FTA funds.

27. FEDERAL FUNDING LIMITATION

The CONTRACTOR understands that funds to pay for CONTRACTOR's performance under this Contract are anticipated to be made available from the United States Department of Transportation through the Federal Transit Administration (FTA). All funds must be approved and administered by FTA. Valley Metro's obligation hereunder is payable from funds that are appropriated and allocated by FTA for the performance of this Contract. If funds are not allocated, or ultimately are disapproved by FTA, Valley Metro may terminate or suspend CONTRACTOR's services without penalty. Valley Metro shall notify CONTRACTOR promptly in writing of the non-allocation, delay, or disapproval of funding.

-- End --



EXHIBIT G – SCOPE OF WORK

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1. TERM OF ENGAGEMENT

Construction Services Contractor(s) (herein referred to as Contractor) team will provide support for construction services to Valley Metro which shall include but not limited to various renovation, repair, replacement, alteration and construction projects on a requirements basis. The Contractors will serve as an extension of Valley Metro staff and may be asked to address complex project issues that require additional expertise.

The budget estimate for this contract, which will be in effect through June 30, 2022, is yet undetermined. However, at this time the order of magnitude estimated for the entire contract over a three year horizon is anticipated to be in the \$8,000,000-\$12,000,000 range. Valley Metro shall provide additional budgetary information as task order projects become more defined.

The total cost of work issued to contractors by Valley Metro in any one-year contract term will not be limited. No single project cost will exceed **\$2,500,000**, at final payment for the project including all change orders and other contract costs.

2. GENERAL SCOPE

Valley Metro seeks to engage a construction firm with proven success, skill, experience, and knowledge in providing a wide range of construction services relative in size and scope to the 60-mile high-capacity transit system as defined in the Regional Transportation Plan. The Consultant's resources will augment and support Valley Metro Staff by providing task specific services in a program team environment. The Construction Services Consultant/Prime Contractor shall self-perform at least 30% of the work over the duration of the contract.

These construction support services may include, but are not limited to: construction services, project document control, budget and cost control, schedule control, cost and estimating, management type services in collaboration with Valley Metro Staff.

The construction work provided under the resultant contract shall comply with current applicable laws, statutes, ordinances, rules, regulations, local building and construction codes, the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act of 1973. Valley Metro may specify details from any of several industry accepted resources including Standard Specifications for Public Works Construction (The "GreenBook"), the Maricopa Association of Governments (MAG) Uniform Standard Specifications and Details for Public Works Construction and other specifications adopted by Valley Metro. Workmanship and construction methodology will comply with generally accepted construction industry standards. When no local or state codes apply, the current edition of the International Building Code, International Fire Code, Uniform Plumbing Code or International Plumbing Code, International Mechanical Code, the National Electrical Code/ NFPA-70, State and Federal Safety and Health laws, State of Arizona Fire Code, and National Fire Protection Association Standards in effect at the time the task order for the specific project or Work is issued, shall apply.

As projects are identified, the Contractor will attend a scope meeting with those involved with the project including if deemed necessary, Design Professionals. Valley Metro will prepare a detailed scope of work identify funding source for federal requirements, if any and issue a Task Order Request to the Contractor in accordance with Exhibit C, Special Terms and Conditions. The Contractor will then prepare a Task Order Proposal for the project.



Contractors may also be called upon to complete emergency work. In these circumstances, the work will be completed to address the emergency and the Task Order Request will be due within five (5) days of emergency work completion.

All projects will be administered under the oversight of the Capital and Service Development Division. The Contractor will allow Valley Metro staff or its contracted consultants access at all times to the site and to all records generated by the Contractor and all subcontractors in connection with a specific Project. The Valley Metro designated project manager shall have the authority to halt construction activities at any time when he determines that (1) site conditions may present a public health or safety concern; (2) the work is not in compliance with applicable codes or ordinances; or (3) the work is not consistent with plans, specifications or current industry standards.

Valley Metro reserves the right to advertise via open competitive Request for Proposals (RFP) or Request for Qualifications (RFQ) for any project it deems appropriate. The selected construction firm will be afforded the opportunity to submit proposals on any advertised RFQ or RFP.

Valley Metro will have sole discretion as to which projects, if any, will be assigned to the selected Contractor. Valley Metro reserves the right to request and require additional detailed proposals from the Contractor.

Valley Metro will provide all required plans and specifications when necessary.

Valley Metro reserves the right to determine bid, performance and/or payment bond requirements and liquidated damages per project. Such requirements for each project will be provided to the Contractor upon request for a project cost estimate.

3. USE OF SUB-CONTRACTORS

It is expected that the Contractor will assemble a team of sub-contractors that provide an adequate range of resources to undertake the variety of assignments described in the Scope of Work.

4. DISCIPLINES

The following general descriptions/disciplines are intended to describe the type of services that may be requested of the selected Contractor. Construction services will be provided on an as-needed and requested basis, and authorized by individual task orders as required.

Valley Metro may add additional disciplines to the general scope of the resultant contract as needed.

- a) Cut and re-facing of Buildings
- b) Demolition work
- c) Removal and replacement of PCCP and subsurface restoration
- d) HVAC Repair and Replacement
- e) Solar panel installation
- f) Installation of emergency generator
- g) Installation of Security Fencing
- h) Replacement and repair of automated gates
- i) Electrical upgrades to Valley Metro Facilities
- j) Repair or replace sanitary sewer services



- k) Remove, repair and/or replacement of switch machines
- l) Remove and replace existing bridge joints
- m) Repair roofs at existing facilities
- n) Install bus bay and shelters
- o) Construct Park and Ride facilities
- p) Remodel / Up-grade existing VM Facilities
- q) Capital improvement projects

5. PROFESSIONAL LICENSE / REGISTRATION IN ARIZONA

Contractors shall have at least one or more of the following Arizona Registrar of Contractors licenses:

A, B1, C-11, C-37, C-39, K-11, K-37, K-39, L-11, L-37 or L-39.

6. TASK ORDER CONTRACTING PROCESS

Valley Metro will utilize a “Master Agreement” with selected Contractor firm(s) which establishes basic terms and conditions.

As projects are defined Task Order requests will be issued by Valley Metro to the Contractor with the applicable expertise, equipment and man power required for such task. Valley Metro and the Contractor will negotiate and execute a Task Order to the Master Agreement relating to each specific assignment.

Each Task Order(s) shall be negotiated to establish, but not be limited to, a defined scope of work, compensation amount, method of payment, schedule, approval of sub-contractors/consultants, DBE goal (if any), and any applicable Federal Transit Administration (FTA) requirements.

For Task Order(s) identified with federal funding Contractor shall follow requirements listed within Exhibit C, Special Terms and Conditions, paragraph 20.

-- End --



EXHIBIT H – INSURANCE REQUIREMENTS

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1. ALL INSURANCE COVERAGES

Upon execution of Contract, all required insurance coverage’s must be evidenced to the Agency through receipt of acceptable certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing full compliance with the insurance requirements set forth in this Section.

All certificates and endorsements are to be received and approved by Agency or their designee before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project.

Failure of the Agency to demand such certificate(s) or other evidence of full compliance with these insurance requirements, or failure of the Agency to identify a deficiency from the evidence that is provided, shall not be construed as a waiver of Consultant’s obligation to maintain such insurance.

Certificate(s) of insurance and any notice of cancellation or material change should be mailed to the following address or such other addresses as designated by the Agency from time to time:

Risk Manager
101 North First Avenue, Suite 1400
Phoenix, AZ 85003

Certificate(s) of insurance shall identify this Agreement.

Failure to maintain the required insurance may result in the termination of this Agreement at the Agency’s option.

If the Consultant fails to maintain the insurance as set forth in this Section, Agency shall have the right, but not the obligation, to purchase said insurance at Consultant’s expense, in which case, Consultant shall promptly reimburse the Agency upon demand.

Agency reserves the right to review copies of all insurance policies procured to meet the requirements of this Section. This information must be provided within ten (10) business days of the Agency, or any Agency designee’s, written request.

All coverage required by this Section shall be obtained from financially sound insurance companies authorized or approved to do business in the State of Arizona and rated A- VII or better by the A,M, Best Rated Carrier.



Each insurance policy shall not be subject to lapse, cancellation or material change in coverage unless at least thirty (30) days prior to written notice is provided to the Agency by the Consultant.

Certificates evidencing the completed operation liability coverage shall be required for eight years past acceptance, cancellation, or termination of the Professional Services.

The coverage required by this Section shall stipulate that the insurance afforded by the policies shall be primary insurance and that any insurance, self-insured retention, deductibles, or risk retention programs participated in or maintained by the Agency or its Members shall be excess and not contributory to insurance required by this Section.

Any failure by the Consultant to comply with the reporting requirements of the required insurance coverage shall not affect the coverage provided to the Agency, the Agency's members and each of their respective agents, officers, employees, and directors.

Members are defined as the cities which are members of Valley Metro Rail's and the Regional Public Transportation Authority's Board of Directors. The jurisdiction or city that the awarded services are to be performed in or on is the member.

If Consultant's commercial general and automobile liability policies do not contain a separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

To the extent commercially available and permitted by State Law, Consultant waives all rights of subrogation or similar rights against the Indemnified Group.

The stipulation of insurance coverage in this Section shall not be construed to limit, qualify, or waive any liabilities or obligations of Consultant, assumed or otherwise, under this Agreement.

Agency makes no warranty regarding the adequacy of the types or amounts of insurance necessary to protect any party against potential loss. The Consultant or Subcontractors must determine the amount of insurance and additional types of insurance necessary to protect its assets. Any additional insurance deemed necessary shall be purchased at the Consultant's or Subcontractor's sole expense.

Agency reserves the right to amend the requirements herein at any time during the Agreement, subject to at least sixty days written notice, including but not limited to providing any or all of the coverage required in this section, provided that an appropriate adjustment to the payment terms of the Agreement to offset any attributable increases or decreases in the Consultant's costs.

Consultant shall require any and all Subcontractors to maintain insurance as appropriate.

The insurance requirements herein are minimum requirements and in no way limit the indemnity covenants contained within this Agreement.

Any deductibles or self-insured retentions are not reimbursable costs.

Consultant warrants that this Section has been thoroughly reviewed by Consultant's insurance agent/broker, who has been instructed to procure the required coverage.



2. COMMERCIAL GENERAL LIABILITY INSURANCE

Consultant shall maintain general liability and, if necessary, excess/umbrella insurance with a limit of liability not less than **\$5,000,000** each occurrence. The insurance shall, at a minimum, include coverage for any and all of the following: bodily injury, property damage, personal injury, broad form contractual liability, and products and completed operations. The policy shall contain an additional insured endorsement to include the following additional insured language: "Valley Metro Rail, Inc. and its Members, Regional Public Transportation Authority and its Members and their respective, officers, employees, and directors shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Consultant."

Additionally, the policy(ies) shall include, or be endorsed to include the following provision:

"The Indemnified Group shall be an additional insured to the full limits of liability purchased by the Consultant even if those limits of liability are in excess of those required by this Agreement."

3. AUTOMOBILE LIABILITY INSURANCE

Consultant shall maintain automobile liability and, if necessary, excess/umbrella insurance with a limit of liability of not less than **\$5,000,000** each accident. Such insurance shall cover liability arising out of any vehicle, including owned, hired, leased, borrowed and non-owned vehicles assigned to or used in performance of the Consultant services.

4. WORKERS' COMPENSATION INSURANCE

Consultant shall maintain workers' compensation and employers' liability insurance in accordance with the Federal and State statutes having jurisdiction over the employees where the Professional Services are performed. The limits of liability for employers' liability coverage shall not be less than **\$1,000,000** each accident for bodily injury by accident and **\$1,000,000** each employee for bodily injury by disease.

The policy shall contain a waiver of subrogation in favor of the Indemnified Group.

5. ALL RISK BUILDERS' RISK INSURANCE

Contractor shall secure and maintain all risk builders risk insurance with a limit of liability equal to the final completed value of the Work (at GMP). Coverage shall name Valley Metro as a loss payee, shall be written on an all risk of direct damage basis, and shall include coverage for flood, water damage, earthquake, and earth movement.

This insurance shall cover, at the Work Site, at any off-site storage location, and while in transit, any and all materials, equipment, machinery, tools, and supplies, including buildings, and all temporary structures at the Work Site, to be used in or incidental to the fabrication, erection, testing, or completion of the Work.

This insurance shall cover the insured property against all direct damage, except but not limited to, war and related causes, nuclear perils, infidelity of employees, mysterious disappearance, and ordinary wear and tear. The insurance may exclude the cost of making good any faulty workmanship, material, construction, or design, but must specifically cover loss or damage arising as a consequence of these perils.



Unless approved in writing by Valley Metro, losses payable by this insurance are non-recoverable costs to the Contractor through a change order or otherwise. The cost of the deductible may not be included in any change order to or claim made to Valley Metro.

6. INDEMNIFICATION

To the fullest extent permitted by law, Consultant, and its successors and assigns, shall pay, defend, indemnify and hold harmless Valley Metro Rail, Inc., its Members, Regional Public Transportation Authority its Members, and their respective officers, employees and directors. (“Indemnified Group”) from and against all allegations, demands, proceeding, suits, actions, claims, damages, losses, expenses, including, but not limited to, reasonable attorney fees, court costs, cost of appellate proceedings and all claim adjusting and handling expenses, but only to the extent related to, arising from or out of any negligent or willful acts, errors, or omissions of Consultant or any Subcontractor relating to services performed under this Agreement, including, but not limited to, services performed or materials supplied by any Subcontractor or anyone directly or indirectly employed by or contracting with Consultant or a Subcontractor or anyone for whose acts any of them may be liable and any injury or damages claimed by any of Consultant’s and Subcontractor’s employees.

If any claim, action or proceeding is brought against the Indemnified Group, by reason of any event that is the subject of this Agreement and or described herein, Consultant, at its sole cost and expense, shall pay, resist or defend such claim or action on behalf of the Indemnified Group. The Agency shall cooperate with all reasonable efforts in the handling and defense of such claim. Any settlement of claims must fully release and discharge the Indemnified Group from any further liability for those claims. The release and discharge of the Indemnified Group shall be in writing and shall be subject to approval by the Agency, which approval shall not be unreasonably withheld or delayed. If Consultant neglects or wrongfully refuses to defend the Indemnified Group as provided by the Contract, any recovery or judgment against the Indemnified Group for a claim covered under this Agreement shall conclusively establish Consultant’s liability to the Indemnified Group in connection with such recovery or judgment, and if the Agency desires to settle such dispute, the Agency shall be entitled to settle such dispute in good faith and Consultant shall be liable for the amount of such settlement, and all expenses connected to the defense, including reasonable attorney fees, and other investigative and claims adjusting expenses.

If a claim is asserted against the Agency or any other member of the Indemnified Group by any person not a Party to this Contract which is predicated upon alleged errors or omissions in Services or other responsibilities of the Consultant, the Agency shall promptly give notice of such claim by tender to the Consultant and the Consultant shall cooperate fully with the Agency and any other member of the Indemnified Group in the defense of such claim. This Section shall be applicable in the event a claim is made or suit filed in a court of law or equity or by demand for arbitration.

In the event that that a claim is tendered to Contractor by the Agency the Contractor shall provide quarterly status information regarding claims, including loss run, denials letters, settlement of loss, etc. This information shall be sent to the Agency’s Risk Management Department by the Contractor.

Insurance provisions set forth are separate and independent from the indemnity provisions of this Section and shall not be construed in any way to limit the scope and magnitude of the indemnity provisions, except that payments pursuant to the insurance provided under this Agreement with respect to a claim covered by the indemnity provisions shall be used to satisfy that portion of the Consultant’s indemnity obligations to the extent of such payments. The indemnity provisions of this Section shall not be construed in any way to limit the scope



and magnitude and applicability of the insurance provisions. The provisions of this Section shall survive the termination of the contract.

-- End --



ATTACHMENT A

**Disadvantaged Business Enterprise (DBE) Program
STATEMENT OF OUTREACH COMMITMENT
(Due with initial submittal)**

On behalf of the Submitter, I certify under penalty of perjury that the following information is true and correct.

If selected as the Successful Submitter, the Successful Submitter will:

- 1) Conduct all required outreach efforts and submit all required outreach efforts documentation prior to the execution of each Task Order;
- 2) Conduct all required small business outreach and provide all required outreach efforts documentation; and
- 3) Comply with the Race- and Gender-Neutral post-award requirements stated in Sections V, VI and VII of the DBE Contract Clause.

Signed: Mike Abraham

Printed Name: Mike Abraham

Title: President

Name of Submitter: J. Banicki Construction, Inc.

Date: 8-7-19



ATTACHMENT I – LIST OF PROPOSED SUBCONTRACTORS

Pursuant to the RFP, the following subcontractor(s) shall perform the described work. Where the Offeror will perform the work, the Offeror’s name must be included in the appropriate space(s) below:

Description of Work	Name of Subcontractor (or Offeror)	Estimated % of Contract Value (Enter as a % only)	DBE (Yes/No)
Adjustments	On It Construction		No
Adjustments	Spear Construction		No
Adjustments	Specialty Companies		No
Asbestos Removal	Environmental Stratagies		No
Asbestos Removal	Spray Systems Environmental		No
Asphalt/Sealcoat	Cactus Asphalt		No
Asphalt/Seal Coat	Cholla Pavement Maintenance		No
Asphalt/Sealcoat	L&L Asphalt		Yes
Bridge Deck Repair	Myers & Sons Construction		No
Bridge Deck Demo	Penhall		No
Caissons	Case Foundation		No
Carbon Fiber Reinforced Polymer	HJ3 Composite Technologies		No
CMU Wall	Alta Vista Masonry		Yes
Concrete Pumping	O'Brien Concrete Pumping		No
Concrete	ACS Concrete		Yes

SUBMITTED BY: J. Banicki Construction, Inc.
 NAME OF OFFEROR

**ATTACHMENT I – LIST OF PROPOSED SUBCONTRACTORS**

Pursuant to the RFP, the following subcontractor(s) shall perform the described work. Where the Offeror will perform the work, the Offeror's name must be included in the appropriate space(s) below:

Description of Work	Name of Subcontractor (or Offeror)	Estimated % of Contract Value (Enter as a % only)	DBE (Yes/No)
Concrete	RGG United Constructors		Yes
Concrete	Upset Concrete		Yes
Concrete	Michael J. Valente Contracting		No
Crushing Buesing	Buesing		No
Deck Joint Seal	Blue Dot Steel		No
Deck Joint Seal	Stringer Bridge & Iron		No
Demolition	Dave's Construction		No
Demolition	Ground Level		Yes
Drywell	Torrent Resources		No
Electrical	Corbin Electric		Yes
Electrical	Contractors West		No
Electrical	Kimbrell Electric		No
Electrical	Rural Electric		No
Electrical	Sturgeon Electric		No
Electrical	TLL Electric		No

SUBMITTED BY: J. Banicki Construction, Inc.
NAME OF OFFEROR



ATTACHMENT I – LIST OF PROPOSED SUBCONTRACTORS

Pursuant to the RFP, the following subcontractor(s) shall perform the described work. Where the Offeror will perform the work, the Offeror’s name must be included in the appropriate space(s) below:

Description of Work	Name of Subcontractor (or Offeror)	Estimated % of Contract Value (Enter as a % only)	DBE (Yes/No)
Electrical	Rosendin Electric		No
Fence/Guardrail	Five G Inc.		Yes
Fence/Guardrail	Hunter Guradrail & Fence		No
Haul Off/Trucking/Shotcrete	Buesing		No
Haul Off/Trucking	Canyon Country Contracting		No
Haul Off/Trucking	Otto Trucking		No
Landscaping	Land-Tech		No
Landscaping	LJ Landscaping		No
Landscaping/Seeding	Revegetation Services		No
Lime Treatment/Soil Cement	Palo Verde Constructors		No
Micro Seal	Southwest Slurry Seal		No
Micro Seal	VSS International		No
Milling	Bryco Asphalt Milling		No
Milling/Soil Cement	Pavement Recycling Systems		No
Milling/Soil Cement	WSP, Inc.		Yes

SUBMITTED BY: J. Banicki Construction, Inc.
 NAME OF OFFEROR



ATTACHMENT I – LIST OF PROPOSED SUBCONTRACTORS

Pursuant to the RFP, the following subcontractor(s) shall perform the described work. Where the Offeror will perform the work, the Offeror’s name must be included in the appropriate space(s) below:

Description of Work	Name of Subcontractor (or Offeror)	Estimated % of Contract Value (Enter as a % only)	DBE (Yes/No)
Milling/Sweeping	C&S Sweeping		No
Painting	Serrano Painting		Yes
Painting	Dougherty Painting		No
Pavement Markings	Pavement Markings, Inc.		No
Pavement Markings	Sunline Contracting		No
Pavement Markings	Falcon Contracting		Yes
Quality Testing	ACS Services		Yes
Quality Testing	Quality Testing		No
Quality Testing	Epsilon Engineering		No
Quality Testing	SAECO		No
Rebar	Gerdau		No
Rebar	Paradise Rebar		Yes
Rebar	Tyler Reinforcing		No
Seeding	Desert Seeders		No
Shotcrete	Shotcrete Specialities		Yes

SUBMITTED BY: J. Banicki Construction, Inc.
 NAME OF OFFEROR



ATTACHMENT I – LIST OF PROPOSED SUBCONTRACTORS

Pursuant to the RFP, the following subcontractor(s) shall perform the described work. Where the Offeror will perform the work, the Offeror’s name must be included in the appropriate space(s) below:

Description of Work	Name of Subcontractor (or Offeror)	Estimated % of Contract Value (Enter as a % only)	DBE (Yes/No)
Surveying	Ament Engineering & Syrvey		No
Surveying	Atwell, LLC		No
Surveying	CK Group		Yes
Surveying	Trace Consulting		Yes
Sweeping	MGM Sweeping		Yes
Sweeping	Offsite Sweeping		No
Traffic Control	Metro Traffic Control		Yes
Traffic Control	National Barricade		No
Traffic Control	Trafficade Services		No
Trucking	Vanco Trucking		No
Underground Utilities	AP Contracting		Yes
Uniformed Officer	Professional Police Services		No
Uniformed Officer	ProForce		No
Weed Control	Evergreen Spray		Yes

SUBMITTED BY: J. Banicki Construction, Inc.
 NAME OF OFFEROR



ATTACHMENT J – LOBBYING CERTIFICATE

This form is to be submitted with an offer exceeding \$100,000. The Offeror certifies, to the best its 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 a federal department or agency, a member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a member of the U.S. 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 thereof.
2. If any funds other than federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to 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 instruction, as amended by "Government-wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).
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 31, USC § 1352 (as amended by the Lobbying Disclosure Act of 1995). 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 OFFEROR, J. Banicki Construction, Inc., CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF EACH STATEMENT OF ITS CERTIFICATION AND DISCLOSURE, IF ANY. IN ADDITION, THE OFFEROR UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 USC §§ 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND DISCLOSURE, IF ANY.

Name of Offeror's authorized official: Mike Abraham

Title: President

 8-7-19
 Authorized signature Date

Per paragraph 2 above, complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," if applicable.



ATTACHMENT K – DEBARMENT AND SUSPENSION CERTIFICATION

This form is to be submitted with an offer exceeding \$25,000.

Choose one alternative:

The Proposer certifies to the best of its knowledge and belief that it and its principals:

- 1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- 2. Have not within a three-year period preceding this Proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or Contract under a public transaction; violation of federal or state antitrust statutes or commission or embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- 3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in Paragraph 2 of this certification; and
- 4. Have not within a three-year period preceding this Proposal had one or more public transactions (federal, state or local) terminated for cause or default.

OR

The Proposer is unable to certify to all of the statements in this certification, and attaches its explanation to this certification. (In explanation, certify to those statements that can be certified to and explain those that cannot.) and

The Proposer certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provisions of Title 31 USC § Sections 3801 are applicable thereto.

Executed in (insert city and state): Phoenix, AZ

Company Name: J. Banicki Construction, Inc.

Mike L

President 8-7-19

Authorized Signature and Title

Date



**ATTACHMENT M – BUY AMERICA CERTIFICATION
OF STEEL, IRON, OR MANUFACTURED PRODUCTS**

This form is to be submitted with an offer exceeding the small purchase threshold for federal assistance programs, currently set at \$150,000. The Offeror must submit the appropriate Buy America certification below with its offer. Offers that are not accompanied by a completed Buy America certification will be rejected as nonresponsive.

Certificate of Compliance with Buy America Requirements

The Offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(1), and the applicable regulations in 49 C.F.R. part 661.

Date: 8-7-19

Signature: *Mike Abraham*

Company: J. Banicki Construction, Inc.

Name: Mike Abraham

Title: President

Certificate of Non-Compliance with Buy America Requirements

The Offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. § 661.7.

Date: _____

Signature: _____

Company: _____

Name: _____

Title: _____

SURETY BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, J. Banicki Construction, Inc.

Travelers Casualty and Surety ^(Contractor's Name)
as Principal, and Company of America as Surety, are hereby held and firmly bound into City of Buckeye as OWNER in the penal sum of Ten Percent of Amount Bid (10%) for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed this 29th day of March, 2018.

The Condition of the above obligation is such that whereas the Principal has submitted a certain BID, attached hereto and hereby made a part hereof to enter into a contract in writing, for: **DORFP# 2 FOR JOC CONTRACT# 2014-094 (1-5): VERRADO AND VAN BUREN INTERSECTION IMPROVEMENTS.**

Now, therefore, if the obligee accepts the proposal of the principal and the principal enters into a contract with the obligee in accordance with the terms of the proposal and gives the bonds and certificates of insurance as specified in the standard specifications with good and sufficient surety for the faithful performance of the contract and for the prompt payment of labor and materials furnished in the prosecution of the contract, or in the event of the failure of the principal to enter into the contract and give the bonds and certificates of insurance, if the principal pays to the obligee the difference not to exceed the penalty of the bond between the amount specified in the proposal and such larger amount for which the obligee may in good faith contract with another party to perform the work covered by the proposal then this obligation is void. Otherwise it remains in full force and effect provided, however, that this bond is executed pursuant to the provisions of § 34-201, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of the section to the extent as if it were copied at length herein.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

J. Banicki Construction, Inc.
Mike Abraham (Principal) (L.S.)

Travelers Casualty and Surety Company of America
(Name of Surety)

By Jessica L. Piccirillo
(Signature) Jessica L. Piccirillo
Attorney-in-Fact





POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Surety Bond No. BID BOND

Principal: J. Banicki Construction, Inc.

OR

Project Description: JOC Contract #2014-094 (1-5) - DORFP #2
Verrado & Van Buren Intersection Improvements

Obligee: City of Buckeye, AZ

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint Jessica Piccirillo of the City of Farmington, State of CT, their true and lawful Attorney-in-Fact, to sign, execute, seal and acknowledge the surety bond(s) referenced above.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 24th day of June, 2016.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut

City of Hartford ss.

By:

Signature of Robert L. Raney
Robert L. Raney, Senior Vice President

On this the 24th day of June, 2016, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the 30th day of June, 2021.



Signature of Marie C. Tetreault
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 29th day of March, 2018



Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

Bond No. 106916332

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Performance Bond

CONTRACTOR:

(Name, legal status and address)

J. Banicki Construction, Inc.
4720 E. Cotton Gin Loop, Ste 240
Phoenix, AZ 85040

SURETY:

(Name, legal status and principal place of business)

Travelers Casualty and Surety Company of America

One Tower Square
Hartford, CT 06183
Mailing Address for Notices

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:

(Name, legal status and address)

City of Buckeye
1651 W. Jackson Street, Rm 121F
Phoenix, AZ 85007

One Tower Square
Hartford, CT 06183

CONSTRUCTION CONTRACT

Date: April 4, 2018

Amount: \$ 1,230,605.00 One Million Two Hundred Thirty Thousand Six Hundred Five Dollars and 00/100

Description:

(Name and location)

JOC Contract #2014-094-3, Delivery Order #1 - DORFP #2 Verrado & Van Buren Intersection

BOND

Date: May 11, 2018

(Not earlier than Construction Contract Date)

Amount: \$ 1,230,605.00 One Million Two Hundred Thirty Thousand Six Hundred Five Dollars and 00/100

Modifications to this Bond: None See Section 16

CONTRACTOR AS PRINCIPAL

Company:

J. Banicki Construction, Inc.

SURETY

Company:

(Corporate Seal)

Travelers Casualty and Surety Company of America

Signature: Mike Abraham

Name and Title: Mike Abraham
President



Signature: Jessica Y. Accirillo

Name and Title: Jessica Piccirillo
Attorney-in-Fact



(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Alliant Insurance Services, Inc.
40 Stanford Drive, 2nd Floor
Farmington, CT 06032
860-269-2150

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failures to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

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

§ 14 Definitions

§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company: _____
(Corporate Seal)

Company: _____
(Corporate Seal)

Signature: _____
Name and Title: _____
Address _____

Signature: _____
Name and Title: _____
Address _____

Bond No. 106916332

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Payment Bond

CONTRACTOR:
(Name, legal status and address)

J. Banicki Construction, Inc.
4720 E. Cotton Gin Loop, Ste 240
Phoenix, AZ 85040

SURETY:
(Name, legal status and principal place of business)

Travelers Casualty and Surety Company of America
One Tower Square
Hartford, CT 06183
Mailing Address for Notices

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:
(Name, legal status and address)

City of Buckeye
1651 W. Jackson Street, Rm 121F
Phoenix, AZ 85007

One Tower Square
Hartford, CT 06183

CONSTRUCTION CONTRACT

Date: April 4, 2018

Amount: \$ 1,230,605.00 One Million Two Hundred Thirty Thousand Six Hundred Five Dollars and 00/100

Description:

(Name and location)

JOC Contract #2014-094-3, Delivery Order #1 - DORFP #2 Verrado & Van Buren Intersection

BOND

Date: May 11, 2018

(Not earlier than Construction Contract Date)

Amount: \$ 1,230,605.00 One Million Two Hundred Thirty Thousand Six Hundred Five Dollars and 00/100

Modifications to this Bond: None See Section 18

CONTRACTOR AS PRINCIPAL

Company:

J. Banicki Construction, Inc.



Signature:

Name and Title:

Mike Abraham
President

SURETY

Company:

Travelers Casualty and Surety Company of America



Signature:

Name and Title:

Jessica G. Piccirillo
Jessica Piccirillo
Attorney-in-Fact

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Alliant Insurance Services, Inc.
40 Stanford Drive, 2nd Floor
Farmington, CT 06032
860-269-2150

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

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

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company: *(Corporate Seal)*

SURETY
Company: *(Corporate Seal)*

Signature: _____
Name and Title:
Address

Signature: _____
Name and Title:
Address



POWER OF ATTORNEY

**Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company**

**St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company**

Surety Bond No. 106916332

Principal: J. Banicki Construction, Inc.

OR

Project Description: JOC Contract #2014-094-3, Delivery Order #1 -
DORFP #2 Verrado & Van Buren Intersection

Obligee: City of Buckeye

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Jessica Piccirillo** of the City of **Farmington**, State of **CT**, their true and lawful Attorney-In-Fact, to sign, execute, seal and acknowledge the surety bond(s) referenced above.

IN WITNESS WHEREOF, the Companies have caused this Instrument to be signed and their corporate seals to be hereto affixed, this **24th** day of **June, 2016**.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut

City of Hartford ss.

By:


Robert L. Raney, Senior Vice President

On this the **24th** day of **June, 2016**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June, 2021**.




Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of Indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 11th day of May, 2018



Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

Document A310™ – 2010

Conforms with The American Institute of Architects AIA Document 310

Bid Bond

CONTRACTOR:

(Name, legal status and address)

J. Banicki Construction, Inc.
4720 E. Cotton Gin Loop, Ste 240
Phoenix, AZ 85040

SURETY:

(Name, legal status and principal place of business)

Travelers Casualty and Surety Company of America
One Tower Square
Hartford, CT 06183
Mailing Address for Notices
One Tower Square
Hartford, CT 06183

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

OWNER:

(Name, legal status and address)

Town of Payson
303 North Beeline Hwy
Payson, AZ 85541

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

BOND AMOUNT: 10% Ten Percent of Amount Bid

PROJECT:

(Name, location or address, and Project number, if any)


Improvements to Payson Airport, Reconstruct Alpha and Delta Aprons

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

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

Signed and sealed this 11th day of May, 2018.



(Witness) Chris Withrook

J. Banicki Construction, Inc.
(Principal) _____ (Seal)

By  - President
(Title) Mike Abraham





(Witness) Diane Moraski

Travelers Casualty and Surety Company of America
(Surety) _____ (Seal)

By 
(Title) Jessica Piccirillo, Attorney-in-Fact





POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Surety Bond No. Bid Bond

Principal: J. Banicki Construction, Inc.

OR

Project Description: Improvements to Payson Airport, Reconstruct Alpha and Delta Aprons
Obligee: Town of Payson

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint Jessica Piccirillo of the City of Farmington, State of CT, their true and lawful Attorney-in-Fact, to sign, execute, seal and acknowledge the surety bond(s) referenced above.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 24th day of June, 2016.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut

City of Hartford ss.

By:

[Handwritten signature of Robert L. Raney]

Robert L. Raney, Senior Vice President

On this the 24th day of June, 2016, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the 30th day of June, 2021.



[Handwritten signature of Marie C. Tetreault]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 11th day of May, 2018.



Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

CONSTRUCTION PERFORMANCE & MAINTENANCE BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

J. Banicki Construction, Inc.
4720 E. Cotton Gin Loop, Ste 240
Phoenix, AZ 85040

SURETY (Name and Principal Place of Business)

Travelers Casualty and Surety Company of America
ONE TOWER SQUARE, HARTFORD, CT 06183

OWNER (Name and Address):

Town of Payson
303 N. Beeline Hwy
Payson, Arizona 85541

CONSTRUCTION CONTRACT

Date: August 10, 2018

Amount: Seven Hundred Twenty Nine Thousand Five Hundred Eighty Nine and 00/100 (\$729,589.00)

Description (Name and Location):

Payson Airport
Payson, Arizona
AIP No. 3-04-0027-22-2018

BOND

Date (Not earlier than Construction Contract Date): 8/10/2018

Amount: Seven Hundred Twenty Nine Thousand Five Hundred Eighty Nine and 00/100 (\$729,589.00)

Modifications to this Bond Form: None

CONTRACTOR AS PRINCIPAL

Company: J. Banicki Construction, Inc.
(Corp. Seal)

SURETY

Company: Travelers Casualty and Surety
(Corp. Seal) Company of America



Signature: *Mike Abraham*

Name and Title: *Mike Abraham
President*

Signature: *Adam Martin*

Name and Title: Adam Martin
Attorney-In-Fact

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, including all related Construction Documents and modifications thereto, which is incorporated herein by reference.
2. If the Contractor completes the Contract and corrects all defects that appear within one year after final acceptance of all the work required under the Contract Documents, the Surety and the Contractor shall have no obligation under this bond, except to participate in conferences as provided in Subparagraph 3.1.
3. The Surety's obligations under this Bond shall arise after:
 - 3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Contract, or for correcting defects in workmanship or material that have appeared within one year after final acceptance of the work. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Contract, or to correct said defects in workmanship or material, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and
 - 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the Contract or to correct said defects. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and
 - 3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Contract or to a contractor selected to perform the Contract, or to correct said defects in accordance with the terms of the Contract with the Owner.
4. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:
 - 4.1 Arrange for the Contractor, with consent of the Owner to perform and complete the Contract, or to correct said defects in workmanship or material; or
 - 4.2 Undertake to perform and complete the Contract, or to correct said defects in workmanship or material itself, through its agents or through independent contractors; or
 - 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract to (a) perform and complete the Contract or correct said defects in workmanship or materials; (b) arrange for a Contract to be prepared for execution by the Owner and the Contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Contract and (c) pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or
 - 4.4 Waive its right to perform and complete, arrange for completion or obtain a new contractor and with reasonable promptness under the circumstances:
 1. After investigation, determine the amount for which it may be liable to the Owner and as soon as practicable after the amount is determined, tender payment therefore to the Owner; or
 2. Deny liability in whole or in part and notify the Owner citing reasons therefore.
5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond and the Owner shall be entitled to enforce any remedy available to the Owner if the Surety proceeds as provided in Subparagraph 4.4 and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
6. After the Owner has terminated the Contractor's right to complete the Contract, or to correct said defects in workmanship or materials and if the Surety elects to act under Subparagraphs 4.1, 4.2 or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Contract and related Construction Documents and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Contract and Construction Documents. To the limit of the amount of this Bond, but subject to commitment by the Owner to pay the Balance of the Contract Price to mitigation of costs and damages of the Contract, the Surety is obligated without duplication for:
 - 6.1 The responsibilities of the Contractor for completion of the Contract and correction of any defects that appear within one year following final acceptance of all the work required under the Construction Contract and related Documents;
 - 6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, or resulting from the actions or failure to act of the Surety under Paragraph 4; and
 - 6.3 Liquidated damages, or if no liquidated damages are specified in the Contract, actual damages caused by delayed performance or nonperformance of the Contractor.
7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Contract and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this bond to any person or entity other than the Owner or its heirs, executors, administrators, or successors.
8. The Surety hereby waives notice of any change, including changes of time and changes in the work required under the Contract or related subcontracts, purchase orders and other obligations.
9. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Owner became aware, or reasonably should have become aware of Contractor Default or within two years after the Surety refuses or fails to perform its obligations under this Bond; whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period for limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.
11. When this bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted hereon and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The Intent is that this Bond shall be construed as a statutory bond and not as a common-law bond.
12. Definitions:
 - 12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Contract after all proper adjustments have been made, including allowance to the Contractor of any amount received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Contract.
 - 12.2 Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
 - 12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Contract.
 - 12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

CONSTRUCTION PAYMENT BOND

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):
J. Banicki Construction, Inc.
4720 E. Cotton Gin Loop, Ste 240
Phoenix, AZ 85040

SURETY (Name and Principal Place of Business)
Travelers Casualty and Surety Company of America
ONE TOWER SQUARE, HARTFORD, CT 06183

OWNER (Name and Address):
Town of Payson
303 N. Beeline Hwy
Payson, Arizona 85541

CONSTRUCTION CONTRACT

Date: August 10, 2018
Amount: Seven Hundred Twenty Nine Thousand Five Hundred Eighty Nine and 00/100 (\$729,589.00)
Description (Name and Location):
Payson Airport
Payson, Arizona
AIP No. 3-04-0027-22-2018

BOND

Date (Not earlier than Construction Contract Date): August 10, 2018
Amount: Seven Hundred Twenty Nine Thousand Five Hundred Eighty Nine and 00/100 (\$729,589.00)
Modifications to this Bond Form: None

CONTRACTOR AS PRINCIPAL
Company: J. Banicki Construction, Inc.
(Corp. Seal)

SURETY
Company: Travelers Casualty and Surety Company
(Corp. Seal) of America



Signature: *[Handwritten Signature]*
Name and Title: *Nike Abatem*
President

Signature: *[Handwritten Signature]*
Name and Title: Adam Martin
Attorney-In-Fact

1. The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.
2. With respect to the Owner, this obligation shall be null and void if the Contractor:
 - 2.1. Promptly makes payment, directly or indirectly, for all sums due Claimants and
 - 2.2. Defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address as described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety and provided there is no Owner Default.
3. With respect to Claimant's this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until:
 - 4.1. Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.
 - 4.2. Claimants who do not have a direct contract with the Contractor:
 1. Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
 2. Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
 3. Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.
5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:
 - 6.1. Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
 - 6.2. Pay or arrange for payment any undisputed amounts.
7. The Surety's total obligation shall not exceed the amount of this Bond and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
9. The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond and shall have under this Bond no obligations to make payments, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.
10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.
11. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2 (3) , or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be accomplished shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or legal requirement shall be deemed incorporated herein. The intent is, that this Bond shall be construed as a statutory bond and not as a common law bond.
14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.
15. DEFINITIONS
 - 15.1. Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.
 - 15.2. Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes hereto.
 - 15.3. Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.



**Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company**

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Adam Martin** of **FARMINGTON Connecticut**, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.
IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **3rd** day of **February**, 2017.



State of Connecticut
City of Hartford ss.

By: 
Robert L. Raney, Senior Vice President

On this the **3rd** day of **February**, 2017, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of **June**, 2021




Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this 10th day of August, 2018




Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.**

Document A310™ – 2010

Conforms with The American Institute of Architects AIA Document 310

Bid Bond

CONTRACTOR:

(Name, legal status and address)

J. Banicki Construction, Inc.
4720 E. Cotton Gin Loop, Ste 240
Phoenix, AZ 85040

OWNER:

(Name, legal status and address)

Town of Wickenburg
155 N. Tegner Street, Suite A
Wickenburg, AZ 85390

SURETY:

(Name, legal status and principal place of business)

Travelers Casualty and Surety Company of America
One Tower Square
Hartford, CT 06183
Mailing Address for Notices
One Tower Square
Hartford, CT 06183

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

BOND AMOUNT: 10% Ten Percent of Amount Bid

PROJECT:

(Name, location or address, and Project number, if any)

Mid-Field Apron and Access Road Construction Project, Phase 2 at the Wickenburg Municipal Airport

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

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

Signed and sealed this 20th day of April, 2018.



(Witness) Chris Wittrock

J. Banicki Construction, Inc.

(Principal) (Seal)

By:  - President

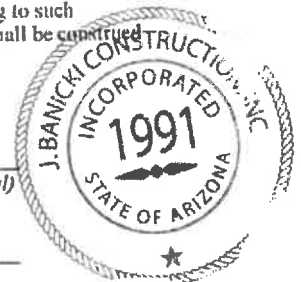
(Title) Mike Abraham

Travelers Casualty and Surety Company of America

(Surety) (Seal)

By:  Attorney-in-Fact

(Title) Jessica Piccirillo





POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Surety Bond No. Bid Bond

Principal: J. Banicki Construction, Inc.

OR

Project Description: Mid-Field Apron and Access Road Construction Project,
Phase 2 at the Wickenburg Municipal Airport

Obligee: Town of Wickenburg

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint Jessica Piccirillo of the City of Farmington, State of CT, their true and lawful Attorney-in-Fact, to sign, execute, seal and acknowledge the surety bond(s) referenced above.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 24th day of June, 2016.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut

City of Hartford ss.

By:

[Signature]
Robert L. Raney, Senior Vice President

On this the 24th day of June, 2016, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the 30th day of June, 2021.



[Signature]
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 20th day of April, 2018



Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

Bond No. 106936132

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Performance Bond

CONTRACTOR:
(Name, legal status and address)

J. Banicki Construction, Inc.
4720 E. Cotton Gin Loop, Ste 240
Phoenix, AZ 85040

SURETY:
(Name, legal status and principal place of business)

Travelers Casualty and Surety Company of America
One Tower Square
Hartford, CT 06183
Mailing Address for Notices

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:
(Name, legal status and address)

Town of Wickenburg
155 N. Tegner Street, Suite A
Wickenburg, AZ 85390

CONSTRUCTION CONTRACT
Date: July 3, 2018

Amount: \$ 996,580.00 Nine Hundred Ninety Six Thousand Five Hundred Eighty Dollars and 00/100

Description:
(Name and location)

Wickenburg Municipal Airport Mid-Field Apron and Access Road Construction Project, Phase 2 - FAA AIP Project
No. 3-04-0048-024

BOND
Date: July 6, 2018

(Not earlier than Construction Contract Date)

Amount: \$ 996,580.00 Nine Hundred Ninety Six Thousand Five Hundred Eighty Dollars and 00/100

Modifications to this Bond: None

CONTRACTOR AS PRINCIPAL

Company:
J. Banicki Construction, Inc.



SURETY

Company:
Travelers Casualty and Surety Company of America

(Corporate Seal)



Signature: *[Signature]*
Name and Title: *Mike Abraham, President*

Signature: *[Signature]*
Name and Title: *Jessica Piccirillo, Attorney-in-Fact*

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:
Alliant Insurance Services, Inc.
40 Stanford Drive, 2nd Floor
Farmington, CT 06032
860-269-2150

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

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

§ 14 Definitions

§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL
Company: *(Corporate Seal)*

SURETY
Company: *(Corporate Seal)*

Signature: _____
Name and Title:
Address

Signature: _____
Name and Title:
Address

Bond No. 106936132

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Payment Bond

CONTRACTOR:
(Name, legal status and address)

J. Banicki Construction, Inc.
4720 E. Cotton Gin Loop, Ste 240
Phoenix, AZ 85040

SURETY:
(Name, legal status and principal place of business)

Travelers Casualty and Surety Company of America
One Tower Square
Hartford, CT 06183
Mailing Address for Notices

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:
(Name, legal status and address)

Town of Wickenburg
155 N. Tegner Street, Suite A
Wickenburg, AZ 85390

CONSTRUCTION CONTRACT

Date: July 3, 2018

Amount: \$ 996,580.00 Nine Hundred Ninety Six Thousand Five Hundred Eighty Dollars and 00/100

Description:
(Name and location)

Wickenburg Municipal Airport Mid-Field Apron and Access Road Construction Project, Phase 2 - FAA AIP Project
No. 3-04-0048-024

BOND
Date: July 6, 2018

(Not earlier than Construction Contract Date)

Amount: \$ 996,580.00 Nine Hundred Ninety Six Thousand Five Hundred Eighty Dollars and 00/100

Modifications to this Bond: None See Section 18

CONTRACTOR AS PRINCIPAL
Company:

J. Banicki Construction, Inc.



SURETY
Company:

Travelers Casualty and Surety Company of America

(Corporate Seal)



Signature: Mike Abraham
Name: Mike Abraham
and Title: President

Signature: Jessica Y. Piccirillo
Name: Jessica Piccirillo
and Title: Attorney-in-Fact

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:
Alliant Insurance Services, Inc.
40 Stanford Drive, 2nd Floor
Farmington, CT 06032
860-269-2150

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

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

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____
(Corporate Seal)

SURETY

Company: _____
(Corporate Seal)

Signature: _____
Name and Title:
Address

Signature: _____
Name and Title:
Address



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Surety Bond No. 106936132

Principal: J. Banicki Construction, Inc.

OR

Project Description: Wickenburg Municipal Airport Mid-Field Apron and Access Road
Construction Project, Phase 2 - FAA AIP Project No. 3-04-0048-024

Obligee: Town of Wickenburg

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc. is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint Jessica Piccirillo of the City of Farmington, State of CT, their true and lawful Attorney-in-Fact, to sign, execute, seal and acknowledge the surety bond(s) referenced above.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 24th day of June, 2016.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut

City of Hartford ss.

By:

Signature of Robert L. Raney
Robert L. Raney, Senior Vice President

On this the 24th day of June, 2016, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the 30th day of June, 2021.



Signature of Marie C. Tetreault
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, Kevin E. Hughes, the undersigned, Assistant Secretary, of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 6th day of July, 2018



Kevin E. Hughes, Assistant Secretary



To verify the authenticity of this Power of Attorney, call 1-800-421-3880 or contact us at www.travelersbond.com. Please refer to the Attorney-In-Fact number, the above-named individuals and the details of the bond to which the power is attached.

Form approved OMB no. 12184-79

Attention: This form contains information relating to employee health and must be used in a manner that protects the confidentiality of employees to the extent possible while the information is being used for occupational safety and health purposes.

You must record information about every work-related death and about every work-related injury or illness that involves loss of consciousness, restricted work, activity or job transfer, days away from work, or medical treatment beyond first aid. You must also record significant work-related injuries and illnesses that are diagnosed by a physician or licensed health care professional. You must also record work-related injuries and illnesses that meet any of the specific recording criteria listed in 29 CFR Part 1904.8 through 1904.12. Feel free to use two lines for a single case if you need to. You must complete an Injury and Illness Incidents Report (OSHA Form 301) or equivalent form for each injury or illness recorded on this form. If you're not sure whether a case is recordable, call your local OSHA office for help.

Establishment Name: **J. Banicki Construction Compan**
City: **Phoenix** State: **AZ**

Identify the person		Describe the case				Classify the case		Enter the number of days the injured or ill worker was:		Check the "injury" column or choose one type of illness:																
(A) Case Number	(B) Employee's Name	(C) Job Title	(D) Date of injury or onset of illness	(E) Where the event occurred	(F) Describe injury or illness, parts of body affected, and object/substance that directly injured or made person ill.	(G) Death	(H) Days away from work	(I) Job transfer or restriction	(J) Restricted work or other recordable cases	(K) Any from work	(L) On job transfer or restriction	(M) Injury	(N) Skin Disorder	(O) Respiratory Condition	(P) Poisoning	(Q) Hearing Loss	(R) All other	(S) Illness	(T) Total	(U) Total	(V) Total	(W) Total	(X) Total	(Y) Total	(Z) Total	
5101612221	Snively, William	Mechanic	12/22/16	Shop	Caught a box when it fell from the shelf.		X			1	0								1	0	0	0	0	0	0	0
Totals										1	0								1	0	0	0	0	0	0	0

Be sure to transfer these totals to the Summary page (Form 300A) before you post it.

Please reporting burden for this collection of information is estimated to average 14 minutes per response, including time to review instructions, search existing data sources, gathering and maintaining the data needed, reviewing and collecting the data, and reviewing and reporting the data. Send comments regarding this burden estimate or any other aspect of this data collection, including suggestions for reducing this burden, to Washington, DC 20503-2970. OSHA Form 300A, 2004 Edition. OSHA Office of Statistics.

OSHA's Form 300A (Rev. 01/2004)
Summary of Work-Related Injuries and Illnesses

Year 2018
 U. S. Department of Labor
 Occupational Safety and Health Administration
 Form 300A-2018 OSHA 309 (12/18/07)B

All establishments covered by Part 1904 must complete this Summary page, even if no work-related injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete and accurate before completing this summary. Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the Log. If you had no cases, write "0". Employees, former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR Part 1904.36. In OSHA's recordkeeping rule, for further details on the access provisions for these forms.

Number of Cases

Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
(a) 0	(b) 0	(c) 0	(d) 1

Number of Days

Total number of days away from work	Total number of days of job transfer or restriction
(e) 0	(f) 0

Injury and Illness Types

Total number of... (g)	(1) Injuries	(2) Skin disorders	(3) Respiratory conditions	(4) Poisonings	(5) Hearing loss	(6) All other illnesses
(h)	1	0	0	0	0	0

Four this Summary page from February 1 to April 30 of the year following the year covered by the form.

Public reporting burden for this collection of information is estimated to average 20 minutes per response, including the time for reviewing the instructions, searching existing data sources, gathering the data needed, and reviewing and revising the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OSHA record number. If you have any comments about this burden estimate or any other aspect of this data collection, including the collection of information, contact: US Department of Labor, OSHA, Office of Statistics, Room N-3604, 200 Constitution Avenue, NW, Washington, DC 20210. Do not send the completed forms to this office.

Establishment Information
 Your establishment name: J. Banki Construction
 Street: 4720 E. Colton Ch. Loop
 City: Phoenix State: AZ ZIP: 85040

Industry description (e.g., Manufacturing of motor truck trailers)
 Highway, Street, and Bridges
 Standard Industrial Classification (SIC), if known (e.g., 3716)
 2 3 7 3

OR
 North American Industrial Classification (NAICS), if known (e.g., 336212)

Employment Information (If you continue these figures, see the Worksheet on the back of the Original Form 300A to estimate.)
 Annual average number of employees: 109
 Total hours worked by all employees last year: 218,517

Sign Here
 Knowledge/Signifying this document may result in a fine.
 I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate and complete.
 Name: M. K. President
 Title: President
 Address: 480, 321, 3016 Date: 01/24/19

OSHA's Form 300A (Rev. 01/2004)
Summary of Work-Related Injuries and Illnesses

All establishments covered by Part 1904 must complete this Summary page, even if no work-related injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete and accurate before completing this summary. Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the Log. If you had no cases, write "0". Employees, former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR Part 1904.35, in OSHA's recordkeeping rule, for further details on the access provisions for these forms.

Number of Cases

Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
0	1	0	2
(g)	(h)	(i)	(j)

Number of Days

Total number of days away from work	Total number of days of job transfer or restriction
0	230
(k)	(l)

Injury and Illness Types

Total number of...	(m)
(1) Injuries	1
(2) Skin disorders	2
(3) Respiratory conditions	0
(4) Poisonings	0
(5) Hearing loss	0
(6) All other illnesses	0

Post this Summary page from February 1 to April 30 of the year following the year covered by the form.

Public reporting burden for this collection of information is estimated to average 90 minutes per response, including time to review the instructions, search existing data sources, gathering the data needed, and reviewing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this data collection, including suggestions for reducing the burden, to Washington, DC 20503. Do not send this information to the OSHA.

Establishment Information

Your establishment name: J. Bankst Construction
 Street: 4720 E. Cotton Glen Loop, #240 State: AZ ZIP: 85240
 City: Phoenix

Industry description (e.g., Manufacture of motor truck trailers)
 Civil Construction

Standard Industrial Classification (SIC), if known (e.g., 3715)
1 6 2 2

OR
 North American Industrial Classification (NAICS), if known (e.g., 38212)

Employment information (if you don't have these figures, see the Worksheet on the back of the Original Form 300A to estimate.)

Annual average number of employees: 67
 Total hours worked by all employees last year: 173,895

Sign Here
 Knowledgeably studying this document may result in a fine. I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate and complete.


 Mike Avastin, The President
 480-621-8016 01/26/18
 Phone Date

OSHA's Form 300A (Rev. 01/2004)
Summary of Work-Related Injuries and Illnesses

Year 2016
 U.S. Department of Labor
 Occupational Safety and Health Administration
 Form approved OMB No. 1282-0178

All establishments covered by Part 1904 must complete this Summary page, even if no work-related injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete and accurate before completing this summary. Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the Log. If you had no cases, write "0". Employees, former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR Part 1904.35, in OSHA's recordkeeping rule, for further details on the access provisions for these forms.

Number of Cases

Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
0	1	0	0
(B)	(C)	(D)	(E)

Number of Days

Total number of days away from work	Total number of days of job transfer or restriction
1	52
(F)	(G)

Injury and Illness Types

Total number of:

(A) (1) Injuries	1	(4) Poisonings	0
(2) Skin disorders	0	(5) Hearing loss	0
(3) Respiratory conditions	0	(6) All other illnesses	0

Post this Summary page from February 1 to April 30 of the year following the year covered by this form.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing the instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Washington Headquarters Service, Paperwork Project (0182-0001), U.S. Department of Labor, OSHA Office of Statistics, Room N-3624, 200 Constitution Avenue, NW, Washington, DC 20210. Do not send the completed form to this office.

Establishment Information

Your establishment name: J. Bechtel Construction

Street: 4720 East Cotton Gin Loop, #240 State: AZ ZIP: 85040

City: Phoenix

Industry description (e.g., Manufacturing of motor truck trailers)

Construction

Standard Industrial Classification (SIC), if known (e.g., 3715)

1 8 2 2

OR

North American Industrial Classification (NAICS), if known (e.g., 336212)

Employment Information (If you don't have these figures, see the Instructions on the back of the Original Form 300A to estimate.)

Annual average number of employees 36

Total hours worked by all employees last year 171,823

Sign here

Knowingly falsifying this document may result in a fine.

I certify that I have examined the document and that to the best of my knowledge the entries are true, accurate and complete.

 President

Name: Abraham

Title: The

Phone: 480-421-8016

Date: 01/21/17

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
J. BANICKI CONSTRUCTION, INC.**

EXHIBIT B
Scope of Work

PROJECT

In accordance with the terms and conditions of this Agreement and the Valley Metro Contract No. 20017, the City is retaining J. Banicki Construction, Inc. for general construction services for the structural repairs for the City of Glendale parking garage located at 58325 West Palmyra Avenue.

**LINKING AGREEMENT
BETWEEN
THE CITY OF GLENDALE, ARIZONA
AND
J. BANICKI CONSTRUCTION, INC.**

EXHIBIT C

METHOD AND AMOUNT OF COMPENSATION

Method and amount of compensation is in accordance with section 3 of this agreement

NOT TO EXCEED AMOUNT

The total amount of compensation paid to Contractor for full completion of all work required by the Project must not exceed \$100,000.00 for the entire term of the Agreement.

DETAILED PROJECT COMPENSATION

City shall pay Contractor compensation in accordance with the rates as set forth in the Valley Metro Contract No. 20017 for general construction services city-wide on an as-needed basis.