

**LINKING AGREEMENT  
BETWEEN  
THE CITY OF GLENDALE, ARIZONA  
AND  
ROBERT E. PORTER CONSTRUCTION CO., INC.**

THIS LINKING AGREEMENT (this "Agreement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021, between the City of Glendale, an Arizona municipal corporation (the "City"), and Robert E. Porter Construction Co., Inc., a(n) Arizona corporation authorized to do business in Arizona ("Contractor"), collectively, the "Parties."

**RECITALS**

- A. On May 17, 2018 under 1 Government Procurement Alliance, the Paradise Valley Unified School District entered into a contract with Contractor to purchase the goods and services described in the Job Order Contracting - General Contractors, Contract No. 18-15PV("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 May 17, 2018, until the date the contract expires on May 17, 2022 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 May 17, 2023. The initial period of this Agreement, therefore, is the period from the Effective Date of this Agreement until May 17, 2022. The City may renew the term

of this Agreement for one (1) one year period until the Cooperative Purchasing Agreement expires on May 17, 2023. Glendale's renewal is 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 two million dollars (\$2,000,000) annually or four million dollars (\$4,000,000) 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 J. Demlong  
6210 W. Myrtle Av. Suite 111  
Glendale, Arizona 85301

And

Robert E. Porter Construction Co., Inc.  
c/o Earl Lucas  
1720 W. Lincoln St.  
Phoenix, Arizona 85007  
earl@robertporterconstruction.com

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

“City”

City of Glendale, an Arizona  
municipal corporation


By: \_\_\_\_\_

Kevin R. Phelps  
City Manager

“Contractor”

Robert E. Porter Construction Co., Inc.,  
an Arizona corporation

By: \_\_\_\_\_

  
Name: Earl Lucas  
Title: President

ATTEST:

\_\_\_\_\_  
Julie K. Bower (SEAL)  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bailey  
City Attorney

**LINKING AGREEMENT  
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**EXHIBIT A  
PARADISE VALLEY UNIFIED SCHOOL DISTRICT  
CONTRACT NO. 18-15PV  
JOB ORDER CONTRACTING - GENERAL CONTRACTORS**

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**EXHIBIT B  
Scope of Work**

**PROJECT**

Contractor will provide general contracting services and products on an as needed basis as described in the Paradise Valley Unified School District Contract #18-15PV. Including structural repair (parking garages, truss repair, concrete, carbon fiber reinforcement, wood roof systems, epoxy), tenant improvements, and restoration services (fire, water and storm damage, structural failure, damage from accidents).

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**EXHIBIT C**

**METHOD AND AMOUNT OF COMPENSATION**

The 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 \$2,000,000 annually or \$4,000,000 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 Paradise Valley Unified School District Contract No. 18-15PV with Robert E. Porter Construction Co., Inc.



## Contract Extension

February 8, 2021

Robert E. Porter Construction Co., Inc.  
1720 W. Lincoln Street  
Phoenix, AZ 85007

Attn: Earl Lucas ([earl@robertporterconstruction.com](mailto:earl@robertporterconstruction.com))


Re: Extension Agreement for Contract #18-15PV-10, Job Order Contracting – General Contractors

The above referenced contract is hereby mutually extended for an additional one (1) year period until May 17, 2022. This is the fourth year of a potential five-year agreement. **Please indicate your desire to extend your contract by completing and emailing back the signed Contract Extension along with the following documentation:**

- Updated Certificate of Insurance (see terms and conditions of contract to ensure compliance).
- Proof/Verification of ROC Licensing in good standing (if applicable).
- Proof of any other applicable licensing related to your contract.
- Proof/Verification of good standing with Arizona Corporation Commission or other State's comparable Corporations/Business Division or Secretary of State (as applicable).
- Current SAM Verification and/or DUNS Number.
- Updated Contact Information Sheet completed.

By signing this document, vendor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

In addition, please verify that your company is providing usage reports as per the terms of your contract. If you have any questions or concerns regarding these reports, please feel free to contact Michelle Aiken by email: [maiken@1GPA.org](mailto:maiken@1GPA.org).

Vendor Acceptance/Signature: 	
Printed Name: Earl E. Lucas	
Title: President	Date: 03/29/2021

1GPA Authorized Signature: <i>Christy Knorr</i>	
Printed Name: Christy Knorr	
Title: Vice President	Date: <i>4/5/2021</i>
Paradise Valley Unified School District Authorized Signature: <i>CL Leon</i>	
Printed Name: Claudia Leon	
Title: Director of Purchasing	Date: <i>4/7/2021</i>

**JOB ORDER CONTRACTING  
MASTER AGREEMENT**

THIS AGREEMENT, entered into and made effective the 18th day of May, 2018 by and between 1Government Procurement Alliance (1GPA), Paradise Valley Unified School District, and Robert E. Porter Construction, a Corporation with offices at 1720 West Lincoln Street, Phoenix, AZ 85007 (hereinafter referred to as Contractor).

WITNESSETH:

THAT IN CONSIDERATION of the mutual promises and covenants hereinafter contained in this Agreement by these presents do agree, as follows:

**ARTICLE 1**

**DEFINITIONS**

- A. The term "Owner" means the Paradise Valley Unified School District, and any 1GPA Member utilizing this agreement, or his duly authorized representative which means any person specifically authorized to act for Owner by executing the Contract and any modification thereto. Duties include administration of the Contract, including the negotiation of change orders and modifications and assessing Contractor's technical performance and progress; inspecting and periodically reporting on such performance and progress during the stated period of performance, and finally certifying as to the acceptance of the Work in its entirety or any portion thereof, as required by the Contract documents. All references to the District mean the Paradise Valley Unified School District or any 1GPA Member utilizing this agreement.
- B. The term "Contractor" means Contractor's senior manager or his duly authorized representative, which means any person specifically authorized to act for Contractor by executing the Contract, and any modifications thereto. Duties include administration of the Contract, including performance of the Work.
- C. The term "Contract" as used herein means this Master Agreement, original Request for Qualifications and all proposals submitted by awarded firm, including its attachments and any Job Orders that may be issued.
- D. The term "Subcontract" as used herein means any agreement including purchase orders (other than one involving an employer-employee relationship) entered into by Contractor calling for equipment, supplies or services required for Contract performance, including any modifications thereto.

**ARTICLE 2**

**WORK TO BE PERFORMED**

- A. In response to Job Orders that may be mutually agreed upon and issued periodically by Owner, Contractor shall, except as may be specified elsewhere in the Contract, furnish all necessary labor, materials, tools, supplies, equipment, transportation, supervision, management, and perform all operations necessary and required for survey, design and construction work (hereinafter called "the Work") which will be defined and further described as to specific project requirements in each Job Order. The Work shall be performed in accordance with the requirements set forth in each Job Order and as further specified in Attachment "A"

Master Agreement Pricing Coefficients, Attachment "B" Master Agreement Open Book Pricing, and in Attachment "C" Scope of Services of which are incorporated herein and made a part hereof.

- B. This Master Agreement embodies agreement of Owner and Contractor to terms and conditions which will govern any Work that may be prescribed under a Job Order that may be issued by Owner and agreed to by Contractor. Nothing herein shall be construed as requiring Owner to issue any Job Order.

### ARTICLE 3

#### WORK AUTHORIZATIONS

- A. Performance of the Work shall be undertaken only upon the issuance of written Job Orders by Owner. Job Orders shall be in accordance with the requirements specified in Attachment "C", Scope of Services, and will set forth, with the necessary particularity, the following:
1. Master Agreement number along with Contractor's name;
  2. Job Order number and date;
  3. The agreed Scope of Services and applicable technical specifications and drawings;
  4. The agreed period of performance and, if required by Owner, a work schedule;
  5. The place of performance;
  7. The agreed total amount for the Work to be performed;
  8. Submittal requirements;
  9. Owner's authorized representative who will accept the completed Work;
  10. Signatures by the parties hereto signifying agreement to the Job Order; and
  11. Such other information as may be necessary to perform the Work.
- B. Job Orders may be amended by Owner in the same manner as they are issued.

### ARTICLE 4

#### SPECIFICATIONS AND DRAWINGS

- A. Contractor shall keep on the work site a copy of the drawings and specifications and shall at all times give Owner access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the drawings shall govern. In case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to Owner, who shall promptly make a determination in writing. Any adjustment by Contractor without such a determination shall be at his own risk and expense. Owner shall furnish from time to time such detail drawings and other information as considered necessary, unless otherwise provided.

- B. Wherever in the specifications or upon the drawings the words "directed," "required," "ordered," "designated," "prescribed," or words of like import are used, it shall be understood that the "direction," "requirement," "order," "designation," or "prescription," of Owner is intended and similarly the words "approved," "acceptable," "satisfactory," or words of like import shall mean "approved by," or "acceptable to," or "satisfactory to" Owner, unless otherwise expressly stated.
- C. Where "as shown," "as indicated," "as detailed," or words of similar import are used, it shall be understood that the reference is made to the drawings accompanying the Contract unless stated otherwise. The word "provided" as used herein shall be understood to mean "provide complete in place," that is "furnished and installed".
- D. Shop drawings means drawings submitted to Owner by Contractor showing in detail:
1. The proposed fabrication and assembly of major electrical elements and,
  2. The installation (i.e., form, fit and attachment details) of materials or equipment.
  3. The construction and detailing of elements of the work.
- It includes sketches, diagrams, layouts, schematics, descriptive literature, illustrations, schedules, performance and test data, and similar materials furnished by Contractor to explain in detail specific portions of the Work required. Owner may duplicate, use, and disclose in any manner and for any purpose shop drawings delivered under the Contract.
- E. Contractor shall coordinate all shop drawings, and review them for accuracy, completeness, and compliance with Contract requirements and shall indicate his approval thereon as evidence of such coordination and review. Shop drawings submitted to Owner without evidence of Contractor's approval may be returned for resubmission. Owner will indicate his approval or disapproval of the shop drawings and if not approved as submitted shall indicate Owner's reasons therefore. Any work done before such approval shall be at Contractor's risk. Approval by Owner shall not relieve Contractor from responsibility for any errors or omissions in such drawings, or from responsibility for complying with the requirements of the Contract, except with respect to variations described and approved in accordance with paragraph F below.
- F. If shop drawings show variations from the Job Order requirements, Contractor shall describe such variations in writing, separate from the drawings, at the time of submission. If Owner approves any such variation, Owner shall issue an appropriate contract modification, except that, if the variation is minor and does not involve a change in price or in time of performance, a modification need not be issued.
- G. Contractor shall submit to Owner for approval an appropriate number of copies of all shop drawings as called for under the various headings of these specifications. Sets of all shop drawings will be retained by Owner and one set will be returned to Contractor.
- H. Omissions from the drawings or specifications or the mis-description of details of work which are manifestly necessary to carry out the intent of the drawings and specifications, or which are customarily performed, shall not relieve Contractor from performing such omitted or mis-described details of the work but they shall be performed as if fully and correctly set forth and described in the drawings and specifications.

- I. Contractor shall check all drawings furnished him immediately upon their receipt and shall promptly notify Owner of any discrepancies. Figures marked on drawings shall be followed in preference to scale measurements. Large-scale drawings shall govern small-scale drawings. Contractor shall compare all drawings and verify the figures before laying out the work and will be responsible for any errors, which might have been avoided thereby.

## ARTICLE 5

### USE OF SPECIFICATIONS, DRAWINGS AND NOTES

All drawings (to include as-built drawings), sketches, designs, design data, specifications, note books, technical and scientific data provided to Contractor or developed by Contractor pursuant to the Contract and all pictures, reports, findings, recommendations, data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the work or any part thereof, shall be the property of Owner and may be used by Owner without any claim by Contractor for additional compensation, unless such material developed by Contractor does not result in an issued Job Order. In such cases, Contractor will receive reasonable reimbursement for the development of such materials before Owner uses in any manner whatsoever.

## ARTICLE 6

### PERMITS AND RESPONSIBILITIES

Contractor shall be responsible for processing of drawings for approval by the civil authorities and for obtaining any necessary licenses and permits, and for complying with any Federal, State and municipal laws, codes, and regulations applicable to the performance of the Work. Owner will reimburse Contractor for the actual, documented costs of construction permits required for the performance of the Work. Contractor shall also be responsible for all damages to persons or property that occur as a result of Contractor's fault or negligence, and shall take proper safety and health precautions to protect the Work, the workers, the public, and the property of others. Contractor shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire Work, except for any completed unit of work, which may have been accepted in writing under the Contract.

## ARTICLE 7

### MATERIAL AND WORKMANSHIP

- A. All equipment, material, and articles incorporated in the Work covered by this Contract shall be new and of the most suitable grade for the purpose intended, unless otherwise specifically provided in the Contract. References in the specifications to equipment, material, article, or patented process by trade name, make, or catalog number, shall be regarded as establishing a standard of quality and shall not be construed as limiting competition. Contractor may, at its option, use any equipment, material, article, or process that, in the judgment of Owner, with written approval, is equal to that named in the specifications, unless otherwise specifically provided in the Contract.
- B. Contractor shall obtain Owner's approval of the machinery and other equipment to be incorporated into the Work. When requesting approval, Contractor shall furnish to Owner the name of the manufacturer, the model number, and other information concerning the performance, capacity, nature, and rating of the machinery and other equipment. When required by the Contract or by Owner, Contractor shall also obtain Owner's approval of the material or articles, which Contractor contemplates incorporating into the Work. When requesting approval, Contractor shall provide full information concerning the material or articles.

When directed to do so, Contractor shall submit samples for approval. Machinery, equipment, material and articles that do not have the required approval shall be installed or used at the risk of subsequent rejection.

- C. All work under the Contract shall be performed in a skillful and workmanlike manner.

**ARTICLE 8**

TESTING OF MATERIALS

Contractor shall be responsible for any required testing of materials prior to Job at the site of the Work. Owner will retain or reimburse Contractor for use of an independent testing laboratory to perform site testing of materials. Contractor shall be required to use the firm of R.A.M. for any geotechnical testing services in accordance with the unit pricing established under the District’s term contract for these services as long as this contract remains in effect.

**ARTICLE 9**

LAYOUT OF WORK

Contractor shall lay out his work in accordance with the Contract plans and specifications and shall be responsible for all measurements in connection with the layout of the work. Contractor shall furnish, at his own expense, all stakes, templates, platforms, equipment, tools, materials, and labor required to layout any part of the work. Contractor shall also be responsible for maintaining and preserving all control points established by Owner.

**ARTICLE 10**

SITE INVESTIGATION AND CONDITIONS AFFECTING THE WORK

- A. Contractor acknowledges that he has taken steps reasonably necessary to ascertain the nature and location of the Work, and that he has investigated and satisfied himself as to the local conditions which can affect the Work or its cost, including but not limited to:
  1. Conditions bearing upon transportation, disposal, handling, and storage of materials;
  2. The availability of labor, water, electric power, and roads;
  3. Uncertainties of weather, river stages, tides, or similar physical conditions at the site;
  4. The conformation and conditions of the ground;
  5. The character of equipment and facilities needed preliminary to and during work performance; and
  6. Owner’s hours and days of operation.
  
- B. Contractor also acknowledges that he has satisfied himself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by Owner, as well as from the drawings and specifications made a part of the Contract.

**ARTICLE 11**

## DIFFERING SITE CONDITIONS

- A. Contractor shall promptly, and before the conditions are disturbed, give a written notice to Owner of:
1. Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract, or
  2. Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.
- B. Owner shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in Contractor's cost of, or the time required for, performing any part of the Work, whether or not changes as a result of the conditions, an equitable adjustment shall be made and the Job Order modified in writing accordingly.
- C. No request by Contractor for an equitable adjustment to the Job Order under this Article shall be allowed, unless Contractor has given the written notice required.
- D. No request by Contractor for an equitable adjustment to the Job Order for differing site conditions shall be allowed if made after final payment under this Job Order.

**ARTICLE 12**

## CONTRACT TERM

The term of the Contract shall commence on the date executed by both parties and shall continue until terminated unless revised in accordance with the terms and conditions of the Contract. Initial term will be for a guaranteed minimum term of twelve (12) months, with - 4 one-year renewals.

**ARTICLE 13**

## COMPENSATION

As full consideration for the satisfactory performance by Contractor of Work prescribed under the Contract, Owner shall pay Contractor the amounts specified in the individual Job Orders.

**ARTICLE 14**

## INVOICING AND PAYMENTS

- A. Owner shall make progress payments monthly as the Work proceeds, or at more frequent intervals as determined by Owner, on estimates approved by Owner. Contractor shall use an acceptable invoice form and shall include supporting documents to reflect a breakdown of the total price showing the amount included therein for each principal category of the Work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates of work accomplished, Owner will authorize payment for material delivered on the site and preparatory work done if Contractor furnishes

- satisfactory evidence that it has acquired title to such material and that the material will be used to perform the Work.
- B. All material and work covered by progress payments made shall, at the time of payment, become the sole property of Owner, but this provision shall not be construed as:
1. Relieving Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or
  2. Waiving the right of Owner to require the fulfillment of all of the terms of the Contract.
- C. Owner shall pay the amount due Contractor under the Contract within thirty (30) days, after:
1. Completion and acceptance of the Work;
  2. Presentation of a properly executed invoice; and
  3. Presentation of release of all claims against Owner arising by virtue of the Contract, other than claims, in stated amounts that Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if Contractor's claim to amounts payable under this Contract has been assigned. Contractor shall complete a contractor's release form acceptable to Owner.
- D. Contractor shall submit invoices to an address specified by the Owner.

## ARTICLE 15

### CONSTRUCTION SCHEDULE

- A. If requested, within seven days of the Notice to Proceed for each Job Order, Contractor will prepare and submit to Owner for approval a practicable schedule showing the order in which Contractor proposes to perform the Work, and the dates on which Contractor contemplates starting and completing the several salient features of the Work (including acquiring materials, plant and equipment). The schedule may be a formal computerized schedule or a progress chart in a bar chart format of suitable scale to indicate appropriately the percentage of Work scheduled for completion by any given date during the period. In either case the basic information should be the same and the schedule chart must contain as a minimum:
1. A list of the different types of work activities or work elements.
  2. Show the logical dependencies (ties) to indicate what work must be accomplished before other work can begin.
  3. Show proposed start and complete dates or time frames for each work activity or work element.
  4. Calculate the "weighting" or relative worth each work activity or work element is of the total project either as a percent or dollar amount.

If Contractor fails to submit a schedule within the time prescribed, Owner may withhold approval of progress payments until Contractor submits the required schedule.

- B. Contractor shall submit a progress report every 30 days, or as directed by Owner, and upon doing so shall immediately deliver the annotated schedule to Owner. If Contractor falls behind the approved schedule, Contractor shall take steps necessary to improve its progress, including those that may be required by Owner, without additional cost to Owner. In this circumstance, Owner may require Contractor to increase the number of shifts, overtime operations, days of work, and to submit for approval any supplementary schedule or schedules in chart form as Owner deems necessary to demonstrate how the approved rate of progress will be regained.
- C. Emergency Work: Contractor will give top priority to any emergency work Owner may have and will allocate all resources necessary to accomplish such work in accordance with Owner's schedule requirements.
- D. Failure of Contractor to comply with the requirements of Owner under this clause shall be grounds for a determination by Owner that Contractor is not prosecuting the Work with sufficient diligence to ensure completion within the time specified in the Job Order. Upon making this determination, Owner may terminate Contractor's right to proceed with the Work, or any separable part of it, in accordance with the default terms of this Master Agreement.

#### ARTICLE 16

##### SUPERINTENDENCE BY CONTRACTOR

At all times during performance of a Job Order and until the Work is completed and accepted, Contractor shall directly superintend the Work or assign and have on the work site a competent superintendent who is satisfactory to Owner and has authority to act for Contractor.

#### ARTICLE 17

##### INSPECTION OF CONSTRUCTION

- A. Contractor shall maintain an adequate inspection system and perform such inspections as will ensure that the Work called for conforms to Job Order requirements. Contractor shall maintain complete inspection records and make them available to Owner. All work shall be conducted under the general direction of Owner and is subject to inspection and test at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract.
- B. Owner inspections and tests are for the sole benefit of Owner and do not:
  - 1. Relieve Contractor of responsibility for providing adequate quality control measures;
  - 2. Relieve Contractor of responsibility for damage to or loss of the material before acceptance;
  - 3. Constitute or imply acceptance; or
  - 4. Affect the continuing rights of Owner after acceptance of the complete work under paragraph H below.

- C. The presence or absence of an inspector does not relieve Contractor from any Contract requirement, nor is the inspector authorized to change any term or condition of the specification without Owner's written authorization.
- D. Contractor shall promptly furnish, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspections and tests as may be required by Owner. Owner may charge to Contractor any additional cost of inspection or test when work is not ready at the time specified by Contractor for inspection or test, or when prior rejection makes reinspection or retest necessary. Owner shall perform all inspections and tests in a manner that will not unnecessarily delay the Work. Special, full size and performance tests shall be performed as described in the Job Order.
- E. Contractor shall, without charge, replace or correct work found by Owner not to conform to Job Order requirements, unless Owner consents to accept the work with an appropriate adjustment in Contract price. Contractor shall promptly segregate and remove rejected material from the premises.
- F. If Contractor does not promptly replace or correct rejected work, Owner may:
1. By contract or otherwise, replace or correct the work and charge the cost to Contractor or
  2. Terminate for default Contractor's right to proceed.
- G. If, before acceptance of the entire Work, Owner decides to examine already completed work by removing it or tearing it out, Contractor, on request, shall promptly furnish all necessary facilities, labor, and material. If the Work is found to be defective or nonconforming in any material respect due to the fault of Contractor or its subcontractors, Contractor shall defray the expenses of the examination and of satisfactory reconstruction. However, if the Work is found to meet requirements, Owner shall make an equitable adjustment for the additional services involved in the examination and reconstruction, including, if completion of the Work was thereby delayed, an extension of the period of performance time.
- H. Unless otherwise specified in the Job Order, Owner shall accept, as promptly as practicable after completion and inspection, all work required by the Job Order or that portion of the Work Owner determines can be accepted separately. Acceptance shall be final and conclusive except for latent defects, fraud, gross mistakes amounting to fraud, or Owner's rights under any warranty or guarantee.

## ARTICLE 18

### OPERATIONS AND STORAGE AREAS

- A. Contractor shall confine all operations (including storage of materials) to areas authorized or approved by Owner.
- B. Temporary buildings (e.g., storage sheds, shops, offices) and utilities may be erected by Contractor only with the approval of Owner and shall be built with labor and materials furnished by Contractor without expense to Owner. The temporary buildings and utilities shall remain the property of Contractor and shall be removed by Contractor at its expense upon the completion of the Work. With the written consent of Owner, the buildings and utilities may be abandoned and need not be removed.

- C. Contractor shall, under regulations prescribed by Owner, use only established roadways or temporary roadways constructed by Contractor when and as authorized by Owner. Contractor shall comply with all Federal, state and local laws and regulations when transporting materials.

#### **ARTICLE 19**

##### **PROTECTION OF EXISTING VEGETATION, STRUCTURES, UTILITIES AND IMPROVEMENTS**

- A. Contractor shall preserve and protect all structures, equipment and vegetation (such as trees, shrubs, and grass) on or adjacent to the work sites, which are not to be removed and which do not unreasonably interfere with the work required under the Job Order. Contractor shall only remove trees when specifically authorized to do so, and shall avoid damaging vegetation that will remain in place. If any limbs or branches of trees are broken during the Work performance, or by the careless operation of equipment, or by workmen, Contractor shall trim those limbs or branches with a clean cut and paint the cut with a tree pruning compound as directed by Owner.
- B. Contractor shall protect from damage all existing improvements and utilities (1) at or near the work site and (2) on adjacent property of a third party, the locations of which are made known to or should be known by Contractor. Contractor shall repair any damage to those facilities, including those that are the property of a third party, resulting from failure to comply with the requirements of the Job Order or failure to exercise reasonable care in performing the Work. If Contractor fails or refuses to repair the damage promptly, Owner may have the necessary work performed and charge the cost to Contractor.

#### **ARTICLE 20**

##### **CLEANING UP AND REFUSE DISPOSAL**

Contractor shall at all times keep the work area, including storage areas, free from accumulations of waste materials. Before completing the Work, Contractor shall remove from the work and premises any rubbish, tools, scaffolding, equipment, and materials that are not the property of Owner. Upon completing the Work, Contractor shall leave the work area in a clean and orderly condition satisfactory to Owner. Final cleanup of the premises shall be included in the Period of Performance of the Job Order. Contractor shall be responsible for all construction refuse disposal containers and removal from the site. Disposal of any hazardous materials not addressed and priced in the Job Order will be segregated for disposal by Owner unless Owner requires Contractor to dispose of the materials in which case, an equitable adjustment in the price will be negotiated and agreed.

#### **ARTICLE 21**

##### **WARRANTY OF CONSTRUCTION**

- A. In addition to any other warranties in any Job Orders, Contractor warrants, except as provided in paragraph J of this Article, that work performed conforms to the Job Order requirements and is free of any defect in equipment, material or design furnished, or workmanship performed by Contractor or any of his subcontractors or suppliers at any tier.
- B. This warranty shall continue for a period of two (2) years from the date of final acceptance of the Work. If Owner takes possession of any part of the Work, in writing, before final acceptance, this warranty shall continue for a period of two (2) years from the date possession is taken.

- C. Contractor shall remedy at Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at Contractor's expense any damage to Owner-owned or controlled real or personal property, when that damage is the result of:
1. Contractor's failure to conform to requirements; or
  2. Any defect of equipment, material, workmanship, or design furnished.
- D. Contractor shall restore any work damaged in fulfilling the terms and conditions of this article. Contractor's warranty with respect to work repaired or replaced will run for one (1) year from the date of repair or replacement.
- E. Owner shall notify Contractor, in writing, within a reasonable time after the discovery of any failure, defect, or damage.
- F. If Contractor fails to remedy any failure, defect, or damage within a reasonable time after receipt of notice, Owner shall have the right to replace, repair, or otherwise remedy the failure, defect or damage at Contractor's expense.
- G. With respect to all warranties, expressed or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished for Job Orders issued under this Master Agreement, Contractor shall:
1. Obtain all warranties that would be given in normal commercial practice;
  2. Require all warranties to be executed, in writing, for the benefit of Owner; and
  3. Enforce all warranties for the benefit of Owner;
- H. In the event Contractor's warranty under paragraph B of this Article has expired, Owner may bring suit at its expense to enforce a subcontractor's, manufacturers, or supplier's warranty.
- I. Unless a defect is caused by the negligence of Contractor or subcontractor or supplier at any tier, Contractor shall not be liable for the repair of any defects of material or design furnished by Owner nor for the repair of any damage that results from any defect in Owner-furnished material or design.
- J. Contractor is not responsible for and does not warranty pre-existing work or facilities that may be assigned to Contractor except to the extent of Contractor's work. Contractor does not assume responsibility for pre-existing work or facilities that may be connected to or interface with the Work.
- K. This warranty shall not limit Owner's rights under the Inspection of Construction Article of this Contract with respect to latent defects, gross mistakes, or fraud.

**ARTICLE 22**

**CHANGES**

- A. Owner may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make changes in the Work within the general scope of the Job Orders, including changes:
  - 1. In the specifications (including drawings and designs);
  - 2. In Owner-furnished facilities, equipment, materials, services, or site; or
  - 3. Directing acceleration in the performance of the Work.
- B. Any other written order from Owner that causes a change shall be treated as a change order under this Article; provided, that Contractor gives Owner written notice stating the date, circumstances, and source of the order and that Contractor regards the order as a change order.
- C. Except as provided in this Article, no order, statement, or conduct of Owner shall be treated as a change under this Article or entitle Contractor to an equitable adjustment hereunder.
- D. If any change under this Article causes an increase or decrease in Contractor's cost of, or the time required for, the performance of any part of the Work under a Job Order, whether or not changed by any such order, Owner shall make an equitable adjustment and modify the Job Order in writing.
- E. Contractor must submit any proposal under this Article within ten (10) calendar days after:
  - 1. Receipt of a written change order under Paragraph A above or;
  - 2. The furnishing of a written notice under Paragraph B above,

By submitting to Owner a written statement describing the nature and amount of the proposal, unless this period is extended by Owner. The statement of proposal for adjustment may be included in the notice under Paragraph B above.

- F. No proposal by Contractor for an equitable adjustment shall be allowed if asserted after final payment for a Job Order.

**ARTICLE 23**

**PRICING CHANGES**

- A. Contractor, in connection with any proposal he makes for a Job Order change shall furnish a price breakdown itemized as required by Owner. Pricing for such changes shall be based on quantities mutually agreed to by Contractor and Owner and the pricing method approved for that Job Order.
- B. Justification shall be furnished for any proposed extension in the period of performance. The proposal, together with the price breakdown and period of performance extension justification, shall be furnished by the date specified by Owner.

**ARTICLE 24****SUSPENSION OF WORK**

- A. Owner may order Contractor, in writing, to suspend, delay, or interrupt all or any part of the Work for the period of time that Owner determines appropriate for the convenience of Owner.
- B. If the performance of all or any part of the Work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of Owner in the administration of a Job Order, or by Owner's failure to act within the time specified in the Job Order (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of the Job Order necessarily caused by the unreasonable suspension, delay, or interruption, and the Job Order will be modified in writing accordingly.
- C. A claim under this Article shall not be allowed for any costs incurred more than 30 calendar days before Contractor shall have notified Owner in writing of the act or failure to act (but this requirement shall not apply as to a claim resulting from a suspension order), and unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the Job Order.

**ARTICLE 25****DISPUTES**

Any dispute concerning a question of fact arising under the Contract or a Job Order which is not disposed of by agreement will be decided by Owner, who will communicate his decision to writing and furnish a copy thereof to Contractor. Appeals from decisions of the Owner shall be resolved pursuant to the Arizona Administrative Code, Article 10, School District Procurement, Section R7-2-1155, extent required by A.R.S., section 12-1518, except as may be required by other applicable statutes.

**ARTICLE 26****TERMINATION FOR CONVENIENCE OF OWNER**

- A. Owner may terminate performance of work under the Contract in whole or, from time to time, in part if Owner determines that termination is in Owner's interest. Owner shall effect such termination by delivering to Contractor a Notice of Termination specifying the extent of termination and the effective date.
- B. After receipt of a Notice of Termination, and except as directed by Owner, Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this Article:
  - 1. Stop work as specified in the notice;
  - 2. Place no further subcontracts or orders (referred to as subcontracts in this Article) for materials, services or facilities, except as necessary to complete the continued portion of the Work;
  - 3. Assign to Owner, as directed by Owner, all right, title, and interest of Contractor under the subcontracts to the extent they relate to the work terminated, in which case Owner shall have the

right to settle or to pay any termination settlement proposal arising out of those terminations, or with approval or ratification to the extent required by Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the approval or ratification of which will be final for purposes of this Article;

4. As directed by Owner, transfer title and deliver to Owner:
    - a. The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and
    - b. The completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to Owner;
  5. Complete performance of the Work not terminated;
  6. Take any action that may be necessary, or that Owner may direct, for the protection and preservation of the property related to this Contract that is in the possession of Contractor and in which Owner has or may acquire an interest;
  7. Use its best efforts to sell, as directed or authorized by Owner, any property of the types referred to in paragraph B4 above; provided, however, that Contractor is not required to extend credit to any purchaser and may acquire the property under the conditions prescribed by, and at prices approved by, Owner. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by Owner under the Contract, credited to the price or cost of the Work, or paid in any other manner directed by Owner.
- C. After termination, Contractor shall submit a final termination settlement proposal to Owner in the form and with the certification prescribed by Owner. Contractor shall submit the proposal promptly, but no later than one year from the effective date of termination, unless extended in writing by Owner upon written request by Contractor within this one-year period. However, if Owner determines that the facts justify it, a termination settlement proposal may be received and acted on after one year or any extension.
- D. Contractor and Owner may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. The Contract shall be amended, and Contractor paid the agreed amount. Paragraph E below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- E. If Contractor and Owner fail to agree on the whole amount to be paid Contractor because of the termination of work, Owner shall pay Contractor the amounts determined as follows, but without duplication of any amounts agreed upon under Paragraph D above:
1. For Work performed before the effective date of termination, the total (without duplication of any items) of:
    - a. The cost of this Work;
    - b. The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract if not included in subdivision (a) above; and

- c. A markup, including overhead and profit, on (a) above as is determined for pricing changes.
  2. The reasonable costs of settlement of the work terminated, including:
    - a. Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
    - b. The termination and settlement of subcontracts (excluding the amounts of such settlements); and
    - c. Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- F. Except for normal spoilage, and except to the extent that Owner expressly assumed the risk of loss, Owner shall exclude from the amounts payable to Contractor under Paragraph E above, the fair value, as determined by Owner, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to Owner or to a buyer.
- G. In arriving at the amount due Contractor under this Article, there shall be deducted:
  1. All unliquidated advances or other payments to Contractor under the terminated portion of the Job Order;
  2. Any claim which Owner has against Contractor under the Contract; and
  3. The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by Contractor or sold under the provisions of this Article and not recovered by or credited to Owner.
- H. If the termination is partial, Contractor may file a proposal with Owner for an equitable adjustment of the price(s) of the continued portion of the Job Order. Any proposal by Contractor for an equitable adjustment under this Article shall be requested within ninety (90) calendar days from the effective date of termination unless extended in writing by Owner. Owner may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by Contractor of the terminated portion of the Job Order, if Owner believes the total of these payments will not exceed the amount to which Contractor will be entitled.
- I. If the total payments exceed the amount finally determined to be due, Contractor shall repay the excess to Owner upon demand.
- J. Unless otherwise provided in this Contract or by statute, Contractor shall maintain all records and documents relating to the terminated portion of this Contract for three (3) years after final settlement. This includes all books and other evidence bearing on Contractor's costs and expenses under this Contract. Contractor shall make these records and documents available to Owner, at Contractor's office, at all reasonable times, without any direct charge. If approved by Owner, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

- K. Contractor shall have the right of appeal, under the Disputes Article, from any determination made by Owner under Paragraph C, E, or I, except that if Contractor failed to submit the termination settlement proposal within the time provided in Paragraph E or I, and failed to request a time extension, there is no right of appeal. If Owner has made a determination of the amount due under Paragraph C, E, or I, Owner shall pay Contractor the amount determined by Owner if there is no right of appeal or if no timely appeal has been taken, or the amount finally determined on an appeal.

## ARTICLE 27

### DEFAULT

- A. If Contractor refuses or fails to prosecute the Work, or any separable part, with the diligence that will ensure its completion within the time specified in the Job Order including any extension, or fails to complete the Work within this time, after thirty (30) days Owner may, by written notice to Contractor, terminate the right to proceed with the Work (or separable part of the Work) that has been delayed. In this event, Owner may take over the Work and complete it by contract or otherwise and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the Work.
- B. Contractor's right to proceed shall not be terminated under this Article, if:
1. The delay in completing the Work arises from unforeseeable causes beyond the control and without the fault or negligence of Contractor. Examples of such causes include:
    - a. acts of God or of the public enemy,
    - b. acts of Owner in its contractual capacity,
    - c. acts of another contractor in the performance of a contract with Owner,
    - d. fires,
    - e. floods,
    - f. epidemics,
    - g. quarantine restrictions,
    - h. strikes,
    - i. freight embargoes,
    - j. unusually severe weather (The basis used to define normal weather will be data showing high and low temperatures, precipitation, and number of days of severe weather in the city closest to the job area for the previous ten (10) years, as compiled by the United States Department of Commerce National Weather Service.), or
    - k. delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both Contractor and the subcontractors or suppliers; and

2. Contractor, within 30 calendar days from the beginning of any such delay (unless extended by Owner), notifies Owner in writing of the causes of delay. The Owner shall ascertain the facts and the extent of delay. If, in the judgment of Owner, the findings of fact warrant such action, the time for completing the Work shall be extended. The findings of Owner shall be final and conclusive on the parties, but subject to appeal under the Disputes Article.
- C. If, after termination of Contractor's right to proceed, it is determined that Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of Owner.
- D. The rights and remedies of Owner in this Article are in addition to any other rights and remedies provided by law or under this Contract.

## ARTICLE 28

### SAFETY

- A. Contractor shall be responsible for compliance with all safety rules and regulations of the Federal Occupational Safety and Health Act of 1970, all applicable State and local laws, ordinances, and regulations during the performance of the Work. Contractor shall indemnify Owner for fines, penalties, and corrective measures that result from the acts of commission or omission of Contractor, its subcontractors, if any, agents, employees, and assigns and their failure to comply with such safety rules and regulations.
- B. Contractor shall furnish and enforce the use of individual protective equipment as needed to complete the Work, including hard hats, rain gear, protective foot wear, protective clothing and gloves, eye protection, ear protection, respirators, safety belts, safety harnesses, safety lifelines and lanyards, and high visibility reflective safety vests.
- C. Contractor shall provide his employees safety training to include special training prior to working with hazardous materials or operations.
- D. Contractor shall provide warning signs, barricades and verbal warnings as required.
- E. Contractor shall inform its employees of emergency procedures to be adhered to in case of a fire, medical emergency, or any other life-threatening catastrophes.
- F. Contractor shall promptly notify Owner of any accident involving personnel or damage to material and equipment. Copies of the "First Report of Injury (E-1 form)" and accident investigation reports of accidents as required, shall be provided to Owner.
- G. Contractor shall maintain a set of OSHA articles at the Jobsite as they apply to the work being performed. Copies shall be provided to Owner when requested.
- H. Contractor shall submit to Owner a copy of their firm's safety policies and program procedures, which establish the safety rules and regulations as they are to be applied to performance of the Work. These documents shall be submitted by Contractor within fourteen (14) calendar days after issuance of the initial Job Order.

- I. Contractor shall assign, during performance of the work, a designated safety representative to develop and monitor the project safety program. The name, company address, and telephone number of the assigned individual shall be submitted to Owner by Contractor along with their safety policies and program procedures.
- J. Contractor shall provide and maintain on the Jobsite, at all times, a completely stocked first aid kit, which contains all standard emergency medical supplies.
- K. Contractor shall make available for its employees and those of its subcontractors, while they are performing work on the Jobsite, emergency medical treatment either at the Jobsite or at a nearby medical facility.
- L. Owner reserves the right to approve prior to commencing work and monitor Contractor's safety policies and program procedures as applied during performance of the Work. Failure to comply with safety policies and program procedures, once approved by Owner, shall be just cause for the complete termination of the Job Order in accordance with Article 27 entitled Default.

#### **ARTICLE 29**

##### USE AND POSSESSION PRIOR TO COMPLETION

- A. Owner shall have the right to take possession of or use any completed or partially completed part of the Work. Before taking possession of or using any work, Owner shall furnish Contractor a list of items of work remaining to be performed or corrected on those portions of the Work that Owner intends to take possession of or use. However, failure of Owner to list any item of work shall not relieve Contractor of responsibility for complying with the terms of this Contract. Owner possession or use shall not be deemed an acceptance of any work under this Contract.
- B. While Owner has such possession or use, Contractor shall be relieved of the responsibility for the loss of or damage to the Work resulting from Owner's possession or use, notwithstanding the terms of the Article in this Contract entitled "Permits and Responsibilities." If prior possession or use by Owner delays the progress of the Work or causes additional expense to Contractor, an equitable adjustment shall be made in the Job Order price or the time of completion, and the Job Order shall be modified in writing accordingly.

#### **ARTICLE 30**

##### OTHER CONTRACTS

Owner may undertake or award other contracts for additional work at or near the site of work under this Contract. Contractor shall fully cooperate with the other contractors and with Owner's employees and shall carefully adapt scheduling and performing the work under this Contract to accommodate the additional work, heeding any direction that may be provided by Owner. Contractor shall not commit or permit any act that will interfere with the performance of work by any other contractor or by Owner's employees.

**ARTICLE 31**

**DISSEMINATION OF CONTRACT INFORMATION**

Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to performance of the Contract, without prior consent of Owner.

**ARTICLE 32**

**PERFORMANCE AND PAYMENT BONDS**

For all Job Orders over the bid threshold or required by Owner, Contractor shall furnish Performance and Payment Bonds, each in an amount equal to one hundred percent (100%) of the Work. Bonds will be submitted on a per job basis. The Performance and Payment Bonds must be submitted to Owner within ten (10) calendar days after award of the Contract. A Notice to Proceed will not be issued until properly executed bonds are received and accepted by Owner.

**ARTICLE 33**

**INSURANCE**

A. Contractor shall purchase and maintain in effect during the entire period of this contract, including any maintenance period thereof, insurance of the types and with minimum limits of liability as stated below. Such insurance shall protect Contractor from claims, which may arise out of or result from Contractor's operations whether such operations are performed by Contractor or by any subcontractor or by anyone for whose acts any of them may be liable.

1. **WORKERS' COMPENSATION INSURANCE** providing Statutory Benefits in accordance with the laws of the State of Arizona or any Federal statutes as may be applicable to the work being performed under this contract.

**EMPLOYER'S LIABILITY INSURANCE** with limits of liability not less than:

- \$1,000,000      Each Accident
- \$1,000,000      Each Employee for Disease
- \$1,000,000      Policy Limit for Disease

2. **COMMERCIAL GENERAL LIABILITY INSURANCE** including Products/Completed Operations and Contractual Liability with limits of liability not less than:

- \$2,000,000      General Aggregate
- \$2,000,000      Products/Completed Operations Aggregate
- \$2,000,000      Each Occurrence

- 3. AUTOMOBILE LIABILITY INSURANCE covering all owned, hired and non-owned motor vehicles used in connection with the work being performed under the contract with limits of liability not less than:
 

\$1,000,000	Each Person for Bodily Injury
\$1,000,000	Each Accident for Bodily Injury
\$1,000,000	Each Occurrence for Property Damage
  
- B. The policies providing Commercial General Liability and Automobile Liability insurance as required in Paragraphs A.2 and A.3 shall be endorsed to name Owner as Additional Insured as respects Contractor's operations in performance of this contract. Such insurance as is provided herein shall be primary and non-contributing with any other valid and collectible insurance available to Owner.
  
- C. All policies providing Contractor's insurance as required in Paragraphs A.1, A.2, and A.3 above shall be endorsed to provide the following:
  - 1. Thirty-days written notice of cancellation or non-renewal to Owner at the address designated elsewhere in the contract for Notices.
  - 2. Waiver of subrogation in favor of Owner.
  
- D. The limits of liability as required above may be provided by a single policy of insurance or by a combination of primary, excess or umbrella policies. But in no event shall the total limits of liability available for any one occurrence or accident be less than the amount required above.
  
- E. Proof of compliance with these insurance requirements shall be furnished Owner in the form of an original certificate of insurance signed by an authorized representative or agent of the insurance company (ies) within ten (10) days of notice of award of Contract. Renewal or replacement certificates shall be furnished Owner not less than twenty-one (21) days prior to the expiration or termination date of the applicable policy (ies).
  
- F. Contractor shall require any and all subcontractors performing work under this contract to carry insurance of the types and with limits of liability, as Contractor shall deem appropriate and adequate for the work being performed. Contractor shall obtain and make available for inspection by Owner upon request current certificates of insurance evidencing insurance coverages carried by such subcontractors.

**ARTICLE 34**

INDEMNIFICATION

To the extent permitted by A.R.S. § 41-621 and § 35-154, the District shall be indemnified and held harmless by the Contractor for its vicarious liability as a result of entering into this contract. Each party to this contract is responsible for its own negligence.

**ARTICLE 35****CONTRACT ORDER OF PRECEDENCE**

In the event of an inconsistency between provisions of this Contract, the inconsistency shall be resolved by giving precedence in the following order:

1. Contract Modifications, if any;
2. The Contract Articles including Attachments;
3. Job Orders;
4. Drawings; and
5. Specifications.

**ARTICLE 36****NOTICES**

All notices to either party by the other shall be delivered personally or sent by U. S. registered or certified mail, postage prepaid, to the addresses set forth to such other addresses as the parties may hereafter designate by written notice. And shall be deemed given on the date so delivered or so deposited in the mail, unless otherwise provided herein.

**ARTICLE 37****SEVERABILITY**

If any provision of this Contract, or the application thereof to any person or circumstances is rendered or declared illegal for any reason or shall be invalid or unenforceable, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby but shall be enforced to the greatest extent permitted by applicable law. The parties agree to negotiate in good faith for a proper amendment to this Contract in the event any provision hereof is declared illegal, invalid, or unenforceable.

**ARTICLE 38****WAIVERS**

- A. Neither Owner's review, approval or acceptance of, nor payment for, the Work required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of the Contract, and Contractor shall be and remain liable to Owner in accordance with applicable law and the terms of this Contract for all damages to Owner caused by Contractor's negligent act, error or omission in the performance of any of the Services furnished under this Contract.
- B. The waiver by Owner of any breach of any term, covenant, condition, or agreement herein contained shall not be deemed to be a waiver of any subsequent breach of the same, or of a breach of any other term, covenant, condition, or agreement herein contained.

**ARTICLE 39****MERGER**

This Contract sets forth the entire agreement between the parties with respect to the subject matter thereof, and supersedes and replaces all proposals, negotiations, representations, and implied obligations. The obligations, liabilities and remedies set forth herein are exclusive and shall operate as limitations on any action brought in connection with the Services, including an action in tort.

**ARTICLE 40****NON-AVAILABILITY OF FUNDS**

Every payment obligation of the District under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the District at the end of the period for which funds are available. No liability shall accrue to the District in the event this provision is exercised, and the District shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

**ARTICLE 41****AUDIT OF RECORDS**

Pursuant to A.R.S §§35-214-AND 35-215, the contractor shall retain and shall contractually require each subcontractor to retain all data, books, and other records ("records") relating to this contract for a period of five years after completion of the contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce the original of any or all such records.

**ARTICLE 42****CANCELLATION FOR CONFLICT OF INTEREST**

Pursuant to A.R.S. §38-511, the State, its political subdivisions or any department or agency of either may, within three years after its execution, cancel any contract, without penalty or further obligation, made by the state, its political subdivisions, or any of the departments or agencies of either if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the state, its political subdivisions or any of the departments or agencies of either is, at any time while the contract or extension of the contract is in effect, an employee or agent of any other party to the contract in any capacity or consultant to any other party of the contract with respect to the subject matter of the contract. A cancellation made pursuant to this provision shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time.

**ARTICLE 43****COMPLIANCE WITH FEDERAL AND STATE REQUIREMENTS**

Contractor shall comply with all applicable federal, state, and local laws, statutes, ordinances, standards, orders, rules, and regulations, including, as applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations.

Contractor shall comply, when working on any federally assisted projects with the following:

1. The Contract Work hours and Safety Standards Act, (40 U.S.C. §3701 – 3708; 29 CFR Part 5)
2. Davis-Bacon Act, (40 U.S.C. §276a / 29 CFR Part 5)
3. Copland Anti-Kickback Act, (18 U.S.C. §874 / 29 CFR Part 5)
4. Equal Opportunity Employment requirements (Executive Order 11246 and 11375 / 41CFR Chapter 60)
5. McNamara-O'Hara Service Contract Act (41 U.S.C. 351),
6. Section 306 of the Clean Air Act (42 U.S.C. § 1857h,
7. Section 508 of the Clean Water Act (33 U.S.C. § 1368),
8. Executive Order 11738, Environmental Protection Agency regulations (40 CFR Part 15).
9. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200)
10. Education Department General Administrative Regulations, 2 C.F.R. Parts 200 and 3474, and 34 C.F.R. Parts 75-77 and 81 (“EDGAR”),
11. 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 (Pub. L. 94-163, 89 Stat. 871)
12. All applicable requirements and regulations, including those related to reporting, patent rights, copyrights, data rights and those mandated by federal agencies making awards of federal funds to 1GPA members.

**ARTICLE 44**

**THIRD PARTY ANTITRUST VIOLATIONS**

The Contractor assigns to the State any claim for overcharges, resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to the Contractor toward fulfillment of this contract.

**ARTICLE 45**

**BUY AMERICAN**

Contractor agrees to comply with the Buy American Provision as it applies to construction projects that use funds appropriated by the American Recovery Reinvestment.

**ARTICLE 46**

**FEDERAL GRANT MONIES**

When a 1GPA Member seeks to procure goods and services using funds under a federal grant or contract, specific federal laws, regulations, and requirements may apply in addition to those under state law. This includes, the procurement standards of the **Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, 2 C.F.R. 200 (EDGAR)**.

**ARTICLE 47**

**COMPLIANCE WITH WORKFORCE REQUIREMENTS**

Pursuant to ARS § 41-4401, Contractor and subcontractor(s) warrant their compliance with all federal and state immigration laws and regulations that relate to their employees, and compliance with ARS § 23-214 subsection A, which states, "...every employer, after hiring and employee, shall verify the employment eligibility of the employee through the E-Verify program."

**ARTICLE 48**

**TIME IS OF ESSENCE**

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement entered into as of the day and year first written above.

**1 Government Procurement Alliance**

Ken Carter  
Executive Director

By:  \_\_\_\_\_

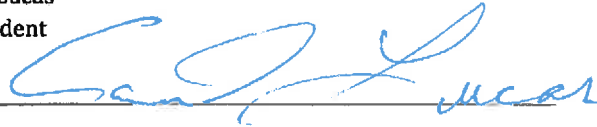
**Paradise Valley Unified School District No. 69**

Claudia Leon  
Director of Purchasing

By:  \_\_\_\_\_

**Contractor: Robert E. Porter**

Earl Lucas  
President

By:  \_\_\_\_\_

**ATTACHMENT "A"****MASTER AGREEMENT PRICING COEFFICIENTS**

- 1.0 Contractor shall furnish all supervision, labor, materials, tools, supplies, equipment, transportation, insurance, taxes, bonds, overhead and profit to perform all operations necessary and required in accordance with the terms and conditions of the Contract, and as further specified in individual Job orders.
- 2.0 Coefficients – See attached letter dated April 20, 2018, sent April 30, 2018.
- 3.0 Pricing the Work.
  - 3.1 The actual pricing for work performed under the Contract will be based on the mutually agreed quantities applied to the R.S. Means Facilities Construction Cost Data, latest edition, total weighted average City Cost Index, as adjusted by application of the appropriate coefficient as set forth above.
  - 3.2 The currently applicable (current version for the locale of the work) R.S. Means Facilities Construction Cost Data, herein called the Unit Price Book contains pricing information for the work to be accomplished in the unit of measure specified. The Unit Price Book will be updated effective upon receipt by Contractor of any periodic updating issued by the publisher. Previously issued Job Orders and changes will not be retroactively repriced although any changes priced after receipt of an update will be priced by the updated version of the Unit Price Book.
- 4.0 Hours of Work.
  - 4.1 Standard hours of work will be from 7:00 AM to 4:00 PM, Monday through Friday, unless alternate standard hours are agreed to and adopted. Contractor may work on weekends and holidays as approved by District. No adjustment in fees shall apply to different work hours. Prices shall be based on total job cost.

**ATTACHMENT "B"****MASTER AGREEMENT OPEN BOOK PRICING**

- 1.0 Contractor shall furnish all supervision, labor, materials, tools, supplies, equipment, transportation, insurance, taxes, bonds, overhead and profit to perform all operations necessary and required in accordance with the terms and conditions of the Contract, and as further specified in individual Job orders.
- 2.0 Open Book Pricing – See attached letter dated April 20, 2018, sent April 30, 2018.
  - 2.1 Open book pricing shall consist of direct job cost, project-specific (general conditions), overhead, and a fixed (profit) multiplier. Bond cost and transaction privilege tax (sales tax) will be added to open book pricing for total job order cost.
  - 2.2 Direct job cost shall be based upon firm price quotes from contractors in the contract's approved subcontractor list. To the extent practicable, contractor shall obtain firm price quotes from three subcontractors for each discipline applicable to the project. If three quotes cannot reasonably be obtained for a discipline, contractor shall make known the reasons contractor was unable to obtain additional price quotes.
  - 2.3 Contractor shall select subcontractors based on qualifications alone or on a combination of qualifications and price and shall not select subcontractors based on price alone. A qualification and price selection may be a one-step selection based on a combination of qualifications and price or a two-step selection. In a two-step selection, the first step shall be based on qualifications alone and the second step may be based on a combination of qualifications and price or on price alone.
  - 2.4 If the District objects to a selected subcontractor, District shall make the objection and the reasons for the objection known to the contractor. Contractor shall then present an acceptable subcontractor for the applicable discipline. District shall not unreasonably object to or withhold approval of a subcontractor.
  - 2.5 General conditions are requirements directly related to the work, but not included in direct construction cost. General conditions shall include, but are not limited to, project management, estimating, quality control, administrative labor, field office equipment, materials and supplies, vehicles, cell phones, dumpsters, travel and subsistence, temporary field office rental and utilities, submittals and operations and maintenance manuals, small tools, face and clothing protection, project scheduling, compliance with environmental laws, and marketing.
  - 2.6 Profit shall be assessed as a fixed multiplier applied to direct project cost and general conditions cost.
  - 2.7 To document contract compliance, each job order using open book pricing shall include a completed price summary and general conditions costs.

**ATTACHMENT "C"****SCOPE OF SERVICES****1.0 GENERAL INFORMATION**

This is an indefinite quantity type contract for the performance of a broad range of renovation/small construction, and or repair or maintenance work on an as-needed basis as may be required by Owner. The specific work requirements will be identified in Job Orders to be issued by Owner.

**2.0 WORK AUTHORIZATION**

Any work required under this Contract shall be authorized by issuance of formal, written Job Orders, as follows:

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

2.2 Upon the receipt of this notification, Contractor shall respond within two (2) working days, or as otherwise agreed, by:

2.2.1 Visiting the proposed site in the company of Owner, or;

2.2.2 Establishing contact with Owner to further define the scope of the requirement.

2.3 After mutual agreement on the scope of the individual requirement, Contractor shall then prepare a proposal for accomplishment of the task.

2.4 The Unit Price Book and Open Book Pricing shall serve as the basis for establishing the value of the work to perform. Owner and Contractor shall agree to the pricing method prior to start of project.

2.5 Contractor's proposal shall be submitted within ten (10) working days unless otherwise agreed.

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

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

**3.0 SCHEDULING OF WORK**

3.1 For each Job Order, Owner will issue a Notice to Proceed. The first day of performance under a Job Order shall be the effective date specified in the Notice to Proceed. Any preliminary work started or material ordered or purchased before receipt of the Notice to Proceed shall be at the risk and expense of Contractor. Contractor shall diligently prosecute the Work to completion within the time set forth in the Job Order. The period of performance includes allowance for mobilization, holidays, weekend days, normal inclement weather, and cleanup, therefore, claims for delay based on these elements will not be allowed. When Contractor considers the Work complete and ready for its intended use, Contractor shall request Owner to

inspect the Work to determine the status of completion. When Owner determines the Work to be substantially Complete, Owner will issue a Certificate of Substantial Completion with a list of items to be completed or corrected prior to final payment for the Job Order. Contractor shall proceed promptly to complete and correct items on the list.

3.2 Job placement of materials and equipment shall be made with a minimum of interference to Owner operations and personnel.

3.3 Furniture and portable office equipment in the immediate work area will be moved by Contractor and replaced to its original location. If the furniture and portable office equipment cannot be replaced to its original location, Owner will designate new locations. If furniture and portable office equipment (or other items) must be moved and/or stored outside the immediate area, Owner will compensate Contractor for any such transportation and storage costs incurred.

3.4 Contractor shall take all precautions to ensure that no damage will result from its operations to private or public property. All damages shall be repaired or replaced by Contractor at no cost to Owner.

3.5 Contractor shall be responsible for providing all necessary traffic control, such as street blockages, traffic cones, flagmen, etc., as required for each Job Order. Proposed traffic control methods shall be submitted to Owner for final approval.

#### 4.0 QUALITY ASSURANCE/QUALITY CONTROL PROGRAM

If requested by Owner, Contractor shall submit, for Owner approval, a Quality Assurance/Quality Control Plan within fifteen (15) calendar days after issuance of the initial Job Order. This plan should address all aspects of quality control including responsibility for surveillance of work, documentation, trend analysis, corrective action and interface with Owner's representatives.

#### 5.0 DESIGN

Contractor's duties under the Contract include the preparation of shop drawings or sketches necessary to permit orderly construction of Owner's design plans. Contractor agrees to provide detailed design drawings and plans if requested by Owner. Compensation for detailed design, if provided, will be negotiated by the parties hereto.

#### 6.0 OWNER-FURNISHED UTILITIES

Owner shall provide free of charge to Contractor utilities and toilet facilities that are existing and available at each site for work performed under the Contract. If utilities and/or toilet facilities are not existing and available, an equitable price will be negotiated and included in the Job Order to compensate Contractor for providing such items.

##### 6.1 Water:

Owner shall furnish to Contractor from existing Owner facilities and without cost to Contractor, a supply of water necessary for the performance of work under this contract. Owner will in no case furnish or install any required supply connections and piping for the purpose of implementing the availability of the water supply. It is the responsibility of Contractor to determine the extent to which existing Owner water supply source is adequate for the needs of the Contract.

April 20, 2018

Mr. Ken Carter  
Executive Director  
1GPA  
1910 W. Washington St.  
Phoenix, Arizona 85009

Ms. Claudia Leon  
Director of Purchasing  
Paradise Valley Unified School District



Construction Co., Inc.

1720 W. Lincoln St.  
Phoenix, AZ 85007  
602-253-4911  
FAX: 602-340-9533

Re: RFQ 18-15PV – JOC – General Contractors  
**Revised April 30, 2018**

Per your request we furnish the following information:

**Unit Price Book:**

Robert Porter Construction proposes to utilize the RS Means Facilities Construction Cost Data for 2018 with the following coefficient adjustments.

Normal business hours	.89
After normal hours	.96
Davis Bacon	Prevailing Davis Bacon wages or above coefficients pending what is applicable
Location Adjustment Multipliers	None
Mark up for NPP items	5%

**Open Book:**

Overhead and Profit percentages:

Project Size	Overhead	Insurance	Profit	Bond
\$1.00 - \$50,000	8%	1.045%	6%	1.35%
\$50,001 - \$100,000	8%	1.045%	4%	1.35%
\$100,001 - \$250,000	6%	1.045%	4%	1.35%
\$250,001 - \$500,000	6%	1.045%	4%	1.35%
\$500,001 - \$1,000,000	6%	1.045%	3%	1.26%
Over \$1,000,001	5%	1.045%	2%	1.21%

Historically we have found that some of the smaller projects require more overhead due to the time it takes to visit the site, develop the work scope and get the required pricing.

**Hourly rates:**

	<b>Straight</b>	<b>Overtime</b>	<b>Double time</b>
Principal	\$105.00	\$105.00	\$105.00
Project Manager	\$ 90.00	\$ 90.00	\$ 90.00
Superintendent	\$ 58.00	\$ 78.00	\$ 98.00
Assistant Superintendent	\$ 52.00	\$ 70.00	\$ 90.00
Foreman	\$ 42.00	\$ 58.00	\$ 72.00
Carpenters	\$ 37.00	\$ 49.00	\$ 61.00
Laborers	\$ 32.00	\$ 42.00	\$ 52.00

Normal work week is 40 hours. Over 40 in a standard week will be overtime. Holiday's are double time.

Reimbursable Expenses would include project related travel, meals and lodging

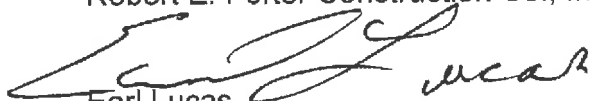
**Job Order Contracting Master Agreement:**

We have reviewed the sample contract and would be in agreement with its terms.

Please contact me with any questions you may have.

Sincerely,

Robert E. Porter Construction Co., Inc.

  
Earl Lucas  
President

All taps, connections, and accessory equipment required in making the water supply source available will be accomplished by and at the expense of Contractor. All work in connection therewith shall be coordinated, scheduled, and performed as directed and approved by Owner. Said taps, connections, and accessory equipment shall be maintained by Contractor in a workmanlike manner in accordance with the rules and regulations of the local authority.

Upon completion of the Contract the removal of all taps, connections and accessories will be accomplished by and at the expense of Contractor so as to leave the water supply source and facility in its original condition. Such removal shall also be subject to the approval of Owner.

6.2 Electricity:

Owner shall furnish to Contractor from existing Owner facilities and without cost to Contractor, electricity necessary for the performance of work under this Contract. It is the responsibility of Contractor to determine the extent to which existing Owner electrical facilities are adequate for the needs of the Contract.

All taps, connections, and necessary equipment required in making the electrical power available will be accomplished by and at the expense of Contractor. All work in connection therewith shall be coordinated, scheduled and performed as directed and approved by Owner. Said taps, connections, and accessory equipment shall be maintained by Contractor in a workmanlike manner in accordance with the rules and regulations of the local authority.

Upon completion of the Contract the removal of all taps, connections and accessories will be accomplished by and at the expense of Contractor so as to leave the electrical power source and facility in its original condition. Such removal shall also be subject to the approval of Owner.

7.0 WORKS BY OWNER

Owner reserves the right to undertake or award contracts for the performance of the same or similar type work contemplated herein, and to do so will not breach or otherwise violate the Contract.