RESOLUTION NO. 13-2008

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BENSON, ARIZONA, ENTERING INTO AN INDEPENDENT CONTRACTOR'S AGREEMENT WITH D. FENN ENTERPRISES, INC., FOR A JOB ORDER CONTRACT (JOC) FOR MISCELLANEOUS PAVING SERVICES ON AN AS-NEEDED BASIS.

WHEREAS, the City Council has determined that it is necessary for the City to retain a contractor to assist the Public Works Department with paving work; and

WHEREAS, D. Fenn Enterprises, Inc,. is qualified for the work.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Benson, Arizona, that the Agreement with D. Fenn Enterprises, Inc., attached hereto as Exhibit A and incorporated herein by this reference, is hereby approved.

BE IT FURTHER RESOLVED that the Vice Mayor is hereby authorized and directed to execute said Agreement on behalf of the City of Benson.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF BENSON, ARIZONA, this 24th day of March, 2008.

TONEY KING SR., Vice Mayor

ATTEST:

Vicki L Vivian

VICKI L. VIVIAN, City Clerk

APPROVED AS TO FORM:

for THOMAS A. BENAVIDEZ,
City Attorney

EXHIBIT A
[Contract for Services]

CITY OF BENSON

BENSON, ARIZONA

2008

CONSTRUCTION SERVICES AGREEMENT

FOR

Job Order Contract for Miscellaneous Paving Services

CONTRACT NO. PW-JOC-2008-01

D. Fenn Enterprises

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ARTICLE 1. DEFINITIONS

Wherever used in these General Conditions or in the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

Amendment - written or graphic instrument issued prior to the due date which clarifies, corrects or changes the Solicitation.

Architect/Engineer - the person licensed to practice architecture/engineering by the State of Arizona and who is identified as the Architect/Engineer of Record by affixing his/her seal upon the Contract plans, drawings, specifications and related documents. May be utilized to provide construction administration services.

Benson Procurement Code – in addition to applicable State statutes and applicable Federal regulations and requirements, the municipal ordinance that governs the construction services contracting process as well as contract administration processes including the resolution of contract claims, disputes and controversies.

Bonds - bid, performance and payment bonds and other instruments of security.

Change Order - a document approved by the City Contract Representative and which is signed by the Contractor and the City's Manager or duly authorized designee and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Completion time, issued on or after the effective date of the Contract.

City - means the City of Benson, Arizona, a municipal corporation.

City Contract Representative - the City official administering the Contract for the City of Benson.

City Manager – the person who has authority to award and revise City solicitations and contracts for construction, construction services, and construction-related services as necessary.

Completion Time - the number of consecutive calendar days agreed to by the City and Contractor for completion of the Work, which may be revised by written Change Order.

Construction – the process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any real public property.

Construction-Manager-At-Risk – a project delivery method in which there is a separate contract for design services and a separate contract for construction services, with design and construction taking place in sequential or concurrent phases, and in which finance services, maintenance services, operations services and preconstruction services may be included.

Construction Services – either of the following for construction-manager-at-risk, design-build and job-order-contracting project delivery methods:

(a) construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods;

(b) a combination of construction and, as elected by the City, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services.

Contract - the written agreement and all associated attachments, drawings, amendments and change orders executed between the City and the Contractor covering the Work to be performed.

Contract Price - the amount payable by the City to the Contractor for satisfactory completion of the Work, and as specified in the Contract as may be amended by written Change Order, or, in the case of a job-order contract, in the Notice to Proceed.

Contract Officer - the City official who conducts the solicitation process to secure a Contractor for the Work and who acts under the authority and direction of the City Manager and in accordance with the Benson Procurement Code.

Contractor - the person, firm or corporation with whom the City has entered into the Contract.

Day - the term "day" as used in the Contract shall mean calendar day.

Design-Build – the process of entering into and managing a contract between the City and a Contractor in which the Contractor agrees to both design and build a structure and in which design and construction services may be in sequential or concurrent phases, and which may include finance services, maintenance services, operations services, design services and preconstruction services.

Design Services – architect services, engineer services or landscape architect services.

Drawings - the graphic and pictorial portions of the contract, wherever located and whenever issued, showing the configuration, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

Estimate for Payment - a form furnished by the City or an approved form submitted by the Contractor in lieu of a City furnished form, which is required to be used when submitting requests for payments for work actually performed and materials supplied during a an agreed-to preceding period of time.

Field Order - a written order or directive issued by the City Contract Representative that orders minor changes in the Work.

Final Completion Date - the calendar date when the Work is one hundred percent (100%) complete as determined by the City.

Finance Services – financing services for the Work.

Guaranteed Maximum Price or GMP - the sum of: the maximum cost of the Work; the Construction-Manager-at-Risk's or Design Builder's construction fee; general conditions fee; taxes; bonds; insurance costs; and bid contingency as proposed and approved pursuant to this Agreement. The approved GMP will be made part of this Agreement by executing an amendment or additional amendments for phased construction.

Job-Order-Contracting – a project delivery method in which the contract is a requirements contract for indefinite quantities of construction and in which specified job orders are issued during the contract and may include finance services, maintenance services, operations services, preconstruction services and design services.

Liquidated Damages – a sum set forth in the Contract documents that will be deducted from any monies due to the Contractor, not as a penalty, but in lieu of actual damages for late completion of the work.

Maintenance Services – routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.

Notice to Proceed - a written notice given by the City to the Contractor fixing the date on which the Completion time will commence and upon which the Contractor shall start to perform the Contractor's obligations under the Contract. In the case of a job order, it may also contain the specifications exclusive to the job order as well as consideration for the Contractor.

Operations Services – routine operation of existing facilities, structures, buildings or real property.

Preconstruction Services – services during the design stage of the Work.

Public Inspector(s) - that person or persons provided by the public authorities having code jurisdiction and who perform day-to-day inspections of the Work for compliance with applicable codes.

Schedule of Values - a schedule submitted by the Contractor setting forth the values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the City Contract Representative may require. This schedule must be submitted before the Contractor submits its first application for progress payment and shall be used as a basis for reviewing and approving payments to the Contractor.

Shop Drawings - drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for the Contractor to illustrate, in detail, how some portion of the Work shall be fabricated and/or installed, and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a supplier and submitted by the Contractor to illustrate material or equipment for some portion of the Work.

Specifications - those portions of the Contract, or Notice to Proceed if a Job Order, consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

Substantial Completion – a written declaration of the date upon which the City, in its sole discretion, determines the Work is substantially complete such that the City has beneficial use and/or occupancy. Upon Substantial Completion, the right of the City to assess Liquidated Damages for time after the date of Substantial Completion ceases, except as allowed for failure to meet Final Completion within thirty days of Substantial Completion.

Work - the entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract, or, in the case of a Job-Order-Contract, within individual Notices to Proceed. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract and/or Notice to Proceed, as appropriate.

ARTICLE 2. THE CONTRACT DOCUMENTS; THEIR EXECUTION, CORRELATION AND INTENT

2.1 **<u>The Contract</u>**

2.1.1 The documents in the Contract include any Amendments, Change Orders, Shop Drawings and City-approved Contractor submittals.

2.1.2 The Contract comprises the entire agreement between the City and the Contractor concerning the Work and supersedes any prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by an instrument in writing and fully executed by the authorized parties to the Contract.

2.2 **<u>Intent of the Contract</u>**

2.2.1 The intent of the Contract is to include all labor, materials, equipment, transportation and all other costs and expenses necessary for the proper execution and completion of the Work by the Contractor.

2.2.2 The Contractor shall take no advantage of any apparent error or omission in the plans, estimated quantities or specifications. In the event the Contractor discovers such an error or omission after contract award, the Contractor shall immediately notify the City Contract Representative. The City Contract Representative shall then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the Contract.

2.2.3 The Contract shall be construed in accordance with the laws of the State of Arizona, and all such laws regulating the construction of public works by the City are hereby incorporated herein by reference and made a part hereof.

2.2.4 Materials or work described in words, which have a well-known technical or trade meaning, shall be held to refer to such recognized standards.

2.2.5 The organization of the Contract into divisions, sections or articles is merely for the purpose of convenient reference, and neither the headings nor divisions shall have any legal or contractual significance and shall not control the division of the Work by the Contractor among the various subcontractors or trades.

2.2.6 The Contractor shall include all utility fees, permits, licenses, etc. including sewer connection fees in each estimate or proposal submitted.

2.3 **Execution**

2.3.1 Execution of the Contract by the Contractor is a representation that the Contractor has thoroughly examined the Contract.

2.4 **Ownership of the Contract**

2.4.1 The Contract, including, but not limited to, the drawings and specifications, is the property of the City and is not to be used by the Contractor or any subcontractor on other projects outside the scope of the Work without the express written consent of the City.

ARTICLE 3. ADMINISTRATION OF THE CONTRACT

3.1 **Lines of Authority and Communications**

3.1.1 The City's Manager is the City official with overall authority and responsibility for the award and administration of City Contracts. The City Manager or his designated representative after consultation with the City Contract Representative has the ultimate authority to resolve disputes concerning Contract performance and to stop the Work whenever such stoppage may be necessary to ensure the proper execution of the Work.

3.1.2 The City Contract Representative is the designated representative of the particular City department for which the Work is being constructed (the "user department") or the City department which is responsible for the oversight of the work.

3.1.3 Day-to-day administration of the Contract is the responsibility of the City Contract Representative. The City Contract Representative is the City's representative during the prosecution of the Work and shall act as surveillance and technical advisor for the City. The City Contract Representative's duties are more fully described in Section 3.2 of this Article.

3.1.4 The Contractor shall supervise and direct the Work and shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work, unless the Contract gives other specific instructions concerning these matters. The Contractor's duties and responsibilities are more fully described in Article 4 of these Contract conditions.

3.1.6 Except where the Contract otherwise provides or where direct communication has been specifically authorized, the Contractor shall initially communicate with the City Contract Representative.

3.2 **City Contract Representative's General Authority and Responsibilities**

3.2.1 Unless the Contractor is responsible for the design of the Work, the City Contract Representative shall furnish to the Contractor, free of charge unless it is provided otherwise in the Contract, up to three copies of drawings, specifications and instructions available for the execution of the Work. The City Contract Representative **may** furnish additional clarifications or interpretations in writing or by drawings as may be necessary for the proper progress and execution of the Work. Such additional clarifications and interpretations shall be furnished with reasonable promptness, and the Contractor shall not do work without drawings or written clarifications where needed. All drawings, specifications and copies thereof furnished by the City Contract Representative are City property. They are not to be used on other work and, with the exception of the signed Contract, are to be returned to the City Contract Representative at the completion of the Work.

3.2.2 The City Contract Representative shall make general surveillance of the Work. By making sufficient periodic visits to the site of the Work, the City Contract Representative will become thoroughly familiar with the progress and quality of completed portions of the Work, and will assess if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract.

3.2.3 The City Contract Representative will decide all questions which may arise as to the quality and acceptability of materials furnished and work performed and as to the rate of progress of the Work, and all questions which may arise as to the interpretation of the drawings and specifications.

3.2.4 The City Contract Representative shall have the authority to reject work that is not in conformity with the Contract and to order additional inspections and testing of the Work. The City Contract Representative's failure during the progress of work to discover or reject materials or work not in accordance with the plans, specifications or contract documents shall not be considered an acceptance of the Work or materials or a waiver of defects. Neither the failure of the City Contract Representative to properly perform inspections, tests or approvals required by the Contract documents nor the activities or duties of the City Contract Representative in the administration of this Contract shall relieve the Contractor from the Contractor's responsibility for the means, methods, techniques, sequences or scheduling of the construction or the obligation to perform the Work in strict accordance with the Contract documents.

3.2.5 The City Contract Representative shall conduct an initial review of, and approve or deny, written Change Orders submitted by the Contractor, and may prepare Change Orders and provide field clarifications and corrections. All Change Orders shall be approved by the City Manager or his designee prior to any work being done. However, in emergencies endangering life or property, the City Contract Representative may take action and issue orders which are deemed necessary to avert the loss of life or property.

3.2.6 The City Contract Representative, pursuant to Article 10 of these General Conditions, shall make recommendations to the Contract Officer as to all claims of the Contractor.

3.2.7 The City Contract Representative will review and process the Contractor's monthly Estimates for Payment, as more fully set forth in Article 7 of these General Conditions.

3.2.8 The City Contract Representative will conduct inspections to determine the dates of Substantial Completion and Final Completion and will certify such dates to the Contract Officer.

3.2.9 The City Contract Representative will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, because these are solely the Contractor's responsibility.

3.3 **Public Inspections**

3.3.1 Unless otherwise specifically provided in the Contract, Public Inspectors who perform day-to-day inspections of the Work for compliance with applicable codes will have authority to require compliance with drawings, specifications and applicable codes, and may provide clarification of any unspecified or unclear item or situation.

3.3.2 If the drawings or specifications, laws, ordinances, or any public authority requires any work to be specially tested or approved, the Contractor shall give the City Contract Representative timely notice of its readiness for inspection. If the inspection is by an individual, authority or entity other than the City Contract Representative or the Public Inspectors, the Contractor shall advise the City Contract Representative of the date fixed for such inspection.

3.3.3 All tests, inspections or approvals required to be performed by the City Contract Representative, Public Inspectors, or other authorities or entities shall not relieve the Contractor of its obligation to perform the Work in accordance with the Contract.

3.4 **Special Inspections and Testing of Materials**

3.4.1 All equipment and materials used in the construction of the Work, especially those upon which the strength and durability of the structure may depend, will be subject to adequate inspection and testing in accordance with accepted standards, to establish conformance with specifications and suitability for the use intended, as determined by the City Contract Representative.

3.4.2 The performance of tests and the engagement of testing laboratories or agencies must have the prior approval of the City Contract Representative. Except as provided in subsection 3.4.3, the City will pay for approved tests and services rendered by the approved laboratory or agency in addition to the Contract price for construction.

3.4.3 When initial tests indicate that any portion of the Work is not in conformance with the Contract because of faulty workmanship, the Contractor shall be required to pay for necessary re-tests. When initial tests indicate that the work is in conformance with the Contract, any re-testing that is ordered by the City shall be paid for by the City.

ARTICLE 4. THE CONTRACTOR'S DUTIES AND RESPONSIBILITIES

4.1 Contractor's Review of Contract and Site Conditions

4.1.1 It shall be the duty of the Contractor to carefully study and compare all drawings, specifications and instructions. If any discrepancies, errors, omissions or inconsistencies are discovered in the drawings or specifications, or between the drawings and specifications, or there are any conflicts between existing site conditions and the requirements of the drawings and specifications, the Contractor shall immediately call all such discrepancies to the attention of the City Contract Representative.

4.1.2 The Contractor shall be required to use, for data and dimensions, figures marked on the drawings in preference to what the drawings may measure to scale; but in the absence of figured dimensions, scale dimensions may be used with the prior written concurrence of the City Contract Representative. The Contractor shall verify all dimensions shown and check all measurements in connection with any present building or buildings, level or grades, walks, driveways or other existing conditions before executing any work. Errors or inconsistencies shall be reported to the City Contract Representative immediately. **It is the responsibility of the Contractor to provide BLUESTAKE verification of underground utilities on and off the construction site.**

4.1.3 Change Orders will not be issued to cover any cost, loss or expense for additional labor or materials required to rectify any error or inconsistency in the drawings and specifications unless prior notification is given by the Contractor to the City Contract Representative.

4.1.4 The Contractor shall perform the Work in accordance with the Contract and with Shop Drawings, product data and samples that have been approved by the City Contract Representative.

4.1.5 Notwithstanding the above provisions, if the Contractor is responsible for the design of the Work, the Contractor shall ensure the accuracy and completeness of the drawings, specifications and instructions. If any discrepancies, errors, omissions or inconsistencies are discovered in the drawings or specifications, or between the drawings and specifications, or there are any conflicts between existing site conditions and the requirements of the drawings and specifications, the Contractor shall immediately call all such discrepancies to the attention of the City Contract Representative and shall be responsible for any required corrective action.

4.2 Contractor's Supervision

4.2.1 The Contractor shall efficiently and continuously supervise and direct the Work, using its best skill and attention. Unless the Contract specifically provides otherwise, the Contractor shall be solely responsible for and shall exercise control over construction means, methods, techniques and procedures and shall coordinate the sequences of all portions of the Work.

4.2.2 The Contractor shall ensure that the key personnel submitted in response to the Request for Qualifications and assigned to this Contract are available throughout the term of the Contract. In the event that the Contractor requests substitution of key personnel, the Contractor shall obtain prior approval from the City for key personnel substitution. The Contractor shall ensure that substituted personnel are equally qualified and capable. Information on the qualifications of proposed substitutes shall be provided to the City for its consideration and approval prior to substitution taking place.

4.2.3 The Contractor agrees that it is as fully responsible to the City for the acts and omissions of its subcontractors and of persons, either directly or indirectly employed by the Contractor, as it is for the acts and omissions of persons directly employed by the Contractor.

4.3 **Materials and Labor; Warranty**

4.3.1 Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, equipment, tools, construction equipment and machinery, water, gas, heat, utilities, transportation, and other facilities and services necessary for the execution, completion and delivery of the Work within the specified Completion Time. Warranty for workmanship and materials is one year from acceptance.

4.3.2 The Contractor shall pay all applicable taxes associated with the Work.

4.3.3 The Contractor warrants to the City that all materials and equipment furnished under the Contract will be new unless otherwise specified, and that all of the Work will be of good quality, free from faults and defects and in conformance with the Contract. All Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

4.3.4 The Contractor shall furnish all materials required to complete the Work, except those specified to be furnished by the City. The Contractor shall receive, inventory, store, inspect, protect, distribute, and install City furnished material unless otherwise specified. The cost of handling and placing all materials after they are delivered to the Contractor shall be considered as included in the contract price for the item in connection with which they are used. The Contractor shall be held responsible for all material delivered to the Contractor. Deductions shall be made from any monies due the Contractor to make good any shortages or deficiencies, from any cause whatsoever and for any damage which may occur after such delivery, and for any late delivery charges.

4.3.5 The Contractor will be held to furnish all Work as specified in the Contract. After a price proposal for the Work has been accepted by the City, changes of brand named, trade named, trade marked, or patented articles, or any other substitutions, will be allowed only by written Change Order signed by the City Contract Representative. Unless otherwise agreed to via Change Order, the City shall receive all benefits of the difference in costs.

4.3.6 Materials not conforming to the requirements of the Specifications, whether in place or not, shall be rejected and shall be promptly removed from the site of the Work, unless otherwise directed by the City Contract Representative. No rejected material, the defects of which have been corrected, shall be returned to the Work site until such time as approval for its use has been given by the City Contract Representative.

4.4 **Construction Schedules and Submittals**

4.4.1 Before commencing the Work, the Contractor shall provide the City Contract Representative with a construction schedule for the Work, fixing the dates at which various pre-determined events shall occur in order to promote a timely completion of the various parts of the Work in accordance with the Contract. The schedule may be revised from time to time as may be required by conditions of the Work, but shall not exceed time limits, or any extensions thereof, set forth in the Contract or in the individual job order, as appropriate.

4.4.2 The Contractor shall prepare and keep current for the City Contract Representative's approval, a schedule of submittals which shall be coordinated with the Contractor's construction schedule and allow the City Contract Representative reasonable time to review such submittals.

4.4.3 After review, the City Contract Representative, with reasonable promptness, shall approve these shop or setting drawings, product data, samples and sequences for conformance with the design concept of the project, the approved construction schedule, and other requirements of the Contract.

4.4.4 The Contractor shall make any corrections required by the City Contract Representative and re-submit such corrected materials to the City Contract Representative for approval. Any correction or

change that will result in a design or function change or in an increase or decrease in the Contract price must also receive the prior approval of the City Manager or his designee.

4.4.5 The Contractor shall perform no portion of the Work requiring submittal and review of shop drawings, product data, samples or schedules until the respective submittals have been approved by the City Contract Representative, and shall not deviate from such submittals after final approval by the City Contract Representative.

4.4.6 As-builts documents must be provided to the City by the Contractor within thirty days of substantial completion. The City reserves the right to withhold final payment until complete as-builts have been received in good order by the City Contract Representative.

4.5 **Documents and Samples at the Work Site**

4.5.1 Unless otherwise directed by the City's Contract Representative, the Contractor shall maintain at the Work site a complete file of the Shop Drawings, Specifications, Amendments, Change Orders and other approved modifications, in good order and marked to reflect changes and selections made during construction, together with all approved shop drawings, product data, samples and similar required submittals. Such files shall be made available to the City Contract Representative and Public Inspectors upon request.

4.6 **Protection and Use of Site - (Signs, Utilities, Water, Sanitation, Traffic, etc.)**

4.6.1 The City will provide land, rights-of-way and easements for all Work specified in the Contract. The Contractor shall confine its apparatus, the storage of materials and the operations of its workmen to limits indicated by law, ordinances, permits or directions of the City Contract Representative, and shall not unreasonably encumber the premises with its material and equipment.

4.6.2 Contractor shall prevent any damage to pipes, sewers, computer and phone lines, conduits or other structures, including public and/or private lawns, gardens, shrubbery and trees encountered in the Work, and shall hold the City harmless from damages for any injury done to such pipes, structures or property during the course of the Work.

4.6.3 Work shall be accomplished so that there will be a minimum of traffic interruption and inconvenience, discomfort or damage to the public.

4.6.4 The Contractor shall supply safe drinking water for all Contractor employees at the Work site. Water from existing fire hydrants may be made available to the Contractor upon its request to the City's Water Department through the City's Contract Representative. In such cases where the City elects to provide hydrant water, the Contractor will be provided a meter for the fire hydrant and will be charged the City's current rate for all water used. A deposit for the meter will be required by the City's Water Department.

4.6.5 If archaeological, historical or paleontological features are encountered or discovered during any activity related to the Work, the Contractor shall stop work immediately at that location and shall take all reasonable steps to secure the preservation of those features. The City Contract Representative will make arrangements for the proper treatment of the affected portion of the Work site. The Contractor shall not resume work in the affected portion without the prior approval of the City Contract Representative. Extensions in the Completion time for delays resulting from the discovery of archaeological, historical or paleontological features, if such discovery results in a delay to the progress of the Work, may be claimed by the Contractor in accordance with Article 10 of these General Conditions.

4.7 **Cleaning Up**

4.7.1 The Contractor shall at all times keep the Work site and surrounding area free from accumulations of waste material or rubbish caused by operations under the Contract. Upon completion of the Work, the Contractor shall remove all rubbish, tools, equipment, scaffolding and surplus materials from the

site and surrounding areas and leave the area "broom clean" or its equivalent, unless otherwise instructed by the City Contract Representative.

4.7.2 If the Contractor fails to clean up as provided in the Contract, the City may do so and the cost thereof shall be charged against the Contractor.

4.8 **Emergencies**

4.8.1 In an emergency affecting the safety of life or property, the Contractor, without special instruction or authorization from the City Contract Representative, is hereby permitted, authorized and directed to act at its own discretion to prevent threatened loss or injury.

4.8.2 Except in the case of an emergency requiring immediate remedial work, any work performed after regular working hours, on Saturdays, Sundays or legal holidays shall be performed without additional expense to the City unless such work has been specifically requested and approved by the City Contract Representative.

4.8.3 The Contractor shall file with the City Contract Representative the names, addresses and telephone numbers of its employees who can be contacted at any time in case of emergency. These Contractor representatives must be fully authorized and equipped to correct unsafe or excessively inconvenient conditions on short notice by the City or the Public Inspectors.

4.9 **Permits, Fees and Notices**

4.9.1 The Contractor shall, at its expense, obtain all necessary permits and licenses for Work performed under the Contract, and shall give all necessary notices required by laws, ordinances, rules, regulations and lawful orders of public authorities pertaining to performance of the Work, public health and safety.

4.9.2 If the Contractor knowingly performs Work which is not in compliance with such laws, ordinances, rules, regulations or orders, without such notice to the City Contract Representative, the Contractor shall assume full responsibility for such Work and shall bear all costs attributable thereto.

4.10 **Royalties and Patents**

4.10.1 The Contractor shall pay all royalties and license fees.

4.10.2 The Contractor and its surety shall defend any suit or proceeding brought against the City, during the prosecution or after the completion of the Work, based on a claim that manufacture, sale, or use of any method, process, machine, technique, design, living thing, genetic material, or composition of matter, or any part thereof, furnished or used under this Contract constitutes an infringement of any patent, trademark, or copyright, and the Contractor shall pay all damages and costs awarded therein, against the City. If manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or any part thereof, is in such suit held to constitute infringement and if manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part thereof, is enjoined, the Contractor shall, at its own expense, either procure for the City the right to continue manufacture, sale, or use of said method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part thereof, or, subject to the City Contract Representative's approval, replace the same with a noninfringing method, process, machine, technique, design, living thing, genetic material, or composition of matter, or part, or modify it so it becomes noninfringing.

4.10.3 If appropriate, the Contractor shall furnish the City Contract Representative satisfactory evidence of patent licenses or patent releases covering City-specified proprietary materials, equipment, devices or processes, as the case may be.

4.11 **Protection of Persons and Property**

4.11.1 The Contractor shall be responsible for initiating, maintaining, supervising and directing all safety precautions and programs in connection with the performance of the Contract.

4.11.2 The Contractor shall be responsible for the protection of all Work until completion and final payment is made, including any material or equipment to be incorporated, whether in storage on or off the Work site.

4.11.3 The Contractor shall, at its own expense, replace damaged or lost material, or repair damaged parts of the Work or of other property at the Work site or adjacent thereto, and the Contractor and its sureties shall be liable therefor.

4.11.4 The Contractor shall assume all risks from floods and casualties and shall make no claim for damages for delay from such causes. However, a reasonable extension of time on account of such delays may be allowed, subject to the conditions contained in Article 6 of these General Conditions.

4.11.5 In the event the Contractor encounters on the Work site material reasonably believed to be a hazardous material, such as asbestos or polychlorinated biphenyl (PCB), the Contractor shall immediately stop Work in the area affected and report the condition to the City Contract Representative.

4.11.6 The Contractor shall take all necessary precautions for the safety of employees on the Work site and other persons who may be affected thereby, and shall comply with all applicable provisions of Federal, State and Municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the Work is being performed. The Contractor shall erect and properly maintain at all times, as required by the condition and progress of the Work, all necessary safeguards for the protection of workmen and the public and shall post danger signs warning against the hazards created by such features of construction as protruding nails, hod hoists, well holes, elevator hatchways, scaffolding, window openings, stairways and falling materials.

4.11.7 The Contractor warrants it is fully familiar with and shall comply with all of the safety requirements of the Occupational Safety and Health Act (29 U.S.C. Sections 641-678, or as amended or recodified from time to time), and the Hazard Communication Act relating to the use of hazardous materials (29 C.F.R. 1910-1200, or as amended or recodified from time to time), as promulgated by the Federal Government and as implemented by the State of Arizona, and that it will be solely responsible for all fines and penalties provided for by law for any violation of such Acts and, furthermore, shall require all subcontractors to comply with such Acts and with the provisions of this section. Any claims arising out of alleged violations of such Acts are covered by the indemnification set forth in Section 4.12.

4.12 **Indemnification and Insurance**

4.12.1 To the fullest extent permitted by law, Contractor, its successors, assigns and guarantors, shall pay, defend, indemnify and hold harmless the City, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses, and expenses, including but not limited to attorney fees, court costs, and the cost of appellate proceedings, and all claim adjusting and handling expenses, related to, arising from or out of or resulting from any actions, acts, errors, mistakes or omissions caused in whole or part by Contractor relating to Work or services in the performance of this Contract, including but not limited to any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and any injury or damages claimed by any of Contractor's and subcontractor's employees, provided, however, that this duty to indemnify, hold harmless and defend shall not include losses, damages, claims, liabilities, costs and expenses to the extent arising from the acts or omissions of the City.

4.12.2 The Contractor Agrees to:

.1 Obtain insurance coverage of the types and amounts required in this subsection and keep such insurance coverage in force throughout the life of the Contract. The Contractor will provide satisfactory certificates of the required coverage to the Contracting Officer before beginning the Work. All policies will contain an endorsement providing that written notice be given to the City at least ten (10) calendar days prior to termination, cancellation or reduction in coverage in any policy.

.2 Include the City as an additional insured on the General Liability Insurance and Automobile Liability Insurance policies with respect to liability arising out of the performance of the Work. The Contractor agrees that the insurance required hereunder will be primary and that any insurance carried by the City will be excess and not contributing.

.3 Provide and maintain minimum insurance coverage as follows:

Coverage Afforded	Limits of Liability
Workers' Compensation	Statute
Commercial General Liability Insurance including: (a) Products & Completed Operations (b) Blanket Contractual (c) Explosion, Collapse & Underground Hazard	$1,000,000 Bodily Injury and property damage Combined Single Limit
Automobile Liability Insurance including: (a) Non-owned (b) Leased (c) Hired Vehicles	$1,000,000 Bodily Injury and property damage Combined Single Limit
[___] Checked If applicable: Builder's Risk Insurance including: Fire, Extended Coverage, Vandalism and Malicious Mischief, and Theft.	Contract Value (Less site preparation)

Builder's Risk insurance shall be required on all vertical construction.

The City reserves the right, at its sole option, to furnish the Builder's Risk Insurance at the City's expense. In the event that the City exercises such right, Contractor shall reduce General Conditions and overhead accordingly.

.4 In the event any of the Work is subcontracted, the Contractor shall require the subcontractor to provide Workers' Compensation insurance for all of the subcontractor's employees engaged in the Work, unless such employees are covered by the protection afforded by the Contractor's Workers' Compensation insurance. In case any class of employees engaged in hazardous work under the Contract is not protected under the Workers' Compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate employer's general liability insurance for the protection of such of their employees as are not otherwise protected.

ARTICLE 5. SUBCONTRACTS AND SEPARATE CONTRACTS

5.1 Subcontracts

5.1.1 The Contractor shall ensure that the subcontractors assigned to this Contract are available throughout the term of the Contract. In the event that the Contractor requests substitution of subcontractors, the

Contractor shall obtain prior approval from the City for subcontractor substitution. The Contractor shall ensure that substituted subcontractors are equally qualified and capable as the subcontractors that they are replacing. Information on the qualifications of proposed substitutes shall be provided to the City for its consideration and approval prior to substitution taking place.

5.1.3 In Job-Order-Contracting, by appropriate written agreement, the Contractor agrees that each subcontractor has been notified in writing of the negotiated amount or coefficient agreed to for billing purposes. Furthermore, by appropriate written agreement, the Contractor agrees that each subcontractor shall be bound to the Contractor by the terms of this Contract. In the event of a conflict between the substance of a written subcontract and the language of this Contract, the language of this Contract shall prevail.

5.1.4 Contractor shall ensure that each subcontract shall preserve and protect the rights of the City under the Contract with respect to the Work to be performed by the subcontractor. Where appropriate, the Contractor shall require each subcontractor to enter into similar agreements with sub-subcontractors. In this connection, the Contractor shall make available to each subcontractor, prior to execution of any subcontract, copies of the Contract provisions to which the subcontractor will be bound. Subcontractors shall also make copies of applicable portions of the Contract available to their respective subcontractors.

5.1.5 Each subcontract will require the subcontractor to submit to the Contractor applications for payment in such reasonable time as to enable the Contractor to apply for payment to the City in a timely manner, including any claims for extras, extensions of time, and damages for delays or otherwise, to the Contractor in the manner provided in the Contract for like claims by the Contractor upon the City.

5.1.6 The Contractor further agrees:

.1 To be bound to the subcontractor by all the obligations that the City assumes to the Contractor under this Contract, and by all provisions thereof affording remedies and redress to the Contractor from the City.

.2 To promptly pay the subcontractor in accordance with applicable State statutes.

.3 That, at all times, the subcontractors' total payments shall be proportionate to the value of the labor and materials provided by them. Payment may be preconditioned upon the subcontractors providing the Contractor with requested significant partial or final lien waivers.

.4 To pay the subcontractor to such extent as may be provided by the Contract or the subcontract, if either of these provides for earlier or larger payments than the above.

.5 To ensure timely payment to subcontractors for their work as performed and for materials fixed in place, less any applicable retention, despite any delay by the City in making payments to the Contractor for any cause not the fault of the subcontractor.

.6 To share or forward, as appropriate, with its subcontractors or, as appropriate, with the City, any fire insurance money received by the Contractor under the insurance provisions of the Contract.

.7 That no claim for services rendered or materials furnished by the Contractor to the subcontractor shall be valid unless written notice thereof is given by the Contractor to the subcontractor during the first ten (10) days of the calendar month following that in which the claim originated.

.8 To give the subcontractor an opportunity to be present and to submit evidence in any contractual claim, controversy or dispute.

5.1.7 Nothing in this Article shall create any obligation on the part of the City to pay to, or to see to the payment of, any sums to any subcontractor, except as may otherwise be required by law.

5.1.8 Each subcontract agreement for a portion of the Work is hereby assignable by the Contractor to the City provided that:

.1 Assignment is effective at the sole option of the City and only upon termination of the Contract for cause pursuant to Article 9 of these General Conditions, and only for those subcontract agreements which the City determines to accept by notifying the subcontractor in writing; and

.2 Assignment is subject to the prior rights of the surety obligated under the Bonds relating to the Contract.

5.2 **Separate Contracts**

5.2.1 The City reserves the right to perform construction or operations related to the Work with the City's own forces and to let separate contracts in connection with other portions of the Work or other construction or operations on the Work site.

5.2.2 The Contractor shall afford other contractors on the Work site reasonable opportunity for the introduction and storage of their materials and the execution of their work, and shall properly connect and coordinate its Work with theirs.

5.2.3 The City Contract Representative shall coordinate the activities of the City's own forces and of each separate contractor with the work of the Contractor. The Contractor and all other contractors on the Work site shall be required to review their construction schedules and cooperate with the City Contract Representative in coordinating the various portions of the Work with the schedules of such separate contractors.

5.2.4 If any part of the Contractor's Work depends, for proper execution or results, upon the Work of any other contractor, the Contractor shall inspect and promptly report to the City Contract Representative any defects in such work that render it unsuitable for continuance of the Contractor's Work. Failure to inspect and report may constitute an acceptance of the other contractor's work as fit and proper for the reception of the Contractor's Work, except as to defects not then reasonably discoverable.

5.2.5 Costs caused by the Contractor because of delays or by improperly timed activities or defective construction shall be borne solely by the Contractor.

5.2.6 If the Contractor causes damage to any separate contractor on the site, the Contractor, upon due notice, agrees to settle with such separate contractor by agreement or arbitration, if he will so settle. If such separate contractor sues the City on account of any damage alleged to have been so sustained, the City shall notify the Contractor, who shall defend such proceedings and, if any judgment against the City arises therefrom, the Contractor shall pay or satisfy it.

5.2.7 Should separate contractors on the Work cause any damage, cost or loss to the Contractor, the City shall not be held responsible or liable therefor in any way other than extensions of completion time in accordance with Article 6 of these General Conditions.

ARTICLE 6. TIME FACTORS; LIQUIDATED DAMAGES

6.1 **Time**

6.1.1 Unless otherwise provided in the Contract, the Completion Time is the number of calendar days, including authorized time extensions, specified for completion of the Work.

6.1.2 Completion Time shall commence on the day specified in the Notice to Proceed. The date shall not be postponed on account of the failure of the Contractor, or of any of its subcontractors to take any action required to commence the Work.

6.1.3 The date of Substantial Completion is the date certified by the City Contract Representative pursuant to Subsection 7.4.1 of Article 7 of these General Conditions. It is expressly agreed that the time for

completion is a reasonable time, considering average climatic conditions and usual industrial conditions prevailing in the Benson area.

6.1.4 The term "day" as used in the Contract shall mean calendar day.

6.1.5 By execution of the Contract documents, or by concurrence with the Notice to Proceed in the case of Job-Order-Contracting, the Contractor acknowledges that the time described is a reasonable period for a competent Contractor to complete the Work.

6.1.6 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the agreed-upon time frame. If the Contractor is delayed on any portion of the Work for any reason whatsoever, it shall expeditiously proceed on other portions of the Work which are not affected by such delay.

6.2 **Liquidated Damages**

6.2.1 The amount of Liquidated Damages shall be as specified in the Contract documents, or, in the case of Job-Order-Contracting, in the Notice to Proceed.

6.2.2 The Contractor has been put on notice that the City shall enforce the Liquidated Damages set forth in the Contract documents or Notice to Proceed.

6.2.3 The Contractor agrees that the City will incur damages if the Contractor fails to complete the Work within the Completion Time or any approved extensions thereof and that the Liquidated Damages specified in the Contract or, in the case of Job-Order-Contracting, in the Notice to Proceed, represents a fair and equitable approximation of the City's damages.

Each day that the Contractor shall fail to achieve Substantial Completion after the calendar date agreed to for the completion of the Work provided for in the Contract, the sum set forth in the Contract documents will be deducted from any monies due the Contractor, not as penalty, but as liquidated damages; provided however, that due account will be taken of any adjustments of the Completion Time for the completion of the Work allowed under the Contract.

Permission allowing the Contractor to continue and finish any part of the Work after the time fixed for its completion or after the date to which the time for completion may have been extended shall in no way operate as a waiver on the part of the City of any of its rights under the Contract.

Once Substantial Completion is achieved, the Contractor shall achieve Final Completion within thirty (30) days, unless otherwise agreed upon by the City. If Final Completion does not occur within the agreed-upon number of days, Liquidated Damages will commence on the first day after the agreed days, until Final Completion occurs.

6.3 **Delays and Time Extensions**

6.3.1 It is agreed that the City's only liability for any delay from any cause shall be limited to granting a time extension to the Contractor and that no extended general conditions for any delay will be applicable unless agreed to by the City. There is no other obligation, express or implied, on the part of the City to the Contractor for delay from any cause.

6.3.2 **Force Majeure**

6.3.2.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of Force Majeure. The term "Force Majeure" means a major occurrence that is beyond the control of the parties affected and occurs without their fault or negligence. Force Majeure shall not include late performance by a sub-contractor unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.

6.3.2.2 If either party is delayed at any time in the progress of the Work by Force Majeure, the delayed party shall immediately notify the other party in writing of such delay and of the commencement thereof, and shall specify the causes of such delay in such notice. Such notice shall be hand-delivered or mailed certified-return receipt and shall make a specific reference to this Article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The Completion Time shall be extended by contract modification for a period of time equal to the time that such delay prevents the delayed party from performing in accordance with this Contract.

6.3.3 The Completion Time shall be extended when delay in completion of the Work by either the Contractor or the subcontractors is due to any preference, priority or allocation order duly issued by the Federal Government.

6.3.4 Time extensions shall only be granted for delays caused by the City, changes authorized in accordance with Article 8 of this agreement, or delays pursuant to sections 6.3.2 and 6.3.3.

6.3.4 Should a dispute arise between the Contractor and the City regarding a delay or time extension, the Contractor shall continue progress on the Work until the dispute is resolved.

ARTICLE 7. PAYMENTS TO THE CONTRACTOR

7.1 Contract Price; Request for Payment; Schedule of Values

7.1.1 The Contract amount or coefficient stated in the Contract documents or, in the case of Job-Order-Contracting, in the Notice to Proceed, plus or minus any authorized adjustments, is the amount payable by the City to the Contractor for performance of the Work under the Contract or for a specific job order.

7.1.2 During the course of construction, the Contractor shall request payment for Work actually performed during the preceding month or some other time period as mutually agreed to, using "ESTIMATE FOR PAYMENT" forms, which are furnished by the City, or a City-approved form submitted by the Contractor. Completed forms shall be submitted to the City Contract Representative. A Schedule of Values and an updated project schedule shall accompany the Estimate for Payment.

7.2 Certification and Payment

7.2.1 The City, by mutual agreement with the Contractor, may make progress payments on Contracts of less than ninety (90) days, and shall make monthly progress payments on all other Contracts, as provided for in this paragraph. Payment to the Contractor on the basis of a duly certified and approved Estimate for Payment of the Work performed during the preceding calendar month under the Contract may include payment for material and equipment. An Estimate for Payment submitted shall be deemed approved and certified for payment after seven (7) days from the date of submission, unless before that time the City or the City's designee prepares and issues a specific written finding, setting forth those items in detail in the Estimate for Payment that are not approved for payment under the Contract. The City may withhold an amount from the progress payment sufficient to pay the expenses the City reasonably expects to incur in correcting the deficiency set forth in the written finding. The progress payments shall be paid on or before fourteen (14) days after the Estimate for Payment is certified and approved. The Estimate for Payment shall be deemed received by the City on submission to any person designated by the City for the submission, review or approval of the Estimate for Payment.

7.2.2 On completion and acceptance of each separate building, public work or other division of the Work on which the price is stated separately in the Contract, except as qualified in paragraph 7.2.5, payment may be made in full, less authorized deductions. In preparing estimates, the material and equipment delivered on the site to be incorporated in the Work shall be taken into consideration in determining the estimated value by the architect, engineer or other person, as specified in the Contract.

7.2.3 The Contractor shall pay to the Contractor's subcontractors or material suppliers and each subcontractor shall pay to the subcontractor's subcontractor 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 by the subcontractors, to the extent of each subcontractor's interest, except that no contract for construction services may materially alter the rights of any Contractor, subcontractor or material supplier to receive prompt and timely payment as provided under this section. The payments to subcontractors or material suppliers shall be based 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 those 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.

7.2.4 A subcontractor may notify the City in writing requesting that the subcontractor be notified by the City 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.

7.2.5. Nothing in this Article prevents the Contractor or subcontractor, at the time of application and certification to the City or Contractor, from withholding the application and certification to the City or Contractor for payment to the subcontractor or material supplier, for unsatisfactory job progress, defective construction work or materials not remedied, disputed work or materials, third party claims filed or reasonable evidence that a claim will be filed, failure of a subcontractor to make timely payments for labor, equipment and materials, damage to the Contractor or another subcontractor, reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum or a reasonable amount for retention.

7.2.6 If any payment to a Contractor is delayed after the date due interest shall be paid at the rate of one per cent (1%) per month or fraction of a month on the unpaid balance as may be due.

7.2.7 If any periodic or final payment to a subcontractor is delayed by more than seven (7) days after receipt of the periodic or final payment by the Contractor or subcontractor, the Contractor or subcontractor shall pay the subcontractor or material supplier interest, beginning on the eighth (8th) day, at the rate of one per cent (1%) per month or fraction of a month on the unpaid balance as may be due.

7.2.8 Notwithstanding anything to the contrary in this section, this section applies only to amounts payable in a Construction Services Contract for Construction and does not apply to amounts payable in a Construction Services Contract for design services, preconstruction services, finance services, maintenance services, operations services or other related services.

7.2.9 The City Contract Representative, with reasonable dispatch, will review the contents of the Estimate for Payment submitted by the Contractor, determine the sufficiency of the estimate, satisfy himself that the City has received full value, certify the estimate and submit it through normal channels for payment.

7.2.10 Neither the certification nor payment made to the Contractor, nor partial or entire use or occupancy of the Work by the City shall constitute an acceptance of any portion of the Work.

7.3 **Payment Withheld**

7.3.1 If the City Contract Representative is unable to certify a request for payment in whole or in part because, after observing the Work and the data comprising the Estimate for Payment, the City Contract Representative determines that the Work has not progressed or the quality of the Work is not in accordance with the Contract, the City Contract Representative shall promptly notify the Contractor. If the City Contract Representative and the Contractor cannot agree on a revised amount, the City Contract Representative will promptly issue a certificate for payment in an amount he determines is justified.

7.3.2 The City Contract Representative or other City official, as a result of subsequently discovered evidence, may also withhold or nullify the whole or a part of any certification to such extent as may be necessary to protect the City from loss on account of:

.1 Defective Work not remedied.

.2 Third party claims filed or reasonable evidence indicating probable filing of such claims.

.3 Failure of the Contractor to make payments properly to subcontractors or for labor, materials, or equipment.

.4 Reasonable doubt that the Work can be completed for the unpaid balance of the Contract amount, or reasonable evidence that the Work will not be completed within the Completion Time and that the unpaid balance would not be adequate to cover actual or Liquidated Damages for the anticipated delay.

.5 Damage to another contractor or to the City.

.6 Damage to the real or personal property of another and failure to repair or replace the same.

.7 Persistent failure to carry out the Work in accordance with the Contract.

7.3.3 When the grounds for withholding payment have been corrected to the satisfaction of the City Contract Representative or other City official concerned, the City shall proceed to process any amounts due.

7.4 **Substantial Completion**

7.4.1 When the Contractor considers that the Work, or a portion thereof which the City has agreed to accept separately, is ready for its intended use, it shall notify the City Contract Representative in writing that the Work, or the agreed upon portion thereof, is substantially complete and request the City Contract Representative to issue a Certificate of Substantial Completion. Within a reasonable time thereafter, the City Contract Representative will make an inspection of the Work, or the designated portion thereof, to determine the status of completion. If the inspection discloses any item that is not in accordance with the Contract, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item. The Contractor shall then submit a request for a re-inspection by the City Contract Representative. When the Work or designated portion thereof is determined to be substantially complete, the City Contract Representative will prepare a Certificate of Substantial Completion for signature of the parties, fixing therein the date of Substantial Completion and establishing the responsibilities of the City and Contractor, pending final payment by the City, for security, maintenance, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall finish all items on the punch list attached to the certificate.

7.4.2 Warranties required by the Contract shall commence on the date of Final Completion for a period of two years, except where a specific provision of the Contract provides otherwise.

7.5 **Final Completion and Final Payment**

7.5.1 Upon receipt of notice from the Contractor that the Work is ready for final inspection and upon receipt of a request for final payment, the City Contract Representative will determine whether all items on the punch list have been completed or corrected and the City will make payment for such work or portion thereof as provided for in the Contract.

7.6 **Consent of Surety/Lien Waivers and As-Built Drawings**

7.6.1 Final payment shall become due when the Contractor provides to the Contract Officer a Consent of Surety Certificate from its bonding company, or lien waivers, at the Contract Officer's discretion and all completed as-built drawings.

7.7 **Partial Utilization**

7.7.1 The City may occupy or use any portion of the Work which the City and the Contractor agree constitutes a separately functioning and usable part of the Work that can be used by the City without significant interference with the Contractor's performance of the remainder of the Work. Such use or occupancy may commence whether or not the portion is substantially complete, provided the City and the Contractor have accepted in writing their mutual responsibilities regarding the used portion, including but not limited to insurance coverage, maintenance and utilities.

7.7.2 Partial use or occupancy of the Work by the City shall not constitute acceptance of Work not complying with the requirements of the Contract.

ARTICLE 8. UNCOVERING AND CORRECTION OF WORK;CHANGES IN THE WORK

8.1 **Uncovering of Work**

8.1.1 Piping, wiring, ducts, etc., shall not be covered up before proper inspection, approval and certificates, if required, are issued. Should any Work that is designated for inspection by the City Contract Representative or the Contract before covering is covered before such inspection, it must be uncovered by the Contractor at its expense when examination is ordered by the City Contract Representative.

8.1.2 If a portion of the Work not designated by the City Contract Representative or the Contract for inspection has been covered and the City Contract Representative or a Public Inspector orders such Work uncovered for inspection, the Contractor shall immediately uncover such Work. If such uncovered Work is found to be in compliance with the Contract, an appropriate Change Order shall be issued to compensate the Contractor for the expense of uncovering and replacing the Work. If such Work is found to be not in compliance with the Contract, the Contractor shall pay such costs, unless the condition was caused by the City or a separate contractor.

8.1.3 The City shall not be responsible for or bear the cost of any re-examination or replacement occasioned by defects in the Work caused by subcontractors.

8.2 **Correction of Work**

8.2.1 **Correction of Work Before Final Payment:** The Contractor shall promptly remove from the site of the Work all materials and/or associated portions of the Work rejected by the City Contract Representative as failing to conform to the Contract, whether incorporated or not, and the Contractor shall promptly replace and re-execute the Work in accordance with the Contract, without expense to the City, and shall bear the expense of making good the Work of other contractors destroyed or damaged by such removal or replacement. If the Contractor does not remove such rejected Work and/or materials within a reasonable time, fixed by written notice, the City may remove it and may store the materials at the expense of the Contractor.

8.2.2 Should the Contractor fail to repair such defective material and/or workmanship or to make replacements within five (5) calendar days after written notice by the City, it is agreed that the City may, at its sole discretion, make such repairs and replacements and the actual cost of the required labor and materials shall be chargeable to and payable by the Contractor or its surety.

8.3 **Changes in the Work**

8.3.1 The City Contract Representative may order extra Work or make changes by altering, adding to or deducting from the Work, the Contract price being adjusted accordingly by Change Order without invalidating the Contract. All such Work shall be executed under the conditions of the original Contract except that any claim for extension of time caused thereby shall be adjusted at the time of ordering such change.

8.3.2 If, instead of requiring corrections or removal of Work not conforming to the requirements of the Contract, the Work is determined to be acceptable with diminished value in the sole judgment of the City Contract Representative, a Change Order shall be issued incorporating the necessary revisions in the Contract, including an appropriate reduction in the Contract Price. Such a Change Order does not require the signature or approval of the Contractor. Such acceptance of non-conforming Work shall not constitute a waiver of any other Work required under this Contract.

8.3.3 The value of any extra Work or change ordered under the Contract shall be determined in one or more of the following ways:

.1 By estimate and acceptance in a lump sum.

.2 By unit prices in the Contract or subsequently agreed upon prices.

.3 By a fixed fee.

ARTICLE 9. SUSPENSION OR TERMINATION OF THE WORK

9.1 **Suspension of the Work for Cause; City's Right to Perform the Work**

9.1.1 If the Contractor fails to correct Work which is not in accordance with the Contract, or persistently fails to carry out the Work in accordance with the Contract, the Contract Officer, after consultation with the City Contract Representative, may order the Contractor in writing to stop the Work, or any portion of the Work, until the cause for such order has been eliminated.

9.1.2 If the Contractor fails to prosecute the Work properly or fails to perform any provision of this Contract, the City may, five (5) days after written notice to the Contractor, and without prejudice to any other remedy the City may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor and its surety shall be liable to the City for such deficiency.

9.2 **Termination by the City for Cause**

9.2.1 The City, upon certification by the City Contract Representative, without prejudice to any other right or remedy of the City and after giving the Contractor seven (7) days written notice, may terminate this Contract as to all or any part of the Work for any of the following reasons:

.1 If the Contractor abandons the Work, or unnecessarily delays the Work.

.2 If the Contractor should persistently or repeatedly refuse or fail to supply enough properly skilled workers or proper materials or competent subcontractors.

.3 If the Contractor fails to make payment to a subcontractor for materials or labor in accordance with the respective agreements between the Contractor and the subcontractor or as expressly set forth herein.

.4 If the Contractor persistently disregards laws, ordinances, rules, regulations or orders of a public authority having jurisdiction, or persistently violates the conditions or covenants of this Contract.

.5 If the Contractor should be adjudged bankrupt.

.6 If the Contractor should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency.

.7 If the Contractor is otherwise in substantial breach of a provision of the Contract as determined by the City.

9.2.2 Upon termination of the Contract for any of the above reasons, the City, subject to any prior rights of the surety, may:

.1 Take possession of the Work and of all materials, equipment, tools, and construction equipment and machinery at the Work site or adjacent thereto belonging to the Contractor.

.2 Accept assignment of subcontracts pursuant to Subsection 5.1.8 of these General Conditions.

.3 Finish the Work by whatever reasonable method the City may deem expedient. In completing the Work by a new contractor or by doing the Work itself, the City may use such equipment, materials, supplies, machinery, implements, tools and plant of the Contractor in the City's possession and may make all necessary repairs and replacements thereto.

9.2.3 If the City terminates the Contract for one of the reasons stated in Subsection 9.2.1, the Contractor shall not be entitled to receive any further payment.

9.2.4 The cost of fully completing the Work provided for under any new contract shall include the sum or sums of money to be paid by the City to other contractors, all costs of repairs and replacements of machinery, implements, tools and plants of the Contractor hereunder, and also all sums of money paid for additional management and administrative services, including but not limited to the cost of the City Contract Representative's additional services and added expenses made necessary by the termination of the Contract.

9.2.5 If the unpaid balance of the Contract Price exceeds costs of finishing the Work, such excess may, at the City's discretion, be paid to the Contractor. If such costs exceed the unpaid balance, the City may sell all materials, supplies, machinery, implements, tools and plants of the Contractor's then on hand, at public sale, on giving the Contractor twenty (20) days notice of the time and place of such sale, and the net proceeds derived from the sale of said property shall be applied against such costs. Should the amount received from the sale be insufficient to pay such deficiency, the Contractor and its surety shall be liable to pay the amount of the deficiency.

9.3 **Suspension by the City for Convenience**

9.3.1 The City may, without cause, order the Contractor in writing to suspend or interrupt the Work in whole or in part for such period of time as the City may determine, whenever such suspension or interruption would be in the best interest of the City.

9.3.2 If the City suspends the Work for convenience, an adjustment shall be made for substantiated increases in the cost of performance of the Contract, if any, including profit on the increased cost of performance, caused by suspension or interruption. No adjustment shall be made to the extent:

.1 That performance is, was or would have been so suspended or interrupted by another cause for which the Contractor is responsible, or

.2 That an equitable adjustment is made or denied by the City.

9.4 **Termination by the City for Convenience**

9.4.1 The performance of the Work under this Contract may be terminated by the City, in whole or in part, in accordance with this clause whenever the City reasonably determines that such termination is in the best interest of the City. Any such termination shall be effected by delivery to the Contractor of a written Notice of Termination specifying the extent to which performance of the Work is terminated, and the date upon which such termination becomes effective.

9.4.2 If the Contract is terminated by the City as provided herein, the Contractor shall receive compensation for any Work performed and accepted, together with profit in proportion to the Work performed and accepted. The compensation shall include payment for contractual obligations reasonably incurred prior to termination. No amount shall be allowed for anticipated profit on unperformed Work.

9.4.3 In the event the City terminates the Work, in whole or in part, for cause pursuant to Section 9.2 herein and the termination is later deemed to be unjustified, then such termination shall be automatically deemed a termination for convenience and the provisions of this Section 9.4 shall apply.

9.4.4 Termination of the Contract or a portion thereof by the City for convenience shall not relieve the Contractor of its contractual responsibilities for the Work completed, nor shall it relieve the surety of its obligation for and concerning any just claim arising out of the Work completed.

9.5 **Contractor's Right to Terminate Contract**

9.5.1 The Contractor may terminate the Contract for any of the following reasons:

.1 If the Work should be stopped under an order of any court of competent jurisdiction or other public authority for a period in excess of one (1) month through no act or fault of the Contractor or of anyone directly or indirectly employed by him.

.2 If the City has failed to pay the Contractor within sixty (60) days after the date when any sum is certified for payment by the City Contract Representative.

.3 If repeated suspensions or interruptions ordered by the City pursuant to Section 9.3 total in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or one hundred twenty (120) days in any three hundred sixty-five (365) day period, whichever is less.

9.5.2 If one of the above reasons exists, the Contractor may, upon seven (7) additional days written notice to the City Contract Representative, stop Work and terminate the Contract and recover payment from the City for all Work executed and accepted by the City, for any loss sustained upon any plant or materials, and for reasonable profit and damages.

ARTICLE 10. CLAIMS AND DISPUTES

10.1 **City Contract Representative's Resolution of Claims and Disputes; Review by Contract Officer**

10.1.1 This Article relates to claims for additional compensation and any other differences between the parties arising under and by virtue of the Contract. Such claims are to be resolved at the earliest possible time and at the first responsible level so as to increase the possibility that such matters will be resolved without the vexation of an administrative hearing process, arbitration or litigation.

10.1.2 All claims, including but not limited to, claims relating to adjustments or interpretations of the Contract, payments of money, or other relief with respect to the terms of the Contract, shall be referred initially in writing to the City Contract Representative for action. The responsibility to substantiate claims shall rest with the party making the claim.

10.1.3 Claims by either party must be made within twenty-one (21) days after the event giving rise to the claim or within twenty-one (21) days after the claimant first becomes aware of the condition giving rise to the claim, whichever is later.

10.1.4 Pending final resolution of a claim, the Contractor shall proceed diligently with performance of the Contract and the City shall continue to make payments in accordance with the Contract.

10.1.5 The City Contract Representative shall, within twenty-one (21) days of receipt of a claim, do one of the following:

(1) Issue a decision either rejecting or approving the claim.
(2) Suggest an equitable compromise of the claim.

(3) Provide a schedule to the Contractor indicating when they expect to be able to take action, which shall be within a reasonable time.

10.1.6 The City Contract Representative may require the submission of additional documentation from the Contractor to facilitate a decision.

10.1.7 The Contractor shall have ten (10) days from the date of the City Contract Representative's final decision rejecting or approving a claim, or suggesting a compromise, within which to accept or object to the decision. Failure of the Contractor to accept or object to the decision in writing within such ten (10) day period shall be deemed an acceptance of the decision. If the Contractor rejects the decision of the City Contract Representative in writing within such ten (10) day period, the matter shall be referred to the Contract Officer for de novo review.

10.1.8 The Contract Officer shall have sixty (60) days from receipt of a written objection by the Contractor to the City Contract Representative's final decision, or such longer period as the parties may stipulate in writing, to review the matter and issue a response in accordance with Article IX of the Benson Procurement Code. During such period, the Contract Officer may require such additional documentation or testimony as deemed necessary to support his/her response.

ARTICLE 11. MISCELLANEOUS PROVISIONS

11.1 **Governing Law**

11.1.1 The Contract shall be governed and construed according to the Benson City Code and the laws of the State of Arizona.

11.2 **Written Notice**

11.2.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last known business address known to the party giving notice.

11.3 **Conflict of Interest**

11.3.1 The City shall also have the right to terminate this Contract pursuant to the conflict-of-interest provisions of A.R.S. Sec. 38-511 and to exercise any and all remedies provided in such statute. The City may cancel this Contract if any person significantly involved in negotiating, drafting, securing or obtaining this Contract for or on behalf of the City becomes an employee in any capacity of any other party or a consultant to any other party with reference to the subject matter of this Contract.

11.4 **Independent Contractor**

11.4.1 It is clearly understood that each party shall act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever.

11.4.2 Contractor shall not be entitled to compensation in the form of salaries, or to paid vacation or sick days by the City, and such days do not accumulate for the use of same at a later date.

11.4.3 The City will not provide any insurance coverage to Contractor, including Workers' Compensation coverage. The Contractor is advised that taxes or Social Security payments shall not be withheld from a City payment issued hereunder and that Contractor should make arrangements to directly pay such expenses, if any.

11.5 **Gratuities**

11.5.1 The City may, by written notice to the Contractor, cancel this Contract if it is found that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the City amending or making any determinations with respect to the performance of this Contract. In the event this Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold from the Contractor the amount of the gratuity.

11.6 **Provisions Required By Law**

11.6.1 Each and every provision of law and any clause required by law to be in the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forthwith be physically amended to make such insertion or correction.

11.7 **Severability**

11.7.1 The provisions of this Contract are severable to the extent that any provision or application held to be invalid shall not affect any other provision or application of the Contract which may remain in effect without the invalid provision or application.

11.8 **Interpretation – Parol Evidence**

This Contract is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of this agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity to object.

11.9 **Rights and Remedies**

No provision in this document or in the Contractor's response shall be construed, expressly or by implication, as a waiver by either party of any existing or future right and/or remedy available by law in the event of any claim or default or breach of contract. The failure of either party to insist upon the strict performance of any term or condition of the Contract, or to exercise or delay the exercise of any right or remedy provided in the Contract, or by law, or the acceptance of materials, services, or obligations imposed by this Contract or by law, shall not be deemed a waiver of any right of either party to insist upon the strict performance of the Contract.

11.10 **Right to Assurance**

Whenever one party to this Contract in good faith has reason to question the other party's intent to perform, the former party may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of this Contract.

ARTICLE 12. CONSTRUCTION SERVICES AGREEMENT

THIS AGREEMENT, made and entered into this_____day of_____, 20 _____, by and between the City of Benson, a municipal corporation organized and existing under the laws of the State of Arizona, hereinafter called the "City", and D. Fenn Enterprises of the City of Benson, County of Cochise, and State of Arizona hereinafter called the "Contractor".

WITNESSETH: That the Contractor and the City, in consideration of the mutual covenants herein contained, agree as follows:

12.1 **Project and Contract Price**

12.1.1 Contract Name: Miscellaneous Paving Services

Contract Number: PW-JOC-2008-01
Description:

Term: 1 (one) year with 4 (four) renewals

12.1.2 Pricing JOC see attached FORM for Rate Schedule

12.2 **Notice to Proceed, Completion Time, and Liquidated Damages**

12.2.1 It is agreed that the City Contract Representative will issue the Notice To Proceed with the Work to be performed under this Contract within thirty (30) consecutive calendar days after the date of execution of this Agreement, except in Job-Order-Contracting, where a separate Notice to Proceed will be issued for each individual job order.

12. 2.2 The Contractor agrees that the Work shall be prosecuted promptly, regularly, diligently and uninterruptedly at such rate of progress as will ensure full completion thereof within the time specified. It is expressly agreed that the time for completion is a reasonable time, considering average climatic conditions and usual industrial conditions prevailing in the Benson area.

12.2.3 Liquidated Damages. Completion times will be specified in the Notice to Proceed. Applicable Liquidated Damages shall be assessed for each day the Work remains incomplete after the scheduled Completion Date. This amount is agreed upon because of the impracticability and extreme difficulty of ascertaining the actual damages the City will sustain on account of late completion.

12.3 **Miscellaneous**

12.3.1 Guarantee. The Contractor shall guarantee all work under this Agreement against defects of material and workmanship for a minimum of two (2) years from the date of Final Completion.

12.3.2 Assignment. Neither party to this Agreement shall assign the Agreement or sublet it as a whole without the written consent of the other, nor shall the Contractor assign any monies due or to become due to it hereunder without the previous written consent of the City.

12.3.3 Contract Documents. The following listed documents constitute the Contract Documents and they are all as fully a part of this Agreement as if repeated herein:

(1) Any and all Amendments, Supplementary General Conditions and Special Requirements included herein.
(2) This Agreement.
(3) Standard Terms & Conditions or General Conditions.
(4) Construction Specifications, including any and all Standard, Special, Technical, and Supplementary Specifications included herein.
(5) Drawings, Sheets 1 to_____ inclusive.

(6) M/WBE Plan, if applicable.
(7) Performance and Payment Bonds.
(8) Insurance Requirements.

12.3.4 Precedence. In the event of any inconsistency between any of the terms of the documents enumerated above, such inconsistency shall be resolved by giving precedent to the terms of the above documents in the order listed. Anything in these Contract Documents to the contrary notwithstanding, the provisions of all pertinent general public laws of the State of Arizona in effect at the time of the execution of this Agreement shall be a part of the Agreement between the parties and shall take precedence over all of the other Contract Documents.

IN WITNESS THEREOF, the parties hereto have executed three (3) identical counterpart copies of this Agreement on the date and year first written above, each of which copies shall for all purposes be deemed an original hereof.

CITY OF BENSON, a municipal corporation

By: _____
As City Manager and Not Personally

By: _____
As Mayor and Not Personally

D. Fenn Enterprises Inc
Contractor

By: _____

Title: Pres.

APPROVED AS TO FORM this 24th
day of March, 20 08

_____
As City Attorney and not personally

NOTE: The City's Contract Representative is:

Bradley J. Hamilton, P.E.
Director of Public Works / Engineer
(520)586-2245

FORMS

Rate Schedule for 2008

D. Fenn Enterprises, Inc.
General Engineering Contractors

P.O. Box 1980
Benson, AZ 85602
520-586-7420
520-586-7159 Fax

Contractors Licenses
Com. 114189-A
Res. 114191-B04

HOURLY RATES FOR:
CITY OF BENSON
RE: JOB ORDER CONTRACT

Equipment List & Prices:

CAT 140H BLADE 14ft/SCARIFIERS $125/hr
CAT D-6R DOZER PAT BLADE/RIPPERS $150/hr
CAT 950G LOADER 4yds $130/hr
CAT 613C SCRAPER 13yd $130/hr
CAT 613C WATER WAGON 5000 GAL $120/hr
CAT 320CL EXCAVATOR 24"- 42" $120/hr
JOHN DEERE 624G LOADER 3.5 yd $110/hr
JOHN DEERE 410G 4X4 BACKHOE EXTENDAHOE $85/hr
JOHN DEERE 210 4X4 GANNON SKIPLOADER $75/hr
JOHN DEERE 850 DOZER 12ft BLADE/RIPPERS $120/hr
SEMI LOWBOY TRANSPORT $100/hr
SEMI END DUMP 23 TON $90/hr
SEMI BELLY DUMP 23 TON $90/hr
SUPER 14 DUMP TRUCK 19 TON $85/hr
4000 GALLON WATER TRUCK $85/hr
INGERSOLL RAND 9 WHEEL PHNEUMATIC ROLLER $70/hr
14ft MOLINE CHIP SPREADER W/2 men $180/hr
SCREEN GRIZZLY (Adjustable) $20/hr
SERVICE TRUCK WITH TOOLS/CRANE $90/hr
SUPERVISOR WITH TRUCK/TOOLS $50/hr
MEN LABOR $35/hr
CONCRETE SAW/per job
WHACKER/PLATE TAMP $100/day
JACKHAMMER $150/day

ALL EQUIPMENT IS RENTED WITH QUALITY OPERATORS.

THANK YOU!