CITY OF SAN LUIS

REQUEST FOR BID (RFB)

FOR

JOE ORDUÑO PARK - TENNIS COURTS RENOVATION PROJECT

2027-RFB-00000006

SEALED REQUEST FOR BID DEADLINE

Monday, October 26, 2026, 11:00 am

CITY OF SAN LUIS
1090 EAST UNION STREET | P.O. BOX 7740 | SAN LUIS, AZ 85349

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CITY OF SAN LUIS
undefined

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A - Contractor's Affidavit Regarding Settlement of Claims

B - Tennis Courts Renovation Exhibit

C - Tennis Court Renovation - Specifications - Rev draft

D - Tennis Courts - Addendum No.1

ADVERTISEMENT FOR BIDS

NOTICE IS HEREBY GIVEN THAT sealed proposals or bids will be received through the Procurement Portal at https://procurement.opengov.com/portal/sanluisaz, until 11:00 am (M.S.T.) on Monday, October 26, 2026, for furnishing all labor, materials, equipment, tools and performing all services required for the construction of the **Joe Orduño Park - Tennis Courts Renovation Project** and work incidental thereto.

The work generally consists of removing the existing deteriorated tennis court coating; repairing cracks, localized concrete damage, and minor slab elevation differences; removing and replacing designated areas of existing concrete slab; cleaning and repairing existing joints and dowels; installing a complete 100% acrylic tennis court surfacing system; applying blue and green court colors; installing white tennis court lines to match the existing courts; installing one APS logo on each court; rehabilitating the existing chain-link fencing, fence posts, and entrance gates; removing and reinstalling the existing north-side cloth/shade fabric; removing and replacing the existing tennis net posts, hardware, and tennis nets; and constructing a new 4-foot-wide concrete sidewalk connection from the existing sidewalk to the existing tennis court gates.

The project shall be complete and in place within no later than December 30, 2026 from the date of Notice to Proceed.

Plans, specifications and contract documents may be obtained through the Procurement Portal at https://procurement.opengov.com/portal/sanluisaz.

A Mandatory Pre-Bid Conference will be held at Parks and Recreation Administration, 744 Cesar Chavez Blvd. San Luis, AZ 85349 on Wednesday, October 14, 2026, at 9:00 am (M.S.T.) to discuss specifications and any questions Bidders may have. The pre-bid conference may also be attended virtually via the following link**:** Pre-bid Meeting - Joe Orduño Park - Tennis Courts Renovation Project. Meeting ID: 255 041 181 553 783 Passcode: qK7rJ6DH

All bids must be submitted through the Procurement Portal and be accompanied by a certified or cashier's check or bid bond in the amount of ten (10%) percent of the total amount of the bid.

Bids will be publicly opened at the City of San Luis City Hall, Pedro Julian Conference Room, 1090 E. Union St. San Luis, AZ 85349, on Tuesday, October 26, 2026, at 11:00 A.M. (M.S.T) and read aloud. Bid opening can also be viewed virtually via the following link: Bid Opening - Joe Orduño - Tennis Courts Renovation Project. Meeting ID: 279 422 599 442 518 Passcode: Yv25L7Av

The City of San Luis reserves the right to cancel this procurement, and/or to reject any or all bids, and/or to waive any informality in any bid. No bidder may withdraw their bid for a period of thirty (30) days after the date set for the bid opening thereof:

City of San Luis, Arizona

Jenny Torres, City Manager

INSTRUCTIONS TO BIDDERS

2.1. DEFINITIONS

1.1 All definitions set forth in the General Conditions are applicable to these Instructions to Bidders.

1.2 Bidding Documents include the Advertisement for Bids, Instructions to Bidders, Bid Form, Bid Bond Form, and the proposed Contract Documents, including any addenda issued prior to the receipt of bids.

1.3 Addenda are written or graphic instructions issued prior to the execution of the contract which modify or interpret the Bidding Documents, including Drawings, conditions of the Contract and Specifications, by additions, deletions, clarifications or corrections. Addenda will become part of the Contract Documents when the Construction Contract is executed.

1.4 The term "Owner" or "City" shall be interpreted to mean City of San Luis, Arizona.

2.2. BIDDER'S REPRESENTATION

2.1 Before submitting a bid, bidders shall carefully examine the Drawings, Bidding Requirements, Bid Document Contract Forms, General Conditions, Supplementary General conditions, Specifications, and Related Documents, visit the site of the work, and fully inform themselves as to all existing conditions and limitations and shall include in the bid a sum sufficient to cover the cost of all items included in the Contract. The Bidder, if awarded the Contract, shall not be allowed any extra compensation by reason of any matter or thing concerning the Project, which said Bidder might have fully informed himself prior to the building.

2.3. BIDDING DOCUMENTS

3.1 Bidders may obtain copies of the bidding Documents through the Procurement Portal at https://procurement.opengov.com/portal/sanluisaz.

2.4. INTERPRETATION OF BIDDING DOCUMENTS

4.1 Should a Bidder find discrepancies, inconsistencies or obscurities in, or omissions from the bidding documents, or should he be in doubt as to their meaning, Bidder shall submit their questions through the Procurement Portal. A written Addendum, clarifying the intent of the documents shall be issued, if needed. Addenda may not be issued less than 48 hours before the time specified for receipt of bids. Questions received less than four calendar days prior to the assigned bid date cannot be answered in writing. Should any discrepancies not be clarified by Addendum, the Contractor shall use the most expensive condition shown or specified in bid.

4.2 Prior to the receipt of bids, each person or firm recorded by the Office of the City Clerk as having received the bidding documents will be notified of any addendum. Addenda will also be available for Inspection wherever the bidding documents are kept available for that purpose.

4.3 All Addenda issued by the City during the time of bidding are to be included in the bid, and shall become a part of the bidding documents (bidder’s responsibility to check for addendums). Acknowledge receipt of Addenda through the Procurement Portal.

4.4 All questions must be submitted through the Procurement Portal no later than 6:00 pm on Friday, October 16, 2026.

2.5. SUBSTITUTIONS

5.1 When a specific manufacturer, trade name or material is specified, or indicated, it is to establish a standard of quality and shall not be construed as limiting competition. However, components of electrical systems shall be standard items and/or interchangeable with specified manufacturer to facilitate repairs and upkeep by the Owner.

5.2 It shall be the Contractor's responsibility to provide materials of equal standards to those specified. The City shall be the sole judge as to whether or not the products meet the established standards. The Contractor MUST request written approval of equal materials from the City prior to, or after the bid date.

2.6. BIDDING PROCEDURES

6.1 A bid is invalid if it has not been submitted through the Procurement Portal at https://procurement.opengov.com/portal/sanluisaz prior to the time and date for receipt of bids indicated in the Invitation to Submit Proposals, or prior to any extension thereof issued to the bidders.

6.2 Bid Security:

1. Each bidder is required to submit, with his bid, a certified or cashier's check upon a solvent bank, or a surety bond for ten percent (10%) of the amount of the Base Bid made payable to the Owner.
    a. If more than one proposal is submitted, only one Bid Security is required for the largest base Bid amount, however, this bond shall apply to any and/or all bids submitted.
2. The Bid Security shall be given as a guarantee that the bidder will enter into a contract to perform the work, if awarded to him, and provide a satisfactory Performance Bond and Payment Bond as required under the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes. Bid Security shall be declared forfeited as liquidated damages if he refuses to enter into said contract upon request to do so by the Owner.
3. Bid Security will be returned to the unsuccessful bidders, and to the successful bidder upon the execution of a satisfactory Performance Bond and Payment Bond and Construction Contract.
4. Bidders may withdraw their bid at any time prior to bid opening, but may not resubmit them. No bid may be modified or withdrawn after the bid opening for a period of 30 days except where the award of the contract has been delayed at least 31 days.

6.3 A Mandatory pre-bidders conference will be held at 9:00 am at the Parks and Recreation Administration, 744 Cesar Chavez Blvd. San Luis, AZ 85349on Wednesday, October 14, 2026.

2.7. SUBCONTRACTOR LIST FORM

7.1 Complete the Subcontractor List Form, listing a single company, firm, or organization name only for each branch of the work. Submit through the vendor PROPOSAL KIT.

7.2 The competency and responsibility of bidders and their proposed subcontractors will be considered in making the award.

7.4 The Contractor shall pay the cost of all permits, changes, meters, connections, fees, etc., directly to governmental agencies having jurisdiction to comply with the law of the place of the Project in order to complete the work. The bidders' attention is directed to the fact that all applicable state laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction shall apply to the Contract.

2.8. REJECTION OF BIDS

8.1 The Bidder acknowledges the right of the Owner to reject any or all bids, to waive any informality or irregularity in any bid received, or to withhold the award for any reason he determines. In addition, the Bidder recognizes the right of the Owner to reject a bid if the Bidder failed to furnish any required Bid Security or to submit the data required by the Bidding Documents, or if the bid is in any way incomplete or irregular. Bidders shall understand that the Owner will not be responsible for any errors or omissions in the preparation of the bid.

2.9. AGREEMENT

9.1 The form of Agreement which the successful Bidder will be required to execute in two (2) original counterparts. Progressed payments will be made to the Contractor by the Owner in an amount equal to 90% of that due until the final payment.

2.10. WARRANTY

10.1 The Contractor certifies by submitting his bid that he has familiarized himself with all specified products, materials, and systems which are proposed for inclusion in the required work, and that said materials, products, and systems are appropriate for the use(s) intended. He additionally certifies by submitting this bid that he shall, in fact, install said materials, products, and systems in the work properly and in rigid compliance with the terms and conditions of the Contract Documents, and shall issue his written warranty applicable to the work as required by the applicable Supplementary General Conditions. If the Bidder determines that the proposed materials, products, and/or systems are not appropriate for the use(s) intended, he shall submit his written exceptions attached to the Bid Form.

2.11. PERFORMANCE AND PAYMENT BONDS

11.1 The Contractor is hereby required to provide and pay for Performance and Payment Bonds. Bonds shall secure the faithful performance (100%) of the Contract and the payment of all obligations (100%) arising there under, in such form as the Owner may prescribe and with such sureties that he may approve. Both Bonds shall be active and held by the Owner for duration of the guaranty (warranty).

2.12. CONTRACTOR LICENSE LAW, ELIGIBILITY & PREFERENCE

12.1 The Contractor shall comply with, and require all subcontractors to comply with State of Arizona and City Contractor's License Laws. Contractor shall comply with the provisions of "an Act to Regulate the Business of Contracting", Title 32, Chapter 10, Arizona Revised Statutes with latest adopted revisions and 'Contractor's License Laws and Regulations" dated July, 1981, published by the Arizona State Registrar of Contractors, or the latest revision thereof adopted under the provision of AIRS title 32, chapter 10, Articles 2 and 3.

The prime Contractor shall have a State of Arizona Classification "A" Contractor's license to perform the work. A bid submitted by any Contractor not properly licensed at the time of bid opening shall be considered non-responsive and will be rejected.

2.13. NONDISCRIMINATION

13.1 In connection with the performance of work under this Contract, the Contractor agrees (as prescribed in A.R.S. Section 23-373) not to discriminate against any employee or applicant for employment because of race, sex, religion, color, or national origin. The aforesaid provision 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 compensations and selection for training, including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clauses. The contractor further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

2.14. COPIES OF DOCUMENTS FURNISHED

14.1 The Contractor shall obtain Construction Documents free of charge through the Procurement Portal.

2.15. INSURANCE

15.1 The contractor is required to provide and pay for insurances. He shall file, with his Performance and Payment Bonds, all required Certificates of Insurance and endorsements demonstrating that the insurance policy was amended to add City of San Luis, Arizona as an additionally insured.

15.2 The Contractor shall not commence work under this Contract until he has obtained all the insurance required under this paragraph and such insurance has been approved by the Owner, nor shall the Contractor allow any Subcontractor to commence work on his subcontract until the insurance require of the subcontractor has been so obtained and approved.

15.3 The Contractor shall procure and maintain during the life of this contract, Workmen's Compensation Insurance as required by applicable State or Territorial Law for all of his employees to be engaged in work at the site of the project under this contract, and in any such work sublet, the Contractor shall require the Subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work unless such employees are covered by the protection afforded by the Contractors Workmen's Compensation Insurance. In case any class of the

employees engaged in hazardous work on the project under this contract are not protected under the Workmen's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide adequate employer's liability insurance for the protection of such of his employees as are not otherwise protected.

15.4 The Contractor shall provide public liability insurance and show evidence specified in the Contract Documents in the City Insurance Requirements.

2.16. ADDITIONAL SERVICES

16.1 Contractor agrees to pay for additional testing services, additional Engineering services, and any similar related additional costs as designated in the Contract Documents.

2.17. SUMMARY OF THE WORK

17.1 Refer to the Overview, Summary and Scope of Work, and Summary of the Work, for description of the work.

2.18. SUBSTANTIAL COMPLETION

18.1 Substantial Completion will be accomplished **no later than December 30, 2026 from dated letter "Notice to Proceed".**

2.19. LIQUIDATED DAMAGES

19.1 The liquidated damages for this project shall be determined by the Schedule of Liquidated Damages in City of San Luis Supplemental to the MAG Uniform Standard Specifications.

2.20. EVALUATION AND AWARD

- Bid opening will take place on Monday, October 26, 2026 immediately after the close of the bidding.
- City staff will convene in the City of San Luis City Hall, Pedro Julian Conference Room, 1090 E Union St. San Luis, AZ 85349, open the proposals virtually, and read the bids into the record.
- Award will be made to the lowest qualified responsive bidder.
- Formal award of contract will be on the next available Regular City Council meeting.

2.21. PROTESTS

All responders will receive notification via e-mail regarding their status vis-a-vis the proposed contract award. Responders not selected have two days from e-mail sent date to initiate protest proceedings. To do this, a dissatisfied party must lodge a protest with Angelica Cifuentes, Procurement Coordinator, via receipted e-mail (acifuentes@sanluisaz.gov) or by certified mail (Attn: Angelica Cifuentes/City of San Luis/P.O. Box 7740/San Luis, AZ 85349). The City of San Luis will then hold a hearing within two days of the receipt of the protest and make a determination within two days of the hearing. In the absence of a successful protest, the contract will be awarded to the most responsive qualified bidder.

SCOPE OF WORK

3.1. TIMELINE

Advertisement/Release Project Date:	October 4, 2026
Advertisement/Release Project Date:	October 11, 2026
Pre-Bid Meeting (Mandatory):	October 14, 2026, 9:00am Parks and Recreation Administration, 744 Cesar Chavez Blvd. San Luis, AZ 85349
Question Submission Deadline:	October 16, 2026, 6:00pm
Question Response Deadline:	October 20, 2026, 6:00pm
Submission Deadline:	October 26, 2026, 11:00am
Bid Opening:	October 26, 2026, 11:00am
Contractor Selection Date:	October 27, 2026
Council Meeting:	November 10, 2026, 6:00pm

3.2. PROJECT NAME, LOCATION, AND OVERVIEW

PROJECT NAME:

The name of this project is **Joe Orduño Park - Tennis Courts Renovation Project**. All correspondence and documents are to reference "Joe Orduño Park - Tennis Courts Renovation Project".

PROJECT LOCATION:

The Project is located in Yuma County, Arizona. The proposed work is located within the limits of the City of San Luis, Arizona, on 965 N Park Ave San Luis, AZ 85349-Joe Orduño Park,

OVERVIEW:

The **Joe Orduño Park - Tennis Courts Renovation Project** project is being undertaken by the City of San Luis, Arizona. This bid pertains to those activities described herein under the Scope of Work.

It is especially important that bidders are aware of the following:

A. This solicitation is open to general contractors and subcontractors licensed to operate in the State of Arizona.

B. Davis-Bacon wage rates **NO VALUE** apply.

3.3. SCOPE OF WORK

Scope of Work, **Joe Orduño Park - Tennis Courts Renovation Project**.

The City of San Luis intends to renovate two existing tennis courts at Joe Orduño Park.

The work generally consists of removing the existing deteriorated tennis court coating; repairing cracks, localized concrete damage, and minor slab elevation differences; removing and replacing designated areas of existing concrete slab; cleaning and repairing existing joints and dowels; installing a complete 100% acrylic tennis court surfacing system; applying blue and green court colors; installing white tennis court lines to match the existing courts; installing one APS logo on each court; rehabilitating the existing chain-link fencing, fence posts, and entrance gates; removing and reinstalling the existing north-side cloth/shade fabric; removing and replacing the existing tennis net posts, hardware, and tennis nets; and constructing a new 4-foot-wide concrete sidewalk connection from the existing sidewalk to the existing tennis court gates.

The Contractor shall provide all labor, materials, equipment, tools, transportation, disposal, supervision, and incidentals necessary to complete the work.

PROPOSAL KIT

1. Proposal*
Project Name: Joe Orduño Park - Tennis Courts Renovation Project

In compliance with the Advertisement for Bids:

Having examined the contract documents, site of work, and being familiar with the conditions to be met, hereby submits the following Proposal for furnishing the material, equipment, labor and everything necessary for the completion of the work listed and agrees to execute the contract documents and furnish the required CONTRACT AND LABOR AND MATERIAL surety bonds and certificates of insurance for the completion of said work, at the locations and for the prices set forth on the inside pages of this form;

Understands that construction of this project shall be in accordance with all applicable Maricopa Association of Governments (MAG) Uniform Standard Specifications and Details for Public Works Construction as adopted by the City of San Luis, the City of Yuma Construction Standard Detail Drawings – 2009 edition [details], the City of San Luis Supplemental to the MAG Uniform Standard Specifications and Details for Public Works Construction and the City of Yuma Construction Standard Detail Drawings, except as otherwise required by the Plans and Special Provisions;

Understands that this proposal for construction of this project shall be submitted with a proposal guarantee of cash, certified check, cashier's check or bid surety bond for an amount not less than 10 percent of the amount bid;

Agrees that upon receipt of Notice of Award, from the City of San Luis, Arizona, Bidder will execute the contract documents within 10 (Ten) calendar days;

Understands that the work shall commence on day 1 of the Contract Time and be completed **no later than December 30, 2026** from the date of Notice to Proceed.

☐ Please confirm

*Response required

2. Bid Surety Bond*
Please download the below documents, complete, and upload.

- Bid_Surety_Bond.pdf

*Response required

3. Non-Collusion Affidavit*
Please download the below documents, complete, and upload.

- Non-Collusion_Affidavit.pdf

*Response required

4. Bidders Participation Subcontractors and Suppliers List*
Please download the below documents, complete, and upload.

- Bidders_Participation_Subco...

*Response required

5. Certificate of Insurance*
Please upload your Certificate of Insurance.

*Response required

6. BID SCHEDULE SHEETS*
Please upload your bid schedule sheets.

*Response required

BID SCHEDULE

Line Item	Description	Quantity	Unit of Measure	Unit Cost	Total
1	Please see Addendum 1. Please fill out all 3 bid schedules completely on pages 23 and 24. Upload pages to the attachments section. On this bid schedule please put the total amounts of each base bid only. Total Base Bid for Schedule A	1	Total Schedule A		
2	Total Base Bid for Schedule B	1	Total Schedule B		
3	Total Base Bid for Schedule C	1	Total Schedule C		
TOTAL					

CITY INSURANCE REQUIREMENTS

The following are the minimum required under the Contract. Greater amounts may be required by law or regulation. Any insurance proceeds in excess of the lmits and coverage required in this Contract and which is applicable to a given loss will be available to the City. These limits required by the Contract do not limit the Contractor's liability under the indemnification provisions of the Contract.

6.1. Contractor's Obligation

The Contractor shall secure and maintain, at the Contractor's expense, until the Final Completion of the Project, general liability and property insurance as shall protect the Contractor and the City from claims for bodily injury, personal injury, and property damage which may arise because of the nature of the work or from operations under this Contract. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources. Any coverage maintained by the City shall not contribute to any claims arising from the Contractor's performance of this Contract. The Contractor shall file these certificates with City of San Luis within ten (10) days of execution of this Contract and prior to engaging in any operation or activities set forth in this AGREEMENT. The foregoing insurance policies shall provide that no cancellation, major change in coverage, or expiration by the insurance company or the insured.

6.2. General Liability Coverage

Contractor shall have general liability coverage on a per occurrence, and in comprehensive form. General liability coverage shall include Products, Completed Operations, Products Liability, Explosion, Underground and Collapse Hazard, Premises, Operations, Contractual, Independent Contractors, Broad Form Property Damage and Personal Injury. General Liability coverage shall include and eliminate the exclusion for property under the care, custody, and control of the Contractor.

6.3. Coverage Amounts

Contractor shall provide general liability and excess general liability coverage in the following amounts, at a minimum:

Employer's Liability

A. Each Accident $100,000

B. Disease for Each Employee $100,000

C. Disease Policy Limit $250,000

Contractors General Liability

A. General Aggregate $2,000,000

B. Products-Completed Operations Aggregate $2,000,000

C. Each Occurrence (Bodily Injury and Property Damage) $2,000,000

D. Personal Injury and Advertising Injury $2,000,000

    1. Property Damage liability insurance will provide Explosion, Collapse, and Underground coverages.

Automobile Liability

A. Bodily Injury:

    1. Each Person $1,000,000

    2. Each Accident $1,000,000

B. Property Damage

    1. Each Accident $1,000,000

C. Combined Single Limit $1,000,000

Contractual Liability

A. Bodily Injury:

    1. Each Accident $2,000,000

    2. Annual Aggregate $2,000,000

B. Property Damage:

    1. Each Accident $2,000,000

    2. Annual Aggregate $2,000,000

3. Each Accident $2,000,000

4. Annual Aggregate $2,000,000

6.4. Additional Provisions

A. Additional Insured: Contractor shall name the **City of San Luis, Arizona (an Arizona municipal corporation) and its elected officials, officers, agents, as "Additional Insureds**" on all insurance policies, except Worker's Compensation and Errors and Omissions, and this shall be reflected on the Certificate(s) of Insurance, with corresponding endorsement relative to the additionally insured indemnification. Contractor shall name the City of San Luis as certificate holder.

B. Cancellation Notice of Material Change of Coverage: The Contractor shall keep all policies in force for the duration of the Contract and any possible extension thereof. Contractors' required insurance shall be endorsed to provide that the policies will not be canceled, reduced, discontinued, or otherwise materially altered during the period of performance without thirty (30) days prior written notice to the City of San Luis Public Workers Department.

C. Certificate(s) of Insurance: Certificates of Insurance shall be Project-specific. Prior to commencing work under the Contract, Certificates of Insurance shall be submitted and approved by the City. Contractor is responsible for obtaining Certificates of Insurance, establishing that the Contractor and all subcontractors have complied with insurance requirements previously stated. Copies of Certificates of Insurance shall be forwarded to the City Risk Manager for review and filing. Failure of the City to demand such Certificate or other evidence of full compliance with these insurance requirements or failure of the City to identify a deficiency from the evidence that is provided shall not be construed as a waiver of the Contractor's obligation to maintain such insurance. City shall have the right, but not the obligation, to prohibit Contractor or any of its subcontractors from entering the Project Site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by City.

D. Rating of Insurance Companies: Any and all insurance companies supplying coverage to the Contractor shall be approved to write insurance in the State of Arizona and must possess no less than an "A" rating in accordance with the A.M. Best rating guide.

E. Deductible: Contractor shall be solely responsible to satisfy any deductible or self-insured retention with respect to any of the coverages required by the Contract Documents. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the City of San Luis. The City of San Luis, at its option, may require the Contractor to secure payment of such deductible or self-insured retention by a surety bond or irrevocable and unconditional Letter of Credit.

F. Rental Equipment: In the event that rental of equipment is undertaken to complete and/or perform the Work, the Contractor agrees that it shall be solely responsible for such rental equipment. Such

responsibility shall include, but not be limited to, theft, fire, vandalism, and use by unauthorized persons.

G. Personal Property: In the event that materials or any other type of personal property are acquired for the Project or delivered to the Project site, the Contractor agrees that it shall be solely responsible for such property until it becomes a fixture on the Project, or otherwise is installed and incorporated as a final part of the Project. Such responsibility shall include, but not be limited to, theft, fire, vandalism, and use by unauthorized persons. Contractor shall maintain "all risk" insurance on a replacement cost basis, covering loss or damage to personal property (for which it has title and/or risk of loss), which is to become a final part of the Project, during any time such personal property is in transit and while stored or worked upon away from the Project site. City and its officials, officers, employees, and agents shall be named as additional insured under such insurance.

H. Waiver of Subrogation: City and Contractor waive all rights against each other and Architect/Engineer, and separate contractors for damages caused by fire or other perils covered by Builder's Risk or any other property insurance, except such rights as they may have to the proceeds of such insurance.

I. Right to Require Higher Limits: City reserves the right, in its sole discretion, to require higher limits of liability coverage if, in the City's opinion, operations by or on behalf of the Contractor create higher-than-normal hazards and to require the Contractor to name additional parties in interest to be Additional Insureds.

J. Waiver of Requirements: The City Manager, in consultation with the City Risk Manager and/or City Attorney, reserves the right to waive or reduce insurance requirements should it be in the best interest of the City.

GENERAL CONDITIONS OF THE CONTRACT

SECTION 1 - Bidders Participation Subcontractors and Suppliers List

These General Conditions encompass provisions that apply and are incorporated into all construction contracts entered into by the City of San Luis unless otherwise specifically excluded in the executed Contract. Sections 2 through 14 of these General Conditions apply to all construction contracts, in whatever form, including without limitation, Fixed Price, Unit Price, Construction Manager at Risk (CM@Risk), Guaranteed Maximum Price (GMP) Cost-Based, and Job Order Contracts (JOC).

SECTION 2 - GENERAL DEFINITIONS

2.1 The Definitions in the Invitation for Bid (IFB), the Request for Proposals (RFP), the Request for Qualifications (RFQ), and/or the JOC Solicitation (JOC) giving rise to the Contract shall apply to these General Conditions and the Contract for the Project.

2.2 Change Order – A written instrument issued after execution of the Contract Documents signed by City and Contractor, stating their agreement upon all of the following: the addition, deletion, or revision in the

scope of services or deliverables; the amount of the adjustment to the Contract Price, the extent of the adjustment to the Contract Time, or modifications of other contract terms. Only a Change Order allows the Contract Price or the Contract Time or both to be changed.

2.3 City – City of San Luis, Arizona, a municipal corporation, with whom the Contractor has entered into the Contract and for whom the Services and/or Work are to be provided pursuant to the Contract(s).

2.4 Contract - The written agreement executed between the City and Contractor, including all of the Contract Documents**.**

2.5 Contract Documents - The documents which together form the Contract between City and Contractor, as identified in Article 2 of the Contract, or are otherwise incorporated into the Contract, including the Contract, the exhibits and attachments to it, these General Conditions, any Notice to Proceed, and any Job Order (if applicable), the Plans and Specifications, Project Schedule, written and properly executed Change Orders, and any other documents so designated in the Contact.

2.6 Contract Price - The agreed-upon price to be paid to the Contractor for full, timely, and acceptable completion of the Services or Work under the terms of the Contract.

2.7 Contract Time(s) - The number of days or the dates related to the Final Completion as stated in Contract Documents. The Contract Time is set forth in the Contract and is based upon the Project Schedule agreed to by the City in writing.

2.8 Contractor - The person or corporation with whom the City has entered into a contract for construction-related work or services related to the Project at issue. As used in these General Conditions, the term Contractor includes CM@Risk and JOC under contract with the City to provide pre-construction and/or construction services.

2.9 Contractor Payment Request - The form that is accepted by the City and used by the Contractor in requesting progress payments or final payment and which shall include such supporting documentation as is required by the Contract Documents and/or City.

2.10 Construction Documents - The plans, specifications, and drawings prepared and issued by the Design Professional and approved by the City for construction, meaning the documents are sealed by the Contractor (as required), acceptable for permitting, and incorporated into the Contract by reference. All amendments and modifications to the Construction Documents must be approved in writing by the City prior to incorporation into the Contract.

2.11 Critical Path - The critical path is the sequence of Project network activities that add up to the longest overall duration. Once established in the Project Schedule, the Critical Path for the Project shall not be changed without prior written approval of the City.

2.12 Day - Calendar day(s) unless otherwise specifically stated in the Contract Documents.

2.13 Final Acceptance - The written notice from the City to the Contractor that Final Completion has occurred.

2.14 Final Completion - The point when all items of the Work, including punch list items, have been completed to the City's satisfaction as reflected in the written Final Acceptance.

2.15 Float - The number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Contract Time. Unless otherwise expressly agreed in writing, all Float belongs to City.

2.16 MAG Specifications – The latest edition adopted by the City of the Uniform Standard Specifications for Public Works Construction published by Maricopa Association of Governments ("MAG"), or the latest revision published by MAG.

2.17 MAG Standard Details – The latest edition adopted by the City of the Uniform Standard Details for Public Works Construction published by Maricopa Association of Governments ("MAG"), or the latest revision published by MAG.

2.18 Notice to Proceed (NTP) - A written notice given by the City to the Contractor fixing the date on which the Contractor will start to perform the Contractor's obligations under the Contract. The Notice to Proceed shall not be issued until the Contract Price is approved and accepted by the City.

2.19 Project – The Project specified in the Contract (including the Job Order).

2.20 Project Manager - The Project Manager designated in Article 1 of the Contract, or any successor Project Manager the City designates. The Project Manager has the authority to act on behalf of the City, as delineated and limited by the Contract Documents and applicable law. The City shall communicate with the Contractor through the Project Manager. However, the Project Manager has no authority to bind the City or City Council in contravention of any City code, State or Federal statute or regulation, or these General Conditions.

2.21 Project Schedule - The schedule for the completion of the Project agreed to and/or required by the City and incorporated into the Contract.

2.22 Project Specific Provisions - Additional conditions that apply to the specific Project and/or Scope of Work.

2.23 Proposal A Proposal submitted to the City by a Contractor in response to an Invitation for Bid (IFB), Request for Qualifications (RFQ), a Request for Proposals (RFP), or other solicitation or request by the City. Bids may be Fixed Price, Guaranteed Maximum Price (GMP), Unit Price, or other form as required or requested by the City in the Bid Schedule.

2.24 Requests for Information (RFIs) - Formal written request from the Contractor to the City and/or Contractor for the Project seeking clarification or additional information needed for the Contractor to properly complete the Work and/or Services under the Contract. The City may require RFI's to be submitted on a specific form or in a specified format.

2.25 Schedule of Values (SOV) - The specified document prepared by the Contractor and approved and accepted by the City, which divides the Contract Price into pay items, such that the sum of all pay items equals the Contract Price for the construction phase Work, or for any portion of the Work having a separate specified Contract Price.

2.26 **Scope of Work** The scope of work agreed to and/or required by the City and incorporated into the Contract as set forth in the IFB and/or an Exhibit to the Contract.

2.27 **Subconsultant** A person, firm, or corporation having a Contract with a Consultant/Contractor to furnish services required as its independent professional associate or consultant with respect to the Project.

2.28 **Subcontractor** - An individual or firm having a direct contract with the Contractor or any other individual or firm having a contract with the aforesaid contractors at any tier, who undertakes to perform a part of the pre-construction services or construction phase Work at the site for which Contractor is responsible. Subcontractors shall be selected through the Subcontractor selection process described in the Contract Documents, if any.

2.29 **Supplier.** Any person or entity providing materials or property for the Project.

2.30 **Total Float.** The number of Days by which the pre-construction services or construction phase Work or any part of the same may be delayed without necessarily extending a pertinent Contract Time or schedule milestone in the Project Schedule.

2.31 **Work** - The entire completion of construction or the various separately identifiable parts thereof, required to be furnished during the construction phase. Work includes and is the result of:

a. performing or furnishing labor;

b. furnishing and incorporating materials, resources, and equipment into the construction; and

c. performing or furnishing services and documents as required by the Contract Documents for the construction phase.

SECTION 3 - STANDARD SPECIFICATIONS AND DETAILS

3.1 The City operates under the 2016 City of San Luis Supplement to the 2015 MAG Uniform Standard Specifications for Public Works Construction.

3.2 The City also operates under the 2009 City of Yuma Construction Standard Detail Drawings.

3.3 The City also operates under the 2006 Yuma County Public Works Standards – Volume III – Storm Drainage Facilities.

3.4 The above standard specifications and details may be viewed and downloaded at the City of San Luis website: https//www.sanluisaz.gov/DocumentCenter/Index/268. **3.5** The City may require particular sections of the revisions of the MAG Specifications and Standard Details after the 2015 revision that the City adopted.

3.6 Current and Historical MAG Specifications and Standard Details may be viewed at the Maricopa Association of Governments website at https://azmag.gov/Programs/Public-Works/Specifications-and-Details.

3.7 The MAG Specifications and Standard Details and the City's amendments to them are incorporated into the Contract.

SECTION 4 - CONTRACTOR'S RESPONSIBILITIES FOR CONSTRUCTION SERVICES

4.1 General

4.1.1 The Contractor shall construct the Work in accordance with the Contract Documents and as outlined in the Contract Documents to the satisfaction of the City, exercising the degree of professional care, skill, diligence, quality, and judgment that a professional Contractor engaged, experienced, and specializing in the construction of facilities of similar scope, function, size, quality, complexity, and detail in urban areas throughout the United States comparable to the City would exercise at such time, under similar conditions. The Contractor shall, at all times, perform the Work in conformance with sound and generally accepted engineering principles and construction management and construction contracting practices.

4.1.2 The Contractor shall comply with, and require all Subcontractors to comply with, the Arizona Contractors' license laws, including all requirements with respect to being duly registered and licensed.

4.1.3 Pursuant to A.R.S. § 41-4401, the Contractor warrants to the City that the Contractor and all its Subcontractors are in compliance and will comply with all Federal Immigration laws and regulations that relate to their employees and with the E-Verify Program under A.R.S. § 23-214(A). The Contractor acknowledges that a breach of this warranty by the Contractor or any of its Subcontractors is a material breach of this Contract subject to penalties up to and including termination of the Contract or any subcontract. The City retains the legal right to inspect the papers of any employee related to this statute and of the Contractor or any Subcontractor who works on this Contract to ensure compliance with this warranty. The City may conduct random verification of the Contractor's employment records and any of its Subcontractors' employment records to ensure compliance with this warranty. The City will not consider the Contractor or any of its Subcontractors in material breach of the foregoing warranty if the Contractor and its Subcontractors establish that they have complied with the employment verification provisions prescribed by 8 USCA §1324(a) and (b) of the Federal Immigration and Nationality Act and the e-verify requirements prescribed by Arizona Revised Statutes § 23-214(A). The provisions of this Section must be included in any agreement the Contractor enters into with its Subcontractors who provide services under this Contract or any subcontract. "Services" are defined as furnishing labor, time, or effort in the State of Arizona by a contractor or Subcontractor. Services include construction or maintenance of any structure, building, or transportation facility or improvement to real property. Breach of this warranty shall constitute a material breach of the contract and shall subject the Contractor to penalties, including termination of the Contract at the sole discretion of the City.

4.1.4 The Contractor further understands and acknowledges the applicability of the Americans with Disabilities Act, the Immigration Reform and Control Act of 1986, and the Drug-Free Workplace Act of 1989 to the Contract. The Contractor understands and acknowledges that it must also comply with A.R.S. § 34-301, "Employment of Aliens on Public Works Prohibited," and A.R.S. § 34-302, as amended, "Residence Requirements for Employees," and A.R.S. § § 12-2701 through 12-704 "Immigration and Nationality Law Practice Act" as amended.

4.2 Contractor's Pre-Contract and Pre-Work Deliverables

4.2.1 Before beginning any Work under the Contract, the Contractor shall execute the Contract and deliver to the City the items listed in Section 4-2.2 below within seven (7) days after the award of the Contract, and the City must execute the Contract. Failure to do so will be a material breach of the Contract, entitling the City to terminate the Contract for Cause.

4.2.2 When the Contractor delivers the executed Contract to the City, the Contractor shall also deliver to the City such bonds and certificates of insurance with endorsements in such amounts (and other evidence of insurance requested by the City) required under Section 11 - of these General Conditions, and as the Contract requires.

4.2.3 The Contractor shall obtain all necessary permits for the Work and pay all applicable fees unless otherwise noted on the plans and in the specifications. The Contractor is specifically notified of the need to obtain traffic control permits from the Arizona Department of Transportation (ADOT) and the necessary environmental permits or file the necessary environmental and regulatory permit notices. Copies of all permits and the associated notices must be provided to the City prior to starting the permitted activity.

4.3 Pre-Construction Conference

4.3.1 Prior to the commencement of any Work, the City may schedule a Pre-Construction Conference.

4.3.2 Prior to the Pre-construction Conference, the Contractor shall provide the Project Manager with a Schedule of Values reflecting the subcontracts and other categories that will be used to submit pay applications for the Work. The total amount of the Schedule of Values shall not be greater than the Contract Price. The Schedule of Values shall be reviewed at the Pre-Construction Conference and revised in response to comments and questions from the City. Once accepted by the City in writing, the Schedule of Values for the Project will not be changed without the City's prior written approval.

4.4 Performance of the Work (Including Field Measurements, Subcontractors, and Suppliers)

4.4.1 Unless otherwise provided in the Contract Documents to be the responsibility of the City or a separate Contractor, the Contractor shall provide through itself or its Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities, and other temporary facilities to permit Contractor to complete the Work consistent with the Contract Documents.

4.4.2 The Contractor's Superintendent shall be present at the Project site at all times that material Work under this Contract is taking place. The Contractor's Superintendent or designee shall be present at the Project site at all times any other Work under this Contract is taking place. All elements of the Work shall be under the direct supervision of a foreman or his designated representative on the Project site, who shall have the authority to take actions required to carry out that particular element of the Work properly.

4.4.3 Before ordering materials or doing work, the Contractor and each Subcontractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements.

No extra charge or compensation will be allowed because of differences between the actual dimensions and the dimensions indicated on the Contract Documents, including the drawings.

4.4.4 If the Contractor observes errors, discrepancies, or omissions in the Contract Documents, it shall promptly notify the Contractor and City and request clarification. The Contractor shall be liable to the City for damages resulting from errors, inconsistencies, or omissions in the Contract Documents or for differences between field measurements or conditions in the Contract Documents. If the Contractor, with the exercise of reasonable care, should have recognized such error, inconsistency, omission, or difference and fails to report it to the City, and if the Contractor proceeds with the Work affected by such observed errors, discrepancies, or omissions, without receiving such clarifications, it does so at its own risk.

4.4.5 In all cases of interconnection of its Work with existing or other work, the Contractor shall verify at the Project site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, locations, or dimensions shall be promptly rectified by the Contractor without any increase in the Contract Price. Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the City.

4.4.6 The Contractor shall be responsible for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between the City and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

4.4.7 The Contractor will not substitute or change any Subcontractor or Supplier without the City's prior written approval. Any substitute or replacement Subcontractor or Supplier shall be required to meet the same qualifications and selection criteria and process as the original Subcontractor or supplier. If a Subcontract or Supplier selection plan has been approved by the City, the Contractor will follow that plan unless otherwise approved by the City in writing.

4.4.8 The Contractor shall not change or replace the Contractor's Project Manager or Superintendent on this Project without an explanation for the change being given to the City and receiving prior written approval of the change from the City, which approval will not be unreasonably withheld.

4.4.9 Subcontractors whose scope of work has a value greater than fifteen percent (15%) of the total Contract Price may be required to furnish performance and payment bonds to the Contractor if directed in writing by the City.

4.5 Control of the Project Site

Throughout all phases of construction, including suspension of Work, the Contractor shall keep the Project site reasonably free from debris, trash, and construction wastes to permit the Contractor to perform its construction services efficiently, safely, and without interfering with the use of adjacent land areas. Prior to the Final Acceptance of the Work, or a portion of the Work, the Contractor shall remove all debris, trash, construction wastes, materials, equipment, machinery, and tools arising from the Work or applicable portions thereof to permit the City to occupy the Project or a portion of the Project for its intended use.

4.5.1 The Contractor shall take whatever steps, procedures, or means necessary to prevent dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the City and in accordance with the requirements of the Yuma County dust control regulations.

4.5.2 The Contractor shall be responsible to the City for the acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and any other person performing any of the Work under a contract with Contractor, or claiming by, through, or under Contractor, for all damages, losses, costs, and expenses resulting from such acts or omissions.

4.6 Project Safety

4.6.1 The Contractor is responsible for the safety of the job site for the Contractor's employees as well as for members of the general public and others who may drive or walk through or be at the Project site.

4.6.2 The Contractor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.

4.6.3 The Contractor shall provide a "competent person" as required by O.S.H.A. regulations. The "competent person" shall be identified at the Pre-Construction Conference, and the City will be advised in writing of any changes.

4.6.4 The Contractor and Subcontractors shall comply with all legal and regulatory requirements relating to safety, as well as any City-specific safety requirements set forth in the Contract Documents, provided that such City-specific requirements do not violate any applicable legal and regulatory requirements.

4.6.5 As between the City and the Contractor, the Contractor is responsible to the City for any and all the safety issues relating to the Work on the Project. The Contractor shall administer and manage the safety program. The safety program will include, but not necessarily be limited to, reviews of the safety programs of each Subcontractor. The Contractor shall monitor the establishment and execution of compliance with all applicable regulatory and advisory agency construction safety standards.

4.6.6 The Contractor shall maintain and have sole responsibility for safety on the job site.

4.7 Materials Quality, Substitutions, and Shop Drawings

4.7.1 All construction materials to be used or incorporated in the Project are subject to inspection, quality control and quality assurance testing, and approval or rejection by the City. Any material rejected by the City shall be removed immediately and replaced in an acceptable manner to the City at no additional cost to the City. When quality control and quality assurance tests indicate noncompliance with the Contract Documents, retesting shall be performed by the same testing laboratory that performed the tests that indicated noncompliance.

4.7.2 A schedule of shop drawing submissions shall be submitted with the Project Schedule for City approval that avoids bulk submissions to the extent reasonably possible. Unless otherwise noted, shop

drawings will not be required for items specified or detailed in the Uniform Standard Specifications and Details or the Technical Specifications. The schedule of shop drawing submissions shall include all of the items for which shop drawings are required by the Contract Documents, including the specifications.

4.7.3 Long Lead Time Items. The Contractor shall submit shop drawings, as required by the Project Engineer, on all long lead items to be furnished and installed as part of the Project within ten (10) days after execution of the Contract. In addition, the Contractor shall order all long lead items to be furnished and installed as part of this Project within (3) days after receiving approved shop drawings. For all long lead times for which shop drawings are not required, the Contractor shall order said long lead items within fifteen (15) days after execution of the Contract. Within two (2) days after ordering long lead items, the Contractor shall supply copies of all purchase orders, along with an accurate delivery schedule from the supplier.

4.8 Project Record Documents

The Contractor shall ensure that any and all changes or modifications done as a result of field changes are accurately reflected in red-lined markings. At the completion of construction, all red lines and markings shall be compiled to aid in the creation of “as-built” plans.

4.9 Warranty and Correction of Defect Work

4.9.1 The Contractor warrants to the City that the construction of the Work shall be of good and workmanlike quality and completed in strict conformance with all applicable laws, rules, and regulations and the plans and specifications and all other terms and conditions of the Contract Documents, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship.

4.9.2 The date of Final Completion shall be the beginning of the Warranty period, regardless of early completion by some Subcontractors of their work.

4.9.3 Unless otherwise specified in the Contract Documents, the Contractor and Subcontractors shall provide to the City all of the following written warranties that apply to the Work in a form acceptable to the City.

(i) General Warranty — Two (2) years
(ii) Mechanical Contractor — Two (2) years
(iii) Plumbing Contractor — Two (2) years
(iv) Electrical Contractor — Two (2) years
(v) Caulking — One (1) year
(vi) Steel Joists, Certificate of Manufacturer
(vii) Exterior Metal Wall System — Five (5) years
(viii) Painting — One (1) year
(ix) Termite — Five (5) years
(x) Sheet Metal: Zinc coating thickness on hot-dipped galvanized Metals — One (1) year

4.9.4 Nothing in the warranties contained in the Contract Documents are intended to limit any manufacturer's warranty, which provides the City with greater warranty rights than set forth in this Section or the Contract Documents. The Contractor will provide the City with all manufacturers' warranties prior to Final Acceptance.

4.9.5 A progress payment, or partial or entire use or occupancy of the Project by the City, shall not constitute Acceptance of Work not in accordance with the Contract Documents.

4.9.6 Without limiting the foregoing or anything in these General Conditions or the Contract to the contrary, the Contractor shall obtain and provide to the City all warranties for any portion of the Project offered by the manufacturer, installer, or provider thereof. The City and the user of the facility shall have the right to the full value and benefit of all such warranties. The Contractor will ensure all such warranties are fully transferrable to facilitate the full value of this Section.

SECTION 5 - CITY'S RESPONSIBILITIES

5.1 City Project Manager The Project Manager is responsible for providing City-supplied information and approvals in a timely manner to assist the Contractor to fulfill its obligations under the Contract Documents.

5.2 Contract Services The City may contract separately with one or more contractors to provide construction administration of the Project. The Contractor's Contract, as well as other firms hired by the City, shall be furnished to the Contractor. The contractor shall not have the right to limit, restrict, or reject any Contract modifications that are mutually acceptable to the City and the Contractor.

SECTION 6 - CONTRACT TIME

6.1 Contract Time

6.1.1 The Contract Time shall start with the Notice to Proceed ("NTP") and end with Final Acceptance, as set forth in Section 6.3 below.

6.1.2 The Contract Time shall be as set forth in the Project Schedule. The Contractor agrees that it will commence the performance of the Work and complete the Project within the Contract Time.

6.1.3 Time is of the essence of this Contract, for the Project, for the Work, and for each phase and/or designated milestone of the Project.

6.2 Project Schedule

6.2.1 The Project Schedule shall be updated and maintained throughout the Contract Time.

6.2.2 The Project Schedule shall be revised as required by conditions and progress of the Work. However, such revisions shall not relieve the Contractor of its obligations to complete the Work within the Contract Time, as adjusted in accordance with the Contract Documents. No modification to the Contract Documents or the Contract Time shall be effective unless approved in advance by the City.

6.2.3 An updated Project Schedule shall be submitted monthly to the City as part of the Payment Request.

6.2.4 The Contractor shall provide the City with a monthly status report with each Project Schedule detailing the progress of the Work, including:

6.2.5 Acceptance of a submitted schedule by the City should in no way be construed as an affirmation or admission that the schedule is reasonable or workable by the Contractor. The responsibility for completing the Work on the Project within the Contract Time remains the obligation of the Contractor. The City's review shall not relieve the Contractor from compliance with the requirements of the Contract Documents or be construed as relieving the Contractor of its complete and exclusive control over the means, methods, sequences, and techniques for executing the Work.

6.2.6 Critical Path Method (CPM)

6.2.6.1 Unless otherwise specified in the Contract, the Project Schedule shall include a Critical Path Method (CPM) diagram schedule showing the sequence of activities, the interdependence of each activity, and identifying the Critical Path.

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

6.2.7 Float Time

6.2.7.1 The total Float time within the overall schedule is for the exclusive use of the City. However, the City may approve the Contractor's use of Float time as needed to meet contract milestones and the Project completion date.

6.2.7.2 The Contractor shall not be allowed to sequence, hide, or reallocate Float time through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew or resource sequencing. No time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Contract Time.

6.2.7.3 Rain-Related Delays. In preparing the Project Schedule, The Contractor is required to take into account all relevant weather conditions, including normal rainfall and distribution. No additional Compensation shall be given for any rain-related delays or impacts on the Work or the Project Schedule. The burden of documenting normal rainfall, excessive rainfall, and the impact on Critical Path activities is on the Contractor.

6.3 Final Completion and Final Acceptance

6.3.1 Unless otherwise expressly agreed to in writing by the City, Final Completion must be obtained by no later than December 30, 2026 after the date of Notice to Proceed. Failure to timely obtain Final Completion will be a material breach of the Contract.

6.3.2 Upon receipt of written notice that the Work is ready for final inspection and Acceptance, the City and the Contractor will jointly inspect to verify that the remaining items of Work have been completed. There shall be no partial acceptance. Final Acceptance shall not be issued, and Final Completion shall not occur until all items of Work, including punch list items, have been completed to the City's satisfaction as reflected in the written Final Acceptance.

6.3.3 Final Payment under Section 8.2 below shall not be due, owing, or paid by the City until the Final Completion is obtained.

6.4 Liquidated Damages

6.4.1 The Contractor acknowledges and agrees that if the Contractor fails to obtain Final Completion of the Work within the Contract Time, the City will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be extremely difficult to ascertain. Therefore, the City and the Contractor agree that if Contractor fails to achieve Final Completion of the Work within the Contract Time, the City shall be entitled to retain or recover from the Contractor, as liquidated damages and not as a penalty, the applicable dollar sum amount in Subsection 108.9 of the 2016 City of San Luis Supplement to the 2015 MAG Uniform Standard Specification for Public Works Construction per calendar day, commencing from the Completion Date required under the Contract until the actual date of the Final Completion of the Work.

6.4.2 The City may deduct liquidated damages described in this Section 6.4 from any unpaid amounts then or thereafter due Contractor under this Contract. Any liquidated damages not so deducted from any unpaid amounts due to the Contractor shall be payable to the City at the demand of the City, together with interest from the date of the demand at the highest lawful rate of interest payable by the Contractor.

6.4.3 Nothing herein shall be deemed to constitute a waiver of any other remedy available to the City in the event of Contractor's default under this Contract prior to the full performance of the Work, including, as applicable, specific performance or completion of the Work on behalf of Contractor, the cost and expense of which shall be offset against any monies then or thereafter due to Contractor (if any) and otherwise immediately reimbursed to City by Contractor.

SECTION 7 - CONTRACT PRICE

7.1 Fixed Price Contracts The Contract Price shall be the amount set forth in the Contract.

7.2 City Sales Tax The Contractor is required to pay Sales Taxes on any contracting activity done for the City, and this cost shall be included in all Contract Prices.

SECTION 8 - PAYMENT

8.1 Payment for Construction Services

8.1.1 Monthly progress payments for certified work and material delivered to the Project site for the preceding month shall be paid on or before fourteen (14) business days after the estimate of the Work

is certified and approved. The submittal estimate shall be deemed certified and approved for payment after seven (7) days from the date of submission unless the City's Project Manager issues a written finding setting forth items not approved for payment.

8.1.2 The City shall retain ten percent (10%) of all progress payments as insurance of proper performance of the Contract or, at the option of the Contractor, a substitute security may be provided by the Contractor in an authorized form approved by the City. The Contractor is entitled to all interest from any such substitute security.

8.1.3 When the Contract is fifty percent (50%) completed, one-half of the amount retained or securities substituted shall be paid to the Contractor upon the Contractor's request, provided the Contractor is making satisfactory progress on the Contract. There is no specific cause or claim requiring a greater amount to be retained. After the Contract is fifty percent (50%) completed, no more than five percent (5%) of the amount of any subsequent progress payments made under the Contract shall be retained, providing the Contractor is making satisfactory progress on the Project. If at any time the City determines satisfactory progress is not being made, ten percent (10%) retention shall be reinstated for all progress payments made under the Contract subsequent to the determination.

8.1.4 . Unless the City Project Manager delivers specific written findings of deficiencies and expected cost to cure, any retention shall be paid, or substitute security shall be returned to the Contractor within sixty (60) Days after Final Completion and Acceptance of Work under the Contract. The City may withhold an amount from the progress payment sufficient to pay the expenses the City's Project Manager reasonably expects to incur in correcting the deficiency set forth in the written finding.

8.1.5 The Contractor, and all Subcontractors, shall pay to Subcontractors or material Suppliers within seven (7) days of receipt of each progress payment unless otherwise agreed in writing by the parties, the respective amounts allowed the Contractor or Subcontractor on account of the Work performed or materials delivered to the extent of each such Subcontractor's or material Supplier's interest therein. No agreement for construction may materially alter the rights of any Contractor, Subcontractor, or material Supplier to receive prompt and timely payment as provided under this Section. These monthly progress payments to Subcontractors or material Suppliers shall be passed on payments received pursuant to this Section. Any diversion by the Contractor or Subcontractor of payments received for Work performed or failure to reasonably account for the application or use of such payments constitutes grounds for disciplinary action by the Registrar of Contractors. The Subcontractor or material Supplier shall notify the Registrar of Contractors and the City in writing of any payment less than the amount or percentage approved for the class or item of work as set forth in this Section. The Subcontractor may notify the City's Project Manager in writing, requesting that the City notify the Subcontractor in writing within five (5) days from payment of each progress payment made to the Contractor. The Subcontractor's request remains in effect for the duration of the Subcontractor's work on the Project.

8.1.6 Nothing in this Section 8.1 prevents the Contractor at the time of application/certification to the City from withholding application or certification to the City for payment to the Subcontractor or material Supplier for unsatisfactory job progress, defective work, or materials not remedied, disputed

work or materials, third party claims filed or reasonable evidence that claim will be filed, failure of a Subcontractor to make timely payment for labor, equipment and materials.

8.2 Final Payment Subject to all of the City's rights to withhold or offset payment and other rights under the Contract, Final Payment, including remaining retainage, shall be paid only after:

(i) The Work has been fully completed (including completion of all incorrect or incomplete work items), and the City has issued the written Final Acceptance;
(ii) necessary operating manuals, any excess materials and supplies necessary for matching materials and supplies incorporated into the Work, and complete "as-built" drawings (including the Building Information Model, if required by the Contract Documents), plans, and specifications have been delivered to City;
(iii) full and unconditional lien waivers and releases by Contractor and any person performing labor or supplying material, machinery, fixtures, or tools for the Work have been delivered to the City;
(iv) all conditions and requirements imposed by the City or any financing entity for the corresponding disbursement have been met; and
(v) the Contractor delivers to the City a Contractor Payment Request Form requesting Final Payment.

8.3 The City's Right to Withhold Payment The City may withhold payment to such extent as may be necessary in the City's opinion to protect the City from loss for which the Contractor is responsible, including, without limitation:

(i) Defective Work not remedied;
(ii) Third-party claims filed or reasonable evidence indicating probable filing of such claims unless Contractor provides security acceptable to the City;
(iii) Failure of Contractor to make payments properly to Subcontractors or for labor, materials, or equipment;
(iv) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
(v) Damage to the City or another Contractor or any third party for which the Contractor may have an obligation under Article 12 of the General Conditions;
(vi) Reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
(vii) Persistent failure to carry out the Work in accordance with the Contract Documents.

8.4 Joint/Direct Checks Payments to the Contractor may be made by checks payable jointly to the Contractor and its employees, agents, Subcontractors, and Suppliers, or any of them. When in the sole opinion of the City, it is advisable, payments may be made directly to the Contractor's Subcontractors. Any amount so paid shall be deducted from the amounts owed to the Contractor under this Contract.

8.5 Payment Not A Waiver No payment (nor use or occupancy of the Project by the City) shall be deemed Acceptance or approval of the Work or as a waiver of any claims, rights, or remedies of the City.

8.6 Liens and Bond Claims The Contractor shall make all payments, in the time required, of all labor and materials furnished to the Contractor in the course of the Work and shall promptly furnish evidence of such payments as the City may require. The Contractor shall pay when due all claims arising out of the performance of the Work covered by this Contract for which a lien may be filed either against the real estate or leasehold interest of City, or against payments due from City to Contractor, or for which a claim may be made against any payment or performance bond or both. To the fullest extent permitted by law, Contractor agrees that no liens or other claims in the nature of a lien against the real estate, leasehold, or other interest of City, against payment due from City to Contractor, or against any payment or performance bond, shall be filed or made in connection with the Work by any party who has supplied professional services, labor, materials, machinery, fixtures, tools, or equipment used in or in connection with the performance of this Contract. The Contractor agrees to remove or to cause to be removed any such liens or claims in the nature of a lien or bond claim within ten (10) days upon receiving notice or obtaining actual knowledge of the existence of such liens or claims. In addition, the Contractor agrees to defend, indemnify, and hold harmless the City from and against any and all such liens and claims. This paragraph does not apply to claims and liens of Contractor due to non-payment for work performed by Contractor. The obligations under this Section 8.4 survive termination of this Contract.

8.7 Financial Record Keeping and City's Audit Right

8.7.1 Records for all Contracts between the City and the Contractor shall, upon reasonable notice, be open to inspection and subject to audit, scanning, and/or reproduction during normal business working hours. The City or its designee may conduct such audits or inspections throughout the term of this Contract and for a period of three years after Final Payment or longer if required by law.

8.7.2 The City, its authorized representative, and/or the appropriate agency reserve the right to audit the Contractor's records in compliance with local, state, or federal policies, statutes, or at the City's discretion within three (3) years of Final Acceptance of the Work.

SECTION 9 - CHANGES TO THE CONTRACT

9.1 Extra Work/Changes in the Work

9.1.1 The City reserves the right to make such changes in the plans and specifications for the Work as it may deem appropriate. Any such change as set forth in a written Change Order or Extra Work Order shall be deemed a part of this Contract as if originally incorporated into this Contract.

9.1.2 The Contractor shall not be entitled to payment for additional work unless a written Change Order or Extra Work Order, in form and content prescribed by the City, has been executed by the City prior to starting the additional work.

9.1.3 Any agreement that modifies the terms of the Contract (including Change Orders) shall be approved in writing by the Project Manager and approved by the San Luis City Council if necessary. Once

properly executed by both Parties, these modifications to the Contract shall have the same effect as if they had been included in the original Contract.

9.2 Accuracy of Change Order Pricing Information Signature by the contracting Parties shall constitute full accord and satisfaction between the City and the Contractor for all costs, damages, and expenses of whatever kind of nature, including delay, impact, or acceleration damages, which may be occasioned by a Change Order or other modification of the Contract, the Parties agreed to in writing.

SECTION 10 - TERMINATION

10.1 Termination by the City for Cause

10.1.1 If, for any reason, the Contractor fails to fulfill in a timely and proper manner its obligations under the Contract Documents, or if the Contractor violates any of the covenants, agreements, or stipulations of this Contract, the City shall thereupon have the right to terminate the Contract by giving written notice to the Contractor of such termination and specifying the effective date of the termination. In such event, all finished or unfinished site or structural improvements, as well as all materials or equipment acquired or stored by the Contractor under this Contract, shall, at the option of the City, become the City's property. The Contractor shall be entitled to receive just and equitable compensation for any Work satisfactorily completed under this Contract.

10.1.2 Notwithstanding Section 10.1.1, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract by the Contractor, and the City may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the City from the Contractor is determined.

10.2 Termination by the City for Convenience The City may also terminate the Contract at any time for its convenience upon seven (7) business days' written notice to the Contractor specifying the termination date. In the event of termination, which is not the fault, in whole or in part, of the Contractor, the City shall pay to the Contractor only such compensation, including reimbursable expenses, due for Work properly performed on the Project prior to the termination date. Upon any termination of the Contract, no further payments shall be due from the City to the Contractor.

10.3 A.R.S. § 38-511 and Other Statutory Requirements This Contract is subject to and may be terminated by the City in accordance with the conflict provisions of A.R.S. § 38-511. The Contractor certifies, to the extent permitted by law, that it is not currently engaged in and agrees that for the duration of this Contract, it will not engage in a boycott of Israel, as that term is defined in A.R.S. § 35- 393. The Contractor certifies, to the extent permitted by law, that it does not currently, and agrees for the duration of this Contract, it will not use the forced labor of the ethnic Uyghurs in the People's Republic of China, nor use any goods or services produced by them, nor use any Contractors, Subcontractors, or Suppliers that use them. If the Contractor becomes aware during the term of this Contract that the Contractor is not in compliance with this certification, it shall follow the notice procedures in A.R.S. § 35- 393.

10.4 Non-Appropriation The City is a government agency that relies upon the appropriation of funds by its governing body to satisfy its obligations. If the City determines that it does not have funds to meet its

obligations under the Contract, the City shall have the right to terminate the Contract without penalty on the last day of the fiscal period for which funds were legally available for the Project.

10.5 Limited Liability Under no circumstances shall the City have any liability for any costs, expenses, overhead, or profits in relation to any work not actually performed or for any future or anticipated profits, recovery, damages, expenses, or losses.

SECTION 11 - BONDS

11.1 Bonds and Other Performance Security

11.5.1 Prior to the execution of the Contract, the Contractor shall provide a Performance Bond and a Payment Bond, each in an amount equal to the full amount of the Contract Price.

11.5.2 Each such bond shall be executed by a surety company or companies holding a Certificate of Authority to transact surety business in the State of Arizona, issued by the Director of the Arizona Department of Insurance. A copy of the Certificate of Authority shall accompany the bonds.

11.5.3 The bonds shall be made payable and be acceptable to the City. The bond forms for the performance and payment bonds shall be in the forms required under A.R.S. § 34-221, et seq.

11.5.4 All bonds submitted for this Project shall be provided by a company that has been rated AM Best rating of B++6 or better for the prior four (4) quarters by the latest edition of the *Results Best's Key Rating Guide (Property/Casualty)*" published by the A.M. Best Company.

11.5.5 Personal or individual bonds are not acceptable.

SECTION 12 - INDEMNIFICATION

12.1 To the fullest extent permitted by law, the Contractor, its successors, and assigns shall defend, indemnify, and hold harmless the City and its elected officials, officers, employees, and agents from all demands, proceedings, suits, actions, claims, damages, or losses relating to, arising out of, resulting from or alleged to have resulted from the performance of the Work or failure to comply with Contractor's obligations under the Contract Documents or any laws, regulations, or legal requirements. The Contractors' duty to defend, indemnify, and hold harmless the City and its agents, representatives, officers, elected officials, and employees shall arise in connection with all demands, proceedings, suits, actions, claims, workers' compensation claims, unemployment claims, damages, losses or expenses (including but not limited to attorney's fees, expert fees, court costs, and the cost of appellate proceedings) that are attributable to personal or bodily injury, sickness, disease, death or injury to, impairment or destruction of property including loss of use resulting therefrom, caused by any act or omission of Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable.

12.2 The Contractor shall also defend, indemnify, and hold harmless the City, any jurisdiction or agency issuing permits for any work involved in the Project and their consultants and each of their officers, officials, employees, representatives, directors, and agents from and against all losses, expenses, damages (including damages to the Work itself), attorney's fees and other costs including costs of defense, which any of them

may incur with respect to the failure, neglect, or refusal of Contractor to faithfully perform the Work and all of the Work and all of Contractor's obligations under the Contract. Such costs, expenses, and damages shall include all costs, including attorney's fees, incurred by the indemnified parties in any lawsuit to which they are a party.

12.3 The indemnified party shall have the right to approve the legal counsel selected by the Contractor or the insurer of the liability, which approval shall not be unreasonably withheld.

12.4 The defense, indemnification, hold harmless provisions, and City's Liability Insurance set forth herein shall survive any termination of the Contract.

SECTION 13 - DISPUTE RESOLUTION

13.1 Informal Dispute Resolution The Parties to the Contract agree that time is of the essence in relation to the performance of the Contract and completion of the Project. Therefore, any and all disputes in relation to the Contract will initially be referred to the City Project Manager and Contractor Project Manager, as applicable to the dispute, for immediate resolution. If, after good faith efforts to reach a resolution, none is reached, any party to the dispute may submit the dispute to the Dispute Resolution Representative ("DRR") process set forth below, which is intended to be an expedited process.

13.2 Dispute Resolution Representative (DRR) Process 1.2.1 The Parties under the Contract agree that all claims and disputes in relation to the Project that are not resolved in the ordinary course of the Project ("Claim or Claims") shall, as a prerequisite to any mediation or litigation of the Claim, first be submitted for resolution between the designated Dispute Resolution Representatives of the Parties as set forth herein (the "DRR Process").

13.2.2 The DRR Process shall be initiated through the service of a DRR Notice as set forth below:

(i) For claims by the Contractor, the DRR Process shall be initiated by the party asserting the claim serving written notice on the City setting forth in detail:

(a) the basis for the claim;
(b) the effect of the Claim upon the construction of, and/or Project Schedule for, the Project;
(c) the specific relief requested, the amount thereof, and how such was calculated;
(d) the parties involved in the Claim and how they are involved;
(e) the specific contract provisions in the Contract Documents (including, if applicable, drawings and specifications) which apply; and
(f) efforts made to date to resolve the Claim.

(ii) For claims by the City, the DRR process will be initiated by the City providing written notice to the other parties of the basis and amount of its claim, the parties involved in the Claim, and how they are involved, the provisions in the Contract Documents that apply, and the relief requested. (iii) The DRR Notice shall be hand-delivered and e-mailed to the other parties' designated Dispute Resolution Representatives.

13.2.3 The other parties shall respond in writing to the DRR Notice ("DRR Response") within ten (10) calendar days of receipt of the DRR Notice, setting forth those items set forth in the DRR Notice that they agree with, dispute, and/or have questions concerning. The DRR Response shall be hand-delivered and e-mailed to the other parties' Dispute Resolution Representatives.

13.2.4 The designated Dispute Resolution Representatives for the parties to the claim shall then meet as soon as possible and, in any event, within twenty (20) calendar Days of submission of the DRR Notice (regardless of whether a DRR Response has been submitted by all parties involved in the dispute), at a mutually agreed upon time and place, to attempt to resolve the Claim based upon the DRR Notice and DRR Response.

13.2.5 At any time after the first meeting required above, either party may terminate the DRR Process by written notice to the other party.

13.2.6 The parties may agree, in writing, to extend or modify the time limits or other provisions of the DRR process in relation to a specific pending Claim.

13.2.7 Unless otherwise designated in a written notice to the other parties, the Project Manager, the representatives of the Contractor, and of the Design Professional shall act as the parties' designated Dispute Resolution Representatives.

13.2.8 If a resolution of the Claim is reached, that resolution shall be set forth in writing. The resolution shall be signed by the Parties' designated Dispute Resolution Representatives. If the resolution involves a change in any Contract Documents, the Contract Price, the Project Schedule, or any other change requiring a written Change Order or Amendment, the parties shall execute an appropriate written Change Order or Amendment pursuant to the terms of the Contract Documents.

13.3 <u>Mediation</u>

13.3.1 Unless extended by written agreement of the parties involved in the dispute, any Claim not resolved through the DRR process set forth above within five (5) calendar days after the meeting required under 13.2.4 or after the DRR is terminated pursuant to 13.2.5 above, whichever is earlier, shall be submitted to mediation as a condition precedent to litigation by either party.

13.3.2 The mediation shall be commenced by written demand upon the other party for mediation. If the parties cannot agree upon a mediator within ten (10) calendar Days of the written demand, either party may make a request to the Civil Presiding Judge of the Yuma County Superior Court to appoint a mediator. The mediation shall occur within forty (40) calendar Days of the written demand for mediation unless the parties agree, in writing, to a longer period of time.

13.3.3 The qualifications for the mediator shall be that the mediator be:

(i) an experienced mediator, arbitrator, or litigator of construction disputes; and
(ii) having engaged a significant portion of their time involving and/or resolving construction disputes for at least the past five (5) years.

13.3.4 Each party shall provide to the other party and the mediator all of the information and documentation required under 13.2.2 and 13.2.3 above, together with any additional information and documentation that the party believes relevant. In addition, the parties shall exchange and provide to the mediator such additional memoranda, information, and/or documentation, as the mediator may request, and in the form and at such times as the mediator may direct.

13.3.5 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in San Luis, Arizona unless another location is mutually agreed upon. Agreements reached in mediation shall be specifically enforceable in any court having jurisdiction over the dispute.

13.4 Arbitration

13.4.1 If the mediation is unsuccessful, the parties shall submit the dispute and/or claim to be resolved through binding arbitration conducted according to the then-current Construction Industry Arbitration Rules of the American Arbitration Association ("AAA") but not administrated or conducted by the AAA. The arbitration shall be held in Yuma County, Arizona, utilizing a single arbitrator selected by the parties unless the parties agree, in writing, to an alternative arbitration procedure.

13.4.2 If: (a) the parties cannot agree on a single arbitrator within two (2) weeks of the demand for arbitration; or (b) the parties at any time prior to the arbitrator being appointed or before the arbitrator has accepted the appointment, cannot agree upon any significant aspect of the arbitration, not already addressed herein, either party may submit the Claim directly to the AAA to select the arbitrator, and thereafter the arbitration shall be administered by the AAA.

13.4.3 The arbitrator shall be an attorney with at least fifteen (15) years of experience in construction-related practice and whose practice, for at least the last five (5) years, consists of at least 50% construction law.

13.4.4 At the request of either party, the arbitration may include as parties, through joinder, consolidation, or otherwise, additional persons or entities involved in the Project, involving claims and/or disputes with common issues and/or facts. The arbitrator shall promptly rule upon any request for joinder or consolidation.

13.4.5 In relation to claims in which the amount in controversy is less than $250,000, no discovery other than the exchange of documents, designation of witnesses, and detailed disclosure of claims and defenses (including specifically a detailed basis for calculating all claims) and no more than three (3) depositions and one (1) expert per issue per side, shall be allowed, subject to disclosure of such other information as approved by the arbitrator. Otherwise, discovery shall be allowed and/or limited as decided by the arbitrator.

13.4.6 The prevailing party in any arbitration or court proceeding under this Contract shall be entitled to an award of its attorneys' fees, costs, and expenses (including expert witness fees) incurred.

13.4.7 A demand for arbitration shall be made within the time limits specified in the Contract Documents as applicable, and in other cases within a reasonable time after the Claim has arisen, and in

no event shall it be made after the date when the applicable statute of limitations would bar institution of legal or equitable proceedings based on such Claim.

13.4.8 The Parties agree to participate as a party, by joinder and/or consolidation, in any arbitration, litigation, or other dispute resolution involving as an issue, claim, or defense, any action, inaction, or service provided under this Contract or in relation to the Project or the Work, or any defect or deficiency in the Work.

13.4.9 The party filing a notice of demand for arbitration, or a counterclaim, must assert in the demand or counterclaim all Claims then known to that party on which arbitration is permitted to be demanded.

13.4.10 Any award by the arbitrator shall not include any consequential or punitive damages.

13.4.11 The award entered by the arbitrator shall be a reasoned award.

13.4.12 The award entered by the arbitrator shall be final, and judgment may be entered upon the award in the Arizona Superior Court.

SECTION 14 - MISCELLANEOUS PROVISIONS

14.1 Assignment Neither the Contractor nor the City shall, without the written consent of the other, assign, transfer, or sublet any portion of this Contract or part of the Work or the obligations required by the Contract Documents. Any such assignment will be void, will transfer no rights to the purported assignee, and would be a material breach of the Contract.

14.2 Governing Law and Venue. In the performance of the Contract, Contractor shall abide by and conform to any and all laws of the United States, State of Arizona, Yuma County, and the City, including but not limited to federal and state executive orders providing for equal opportunities, the Federal Occupational Safety and Health Act and any other federal, state, county, or local laws applicable to the Contract. This Contract shall be governed by and construed in accordance with the substantive and procedural laws of the State of Arizona, including choice of law and conflict of laws and principles. Exclusive jurisdiction and venue for any action brought to enforce or construe any provision of this Contract shall be proper in the Superior Court of Yuma County, Arizona. Both Parties consent to jurisdiction and venue in such court for such purposes. The Party prevailing in any such action or other proceeding to resolve a dispute shall be paid all reasonable costs, reasonable expert services fees, and reasonable attorney's fees by the other Party. In the event any judgment is secured by said prevailing Party, all such costs, expert fees, and attorney's fees shall be included in the judgment, such fees to be set by the court and not by jury.

14.3 San Luis Business License The General Contractor and sub-contractors shall obtain a San Luis Business License before commencing Work.

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

14.5 No Waiver The failure of either Party to enforce any of the provisions of the Contract Documents or to require the performance of the other Party of any of the provisions under this Contract shall not be construed

to be a waiver of such provisions, nor shall it affect the validity of the Contract Documents or any part of them, or the right of either Party to thereafter enforce each and every provision. Unless otherwise specifically agreed to in writing by both Parties, any consent to delay in the Contractor's performance of its obligation is applicable only to the particular transaction to which it relates and is not applicable to any other obligation or transaction.

14.6 Project Communications

14.6.1 All communications concerning the performance of the Work or the Project shall be provided to the designated Project Manager and Contractor's Representative set forth in Article 1 of the Contract.

14.6.2 Project communications may be exchanged by e-mail upon the written agreement of the Project Manager and Contractor Representative. However, e-mail communications are not binding upon the City. E-mail communications cannot change the terms of the Contract or the scope of work or effectuate any change that requires a written change order. The use of e-mails is for information only, and e-mails will have no legal or binding effect.

14.7 Independent Contractor The parties intend that this Contract will create an independent contractor relationship and not an employer-employee relationship. The City is interested only in the results to be achieved, and the conduct and control of the performance of the services contemplated under this Contract will be solely with the Contractor. Contractor's employees, agents, and Subcontractors shall not be considered to be employees or agents of the City for any purpose. They shall not be entitled to any of the benefits the City provides for its employees. The Contractor shall furnish at its own expense all materials and equipment necessary to carry out the terms of this Contract.

14.8 No Partnership Nothing in this Contract constitutes a partnership, joint venture or similar arrangement between the Parties. Neither Party is the principal or agent of the other.

14.9 No Third-Party Beneficiaries There are no third-party beneficiaries to this Contract and no person or entity, not a Party, shall have any right or cause of action under this Contract.

14.10 *Force Majeure* If the Contractor or the City or both are prevented or materially restricted from performing any of their obligations under this Contract by an event of *force majeure*, then the obligations of each Party shall be suspended or reduced to the extent made necessary by the event. As used in this section, "*force majeure*" means any act or cause not reasonably within the control of the Party whose ability to perform is impaired and which that Party could not have prevented by the exercise of reasonable diligence. *Force majeure* events include but are not limited to natural disasters, fire, flood, explosions, strikes (or labor disputes) over which the affected Party has no control, sabotage, riots, civil commotion, acts of civil or military authority, wars, public health emergencies, or material changes in applicable business laws (including but not limited to through statutes, regulations, executive orders, or emergency declarations and proclamations).

14.11 Notices The notices under this Contract shall be validly given and fully received when in compliance with all of the following:

(i) In writing,
(ii) Delivered or refused delivery,
(iii) By personal delivery, or by major commercial delivery courier service which requires a signature of the recipient, or by registered or certified United States Postal Service mail, return receipt requested with the signature of the recipient, postage prepaid to the addresses in the first paragraph of this Contract.

14.11.2 Either Party may designate in writing and deliver notice of a different address in the same way as above. Any such change of address notice shall be delivered at least ten (10) Days before the date on which the change is to become effective.

14.11.3 Notices for delivery to the City shall be to the attention of the Public Works Director, copies to the City Manager, City Attorney, and City Clerk.

14.12 Severability If any terms, parts, or provisions of this Contract are for any reason invalid or unenforceable, the remaining terms, parts, or provisions are nevertheless valid and enforceable.

14.13 Entire Agreement This Contract (including the incorporated documents) contains the entire agreement between the Parties, and no oral or written statement, promise, or inducement made by either Party or its agents not contained or specifically referred to in this Contract is valid or binding. All modifications to this Contract must be in writing, signed, and endorsed by the Parties.

14.14 Headings The headings of this Contract are solely for the convenience of the Parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Contract.

14.15 Further Acts Each of the Parties shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Contract.