City of Benson
City Council Communication

Regular Meeting **June 10, 2013**

To: Mayor and Council Agenda Item # 5

From: Bradley J. Hamilton, P.E., Public Works Director/City Engineer

Subject:

Resolution 18-2013 of the Mayor and Council of the City of Benson, Arizona, approving a Construction Agreement with L.B. Foster Company for installation of ADA-compliant restrooms at Lions Park, pursuant to CDBG Grant #107-13

Discussion:

The City, as part of the 2013 Community Development Block Grant ("CDBG") project, has bid the construction of two ADA restrooms for Lions Park. The Restrooms will replace the current restrooms at the big Ramada and the softball field.

The City received two bids on the project and L.B. Foster Company was the lowest responsible bidder.

Staff Recommendation:

Approval of Resolution 18-2013

RESOLUTION 18-2013

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, APPROVING A CONSTRUCTION AGREEMENT WITH L.B. FOSTER COMPANY FOR INSTALLATION OF ADA-COMPLIANT RESTROOMS AT LIONS PARK, PURSUANT TO CDBG GRANT #107-13

WHEREAS, the City of Benson was previously awarded a Community Development Block Grant ("CDBG") from the federal Department of Housing and Urban Development for installation of ADA-compliant pre-fabricated restrooms at Lions Park, CDBG project no. 107-13; and

WHEREAS, the Public Works Department has published a request for sealed bids for this work and the proposal submitted by L.B. Foster Company d/b/a CXT Concrete Buildings is recommended for selection as the lowest responsible bidder.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Benson, Arizona, as follows:

The construction agreement with L.B. Foster Company attached hereto as Exhibit "A" and incorporated herein by this reference, in the amount of $188,190.56 is hereby adopted and approved; the Interim City Manager is authorized to execute said agreement on behalf of the City; and Brad Hamilton, City Engineer and Public Works Director, is hereby designated as project administrator for the above-described project and is hereby authorized and directed to act on behalf of the City as set for in said agreement.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, this 10th day of June, 2013.

_____
TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
MICHAEL J. MASSEE, City Attorney

EXHIBT A
CONSTRUCTION AGREEMENT

City of Benson Lions Park ADA-Compliant Restroom Construction Project,
CDBG #107-13

CITY OF BENSON
LION'S PARK ADA-COMPLIANT RESTROOM CONSTRUCTION PROJECT
CDBG #107-13

CONSTRUCTION AGREEMENT
CONTRACT AND GENERAL CONDITIONS
BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT, made this 11th day of June, 2013, by and between CXT Concrete Buildings, an LB Foster Company, hereinafter called the "Contractor", and the **City of Benson,** Arizona, hereinafter called the "Owner":

W I T N E S E T H:

That the Contractor and the Owner agree as follows:

ARTICLE 1
SCOPE OF WORK

As required by the Contract Documents, the Contractor shall completely engineer, construct, deliver and install, including all utility connections (plumbing, electrical and sewer), all in a workmanlike and substantial manner and to the satisfaction of the Owner for the Owner's Project known as the **City of Benson Lion's Park ADA-Compliant Restroom Construction Project, CDBG #107-13.**

This project is wholly or in part Federally Funded and this agreement is subject to the Federal Labor Standards Provisions, Davis-Bacon Act of 1931, Contract Work Hours and Safety Standards Act of 1962, Copeland Act of 1934 and the Fair Labor Standards Act of 1939.

The Contractor agrees to comply with the Federal Labor Standards Provisions (HUD Form 4010), which is incorporated by reference herein. The Contractor shall supply information to the Owner as necessary for monitoring of compliance to include, but not limited to, submission of Labor Standard Forms included in the bid package, on-site inspections, investigations and/or enforcement by the Owner. The Contractor agrees to comply with the current **Wage Rate Determination General Decision Number: AZ130016, Heavy, MOD #0, 01/04/2013** which are included in the bid package and incorporated by reference.

ARTICLE 2
THE CONTRACT DOCUMENTS

The following listed documents constitute the Contract Documents, and they are all as full a part of the Contract and General Conditions as if herein repeated:

This Contract and General Conditions between Owner and Contractor
Special Provisions

Project Technical Specifications
Standard Details
Sheet Index of Drawings
Drawings to this Contract
Addenda
Invitation to Bid
Information for Bidders
Bid Proposal
Bid Bond
Performance Bond
Labor & Material Payment Bond
List of Subcontractors
Non-Collusion Affidavit
Compliance Bid Document
LS-2 Contractor Certification
LS-3 Subcontractor Certification
Certification/Provisions

1. Certification Regarding Lobbying
2. Certification Regarding Conflict of Interest
3. Cement (Fly Ash) Certification
4. Civil Rights Provisions
5. Section 503 Clause & (Affirmative Action for Handicapped Workers) Certification
6. Section 3 Clause
7. Equal Employment Opportunity
8. Federal Labor Standards Provisions (HUD 4010)

Wage Rate Determination: **AZ130016, Heavy, MOD #0, 01/04/2013**
SLS Form B, Point of Contact Information Sheet
SLS Form C, Professional Firm's Sub-Firm's Certification
SLS Form E, Project Wage Rate Classifications and Additional Classifications
LS-4, Weekly Payroll Reports
LS-5, Statement of Compliance
LS-7, Notice to All Employees
Standard Form 1444, Request to Conform an Additional Classification
LS-14, Fringe Benefits Documentation
LS-15, Authorization for Deductions
LS-17, Certification of Applicable Fringe Benefit Payments
Non-Discrimination Poster
EEO - Certification Poster
EEO – It's the Law Poster
LS-9, Record of Employee Interviews
LS-10, On-Site Inspection Report
LS-11, Labor Standards Investigative Reports
LS-12, Labor Standards Enforcement Report
Environmental Conditions

In the event of any conflict in the provision of these Contract Documents, these respective documents shall prevail in the order listed.

ARTICLE 3
CONTRACT AMOUNT

3.1 CONTRACT AMOUNT. **The Owner shall pay the Contractor the sum of ONE HUNDRED AND EIGHTY EIGHT THOUSAND, ONE HUNDRED and NINETY Dollars and FIFTY-SIX CENTS ($188,190.56.00), the Contract Amount. This sum is subject to additions or deductions made in accordance with the provisions of the Contract Documents**.

3.2 SOURCE OF FUNDS. NOT USED

3.3 CONTRACT TIME. The Contract Time as used and defined in Article 11 herein shall be **Ninety (90) calendar days.** If completion date occurs after the **90 calendar-day period,** Liquidated Damages will be assessed as stated in the Construction Agreement.

3.4 LIQUIDATED DAMAGES. Liquidated damages as used and defined in Article 11 herein shall be **Two Hundred Dollars ($200.00) per calendar day.**

3.5 OVERHEAD AND PROFIT. The limits on the amount of overhead and profit as used in Articles 2, 15 and 17 herein shall be ten percent (10%) overhead and twelve percent (12%) profit for the Contractor and Subcontractors.

3.6 CASH ALLOWANCES. The Contractor agrees that he has included in the contract price all cash allowances, if any, specified in the Contract Documents, and shall cause the work so covered to be done by such contractors as the Owner may direct, the Contract Amount being adjusted in conformity therewith. The Contractor agrees that the Contract Amount includes all his expenses and such profit as he deems proper in connection with the Cash Allowance. No demand for any sum other than those included in the Contract Amount shall be allowed in connection with the Cash Allowance and only direct costs may be charged against the Cash Allowance. If the cost, when determined, is more than or less than the allowance, the Contract Amount shall be adjusted accordingly by change order.

3.7 EXPENDITURE OF CASH ALLOWANCES. The Project Administrator and City Manager, are authorized to act for and on behalf of the Owner and as Special Agents of the Owner in the expenditure of the Cash Allowances, including any allowance later added to the Contract Documents pursuant to the provisions for modifying the Contract Documents. No act of such Special Agents purporting to authorize any charge against any Cash Allowance shall be valid unless in the form of a written Change Order, specifying the particular work to be done and the whole cost thereof to the Owner, and signed by both Special Agents. The cost of extra work or changes shall be determined under the provisions of Article 15 of this Contract and General Conditions.

Said Special Agents are not authorized to exceed the amount of the Cash Allowance hereinbefore listed.

The Contractor is warned of, and agrees to, these express limitations on the authority of the Owner's Special Agents.

ARTICLE 4
DEFINITIONS AND GENERAL PROVISIONS

4.1 OWNER, CONTRACTOR AND PROJECT ADMINISTRATOR. The Owner, the Contractor, and the Project Administrator are those herein defined in this Contract and General Conditions. They are treated throughout the Contract Documents as though each were of the singular number and masculine gender.

4.2 SUBCONTRACTOR. See Article 8.

4.3 NOTICE. See Article 10.

4.4 TIME. See Article 11.

4.5 COST. The term "Cost" shall include all charges, costs, losses, and expenditures of every kind whatsoever for the Work, or portion thereof to which reference is made with respect to this term.

4.6 FINISH AND COMPLETION DATES. See Article 11.

4.7 CONTRACT DOCUMENTS. See also Article 1. A modification is:

.1 A written amendment to the Contract and General Conditions signed by all parties;
.2 A Change Order properly signed by all parties pursuant to Paragraph 15.1; or
.3 A Field Order for a minor change in the Work issued by the Project Administrator pursuant to Paragraph 15.4.

A modification may be made only after execution of the Contract and General Conditions.

4.8 CONTRACT AND GENERAL CONDITIONS. The Contract and General Conditions consist of all the Contract Documents enumerated in Article 2. The Contract and General Conditions represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral, including the bidding documents. The Contract and General Conditions may be amended or modified only by a Modification as defined in Subparagraph 4.7.

4.9 WORK. The term "Work" includes, without limitation, furnishing all labor, administrative services and supervision necessary to produce the construction required by the Contract Documents and furnishing and installing all materials and equipment incorporated, or to be incorporated in such construction to complete the Project.

4.10 PROJECT. The Project is the total construction, installation and connection of all utilities of the ADA-compliant restrooms, and more fully depicted and described by the Contract Documents.

4.11 EXECUTION, CORRELATION, INTENT AND INTERPRETATIONS OF THE CONTRACT DOCUMENTS.

4.11.1 The Contract and General Conditions shall be signed by the Owner and the Contractor. By executing the Contract and General Conditions, each party accepts and agrees to be bound by each of the Contract Documents listed in Article 2.

4.11.2 By executing the Contract and General Conditions, the Contractor represents and warrants that he has examined closely the site and the existing structures, if any, including the materials and methods of construction utilized in and the condition of the existing structures, has familiarized himself with the local conditions under which the Work is to be performed, including any and all relevant weather conditions or records or both, and correlated all of his observations with the provisions and requirements of the Contract Documents including, but not limited to, the details of demolition and construction indicated by the Plans and Specifications. Where discrepancies in quantities, materials, sizes or other conditions exist between the existing structure and the Plans and Specifications, the Contractor shall accomplish the Work required to carry out the intent of the Contract Documents and the actual requirements of the existing structure shall take precedence over the Plans and Specifications for purposes of determining the quantity and nature of the Work required herein.

4.11.3 The Contract Documents are complementary, and what is required by any one shall be as binding as if required by all. The intention of the Contract Documents is to include, without limitation, all labor, materials, equipment and other items as provided in Subparagraph 7.4.1 necessary for the proper execution and completion of the Work. Words which have well known technical or trade meanings are used herein in accordance with such recognized meanings.

4.11.4 The organization of the Specifications into divisions, sections and articles, and the arrangements of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade, or constituting part of the contract or having any legal or contractual significance.

4.12 COPIES FURNISHED AND OWNERSHIP

4.12.1 All Drawings, Specifications and other data, and copies thereof, furnished to the Contractor are and shall remain the property of the Owner. They are not to be used on any other project and, with the exception of one set for each party of the Contract and General Conditions, are to be returned to the Owner upon request at the completion of the Work.

4.12.2 It shall be the responsibility of the Contractor to insure that each subcontractor and material supplier has a current set of Drawings, Specifications and Addenda, as required for proper execution of their respective portions of the Work.

ARTICLE 5
PROJECT ADMINISTRATOR

5.1 DEFINITION

5.1.1 The Project Administrator for this project, as used in this Contract and General Conditions by the term "Project Administrator," means **BRAD HAMILTON, CITY PUBLIC WORKS DIRECTOR**.

5.2 ADMINISTRATION OF THE CONTRACT

5.2.2 The Project Administrator will be the Owner's representative during construction to the extent described herein, until final payment and including the guarantee period. The Project Administrator will have authority to act on behalf of the Owner to the extent provided in the Contract Documents, unless otherwise modified by written instrument that will be shown to the Contractor. The Project Administrator will be the principal means of communication between Owner and Contractor.

5.2.3 The Project Administrator and Owner's designated representatives and officers shall at all times have access to the Work wherever it is in preparation and progress.

5.2.4 The Project Administrator shall make periodic visits to the site to become generally familiar with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. These visits shall be of the frequency necessary to apprise the Project Administrator of the progress and quality of the Work.

5.2.5 Based on such observations and the Contractor's Applications for Payment, the Project Administrator will determine the amounts owing to the Contractor and will issue Certificates for Payment in such amounts, as provided in Subparagraph 12.4.1.

5.2.6 Claims, disputes and other matters in question relating to the execution or progress of the Work, payment, time extension or interpretation of the Contract Documents shall be referred to the Owner in the manner provided by Subparagraph 12.4.4, within the time limits prescribed in Subparagraph 15.2.1, for decision by the Project Administrator, as the subject of the matter may require, which decision will be rendered in writing within a reasonable time.

5.2.7 If a decision of the Project Administrator is made pursuant to the terms of Subparagraph 5.2.6 which goes directly to the Contractor in writing, and it states that it is final but subject to appeal, no claim, dispute, or other matter covered by such decision may be made later than thirty (30) days after the date on which the party making the demand received the decision. Appeal shall be to the Owner's City Manager, whose decision is final, subject to any rights that the Contractor may have at law.

5.2.8 The Project Administrator will have authority to reject Work that does not conform to the Contract Documents. Whenever, in his reasonable opinion, the Project Administrator considers it necessary or advisable to insure the proper implementation of the intent of the Contract Documents, he will have authority to require the Contractor to stop the Work or any portion thereof,

or to require special inspection or testing of the Work as provided in Subparagraph 10.8.2, whether or not such Work be then fabricated, installed or completed.

5.2.9 Within a reasonable time the Project Administrator will review Shop Drawings, Product Data and Samples promptly as provided in Subparagraphs 7.12.1 through 7.12.8, inclusive.

5.2.10 The Project Administrator will prepare Change Orders in accordance with Article 15. The Project Administrator will have authority to order minor changes in the Work not involving extra cost or an extension of the Contract time and not inconsistent with the Contract Documents as provided in Subparagraph 15.3.1.

5.2.11 The Project Administrator will conduct site visits to determine the date of Final Completion, shall notify the Owner of a date for inspections, and shall issue a Certificate of Final Completion. The Project Administrator will receive written warranties, record drawings, maintenance manuals and related documents required by the Contract and assembled by the Contractor, and will transmit a final Certificate for Payment to the Owner.

5.2.12 The duties, responsibilities and limitations of authority of the Project Administrator as the Owner's representative during construction are set forth in Articles 1 through 18, inclusive, of this Contract and General Conditions. The Owner may increase or diminish the responsibilities and duties of the Project Administrator as it may see fit in its sole discretion.

ARTICLE 6
OWNER

6.1 DEFINITION

6.1.1 The Owner is the person or organization identified as such in the Contract and General Conditions.

6.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

6.2.1 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in the orderly progress of the Work.

6.2.2 The Owner may issue instructions directly to the Contractor through the Project Administrator.

6.2.3 All final decisions concerning Change Orders, Payments, Substantial Completion, Final Completion, Liquidated Damages and Contract Time shall be reserved to the Owner’s City Manager and this provision of the Contract shall take precedence over any other term hereof.

6.2.4 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Payment and Insurance in Articles 12 and 14, respectively.

ARTICLE 7
CONTRACTOR

7.1 DEFINITION

7.1.1 The Contractor is the person or organization identified as such in this Contract and General Conditions and the term "Contractor" means the Contractor or his authorized representative.

7.1.2 Whenever the words "as may be directed," "suitable," "or equal," "as approved," or other works of similar intent and meaning are used implying that judgment or discretion is to be exercised or a decision is to be made, it is understood that it is the judgment, discretion, or decision of the Project Administrator to which reference is made.

7.1.3 All materials and articles of any kind necessary for this Work are subject to the approval of the Project Administrator and his judgment and decision shall be final and conclusive.

7.1.4 Except as the Specifications may be modified (prior to the opening of Bids) by addenda and/or written approvals of equal items of equipment or materials as provided for in the bid documents, the successful contractor will he held to furnish all Work as specified in the bid documents.

7.1.5 After execution of the Contract, changes of brand named, trade named, trademarked, patented articles, or any other substitutions will be allowed only by written order signed by the Project Administrator, in which case the Owner shall receive all benefit of the difference in cost involved, except where choice of material or method is designated "or equal" in the specifications.

7.2 REVIEW OF CONTRACT DOCUMENTS AND SITE CONDITIONS

7.2.1 By executing this Contract the Contractor warrants that he has carefully studied and compared the Contract and General Conditions, Drawings, Specifications, Addenda, all other Contract Documents and the existing structure and has determined that the Contract Documents describe a completely buildable and functional Project. The Contractor does not warrant the suitability or feasibility of the Owner's proposed operation of the Project. The Contractor shall at once report to the Project Administrator any error, inconsistency or omission he may discover. The Contractor shall not be liable to the Owner for any damage resulting from any such errors, inconsistencies or omissions so long as the Project Administrator is notified promptly thereof unless discovery of such error, inconsistency or omission should have been made by careful examination of the Contract Documents prior to submitting a Proposal.

7.2.2 The Contractor shall be required to use for data and dimensions, figures marked on any drawings in preference to what the drawings may measure to scale.

7.2.3 The Contractor shall verify all dimensions shown and check all measurements in connection with any present improvements, driveways, or other existing conditions, before executing any work.

7.2.4 The Contractor agrees to comply fully with all applicable state, federal and local laws. Contractor agrees to indemnify and hold harmless the Owner from all claims or whatever nature

involving failure of the Contractor or any of its Subcontractors to comply with any federal, state or local law or ordinance in connection with this Project.

7.2.5 It is the Contractor's responsibility to inspect the site of the work to identify any surface or subsurface conditions or underground facilities that can be reasonably identified and that are materially different than what may be indicated in the Contract Documents prior to beginning the Work.

7.2.6 If the Contractor believes that any surface, subsurface or physical condition at the work site that is uncovered or revealed is of such a nature as to require a Change Order, because it either differs materially from that which is specifically designated on the Contract Documents or is of an unusual nature and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character required by the Contract at this location, then the Contractor shall promptly notify the Project Administrator in writing prior to further disturbing the site and performing the Work. The Project Administrator shall promptly review such notice and the conditions and advise the Contractor whether additional tests may be required or a revision of the plans may be appropriate. The Contractor shall not be entitled to an adjustment in the Contract Price or Contract Time if the Contractor knew or should have known of the existence of such conditions at the time of the Bid was submitted; the existence of the condition could reasonably have been discovered or revealed as a result of the investigation or study of the site as required of the Contractor, or the Contractor failed to provide written notice of condition, as required in this section.

7.2.7 The information and data shown or indicated on the Contract Documents with respect to underground facilities at or around the location of the work is based upon information and data provided by the owners of these facilities. The Owner not responsible for the accuracy or completeness of this information. The Contractor is required to verify the location any such utilities and to comply with all applicable laws and regulation regarding the location and protection of utilities. No additional compensation shall be provided for complying with these obligations.

7.3 SUPERVISION AND CONSTRUCTION PROCEDURES

7.3.1 The Contractor shall supervise the Work, using his best skill and attention. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

7.3.2 Contractor shall hold periodic meetings as often as reasonably required, but at least one a week, with subcontractors to monitor the progress of the Work. A report of the results of each such meeting shall be included in the Daily Report required by Subparagraph 7.10.2 herein. Contractor shall inform the Project Administrator at least twenty-four (24) hours in advance of the time for each meeting.

7.4 LABOR AND MATERIALS

7.4.1 Unless otherwise specifically noted, the Contractor shall provide and pay for all labor, material, equipment, tools, construction equipment, machinery, water, heat, utilities, waste and refuse disposal, transportation and any other facilities and services necessary for the proper

execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

7.4.2 Any work necessary to be performed after regular working hours, on Sundays, or legal holidays, shall be performed without additional expense to the Owner.

7.4.3 The Contractor shall at all times enforce strict discipline and good order among his employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him. When requested in writing by the Project Administrator, the Contractor shall remove from the Project any person who commits trespass or is, in the opinion of the Project Administrator, disorderly, dangerous, insubordinate, incompetent, or otherwise objectionable. If the Project Administrator requests such a removal, he shall notify the Contractor in writing of his action. The Contractor shall keep the Owner harmless from damages or claims for compensation that may occur in the enforcement of this requirement.

7.5 WARRANTY

7.5.1 The Contractor warrants to the Owner that all material and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. Faults or defects are considered to be any aspect of the Work that is found not to be in conformance with the Contract Documents at any stage of the Work or upon inspection, or any aspect of the Work that materially deteriorates, becomes non-functional or otherwise fails, in some functional or aesthetic manner, to meet the requirements of the Contract Documents within two years after issuance of Certificate of Completion, normal wear and tear excepted, as further set forth in Article 18 hereof. All Work not so conforming to these standards may be considered defective. If required by the Project Administrator, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

7.5.2 The warranty provided in this Paragraph 7.5 shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents.

7.6 TAXES

7.6.1 The Contractor shall pay all sales, consumer, use, transaction privilege and other taxes required by law arising out of construction or other business activities of the Contractor in connection with the Project and in connection with the performance of this Contract, whether in force as of the date of this Contract or later imposed.

7.7 PERMITS, FEES AND NOTICES

7.7.1 Unless otherwise provided in any Plans, Specifications or by Addendum, Contractor will secure all permits, fees and licenses necessary for the proper execution and completion of the Work, including, but not limited to, building, plumbing, mechanical, electrical, and fire protection permits. The Contractor shall pay for water meters, fire protection, water service, sewer connection, sewer fees or assessments, gas service, and electric service to procure all necessary utilities for the Project and for temporary utility hook-ups required during the course of construction. The Contractor shall pay for electric power and water necessary for the construction of the Project.

7.7.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Work. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Project Administrator in writing. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Project Administrator, he shall assume full responsibility therefore and shall bear all costs attributable thereto, including any reasonable attorney's fees incurred by Owner in connection therewith.

7.8 SUPERINTENDENT

7.8.1 The Contractor shall employ a competent Superintendent and necessary assistants who shall be in attendance at the Project site during the progress of the Work. The Superintendent shall be satisfactory to the Project Administrator and shall not be changed except with the consent of the Project Administrator. The Superintendent shall represent the Contractor, and all communications given to the Superintendent shall be as binding as if given to the Contractor. Important communications will be confirmed in writing. Other communications will be so confirmed on written request in each case.

7.9 RESPONSIBILITY FOR THOSE PERFORMING THE WORK

7.9.1 The Contractor shall be responsible to the Owner for the acts and omissions of all his employees and all Subcontractors, their agents and employees, and all other persons performing any of the Work or supplying any material or equipment to be incorporated in the Work under a contract of any nature with the Contractor.

7.10 PROGRESS SCHEDULE AND REPORTS

7.10.1 The Contractor, immediately after being awarded the Contract, shall prepare and submit for the Project Administrator’s approval an estimated Progress Schedule for the Work. The progress schedule shall be related to the entire Project and shall indicate the dates for the starting and completion of the various components and phases of construction and shall be revised as required by the conditions of the Work, upon request of and subject to the approval of the Project Administrator. The Contractor agrees to promptly respond to all inquiries by the Project Administrator concerning substantial deviation of the progress of construction from the Progress Schedule. Failure to timely respond to such request or substantial delay from the schedule may result in progress payments being withheld. The Progress Schedule shall include projected dates of submittal of all items of material for which submittals are required and shall include delivery dates of all items of material and equipment that are considered critical or long lead time. The Contractor shall submit a biweekly report summarizing all deviations from the Progress Schedule that will or may result in delay of the Project.

7.10.2 The Contractor shall prepare and submit for the Owner's information, review and approval for the duration of the Work a Daily Report in a form acceptable to Owner. The Daily Report shall be completed daily and submitted to the Project Administrator on a weekly basis as a statement and review of the progress of the Work.

7.10.3 The Contractor shall furnish sufficient labor force, materials, plant, and equipment to ensure the prosecution of the Work in accordance with the approved Progress Schedule. If the Contractor's prosecution of the Work falls behind the Progress Schedule, Contractor shall take such steps as may be necessary to regain compliance with the Progress Schedule including additional labor or services or work such overtime as may be necessary to bring his operations up to schedule. Failure to maintain schedule or to take the above steps to regain the agreed Progress Schedule shall constitute default under this Contract.

7.11 DRAWINGS AND SPECIFICATIONS AT THE SITE

7.11.1 The Contractor shall maintain at the site for the Owner one (1) copy of all Drawings, Specifications, Addenda, approved Shop Drawings, Change Orders, other Modifications, and manufacturers' printed specifications and recommendations, in good order and marked carefully and accurately to record all changes made during construction and shall be available to the Project Administrator at all times. Upon completion of the Project, a clean set of Drawings shall be accurately marked to depict the as-built condition of the Project, and these Drawings along with all record drawing, shall be delivered to the Owner upon completion of the Work.

7.11.2 The Contractor shall also submit to the Project Administrator for his record two copies each of all manufacturers' maintenance manuals, printed specifications and recommendations, which by reference in the several divisions of the specifications are a part thereof.

7.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

7.12.1 Shop Drawings and Product Data are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared or supplied by the Contractor or any Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor, and which illustrate or describe some portion of the Work.

7.12.2 Samples are physical examples furnished by the Contractor to illustrate materials, equipment or workmanship, and to establish standards by which the Work will be judged.

7.12.3 The Contractor shall review, stamp with his approval and submit, with promptness and in orderly sequence so as to cause no delay in the Work or in the work of any other contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents or subsequently by the Project Administrator as covered by Modifications. The Contractor shall, within ten (10) days after the notice to proceed, submit to the Project Administrator for his approval a schedule indicating the date that each required Shop Drawing and Product Data submittal will be delivered to Project Administrator. Shop Drawings, Product Data and Samples shall be properly identified as specified, or as the Project Administrator may require. At the time of submission the Contractor shall inform the Project Administrator in writing of any deviation of the Shop Drawings, Product Data or Samples from the requirements of the Contract Documents.

7.12.4 By approving and submitting Shop Drawings, Product Data and Samples, the Contractor thereby represents that he has determined and verified all field measurements, field construction criteria, materials, catalog numbers and similar data, or will do so, and that he has checked and coordinated each Shop Drawing, Product Data and Sample with the requirements of the Work and of the Contract Documents.

7.12.5 The Project Administrator will review and return Shop drawings, Product Data and Samples with reasonable promptness so as to cause no delay, but such review is only for conformance with the design concept of the Project and with the information given in the Contract Documents. The Project Administrator's approval of a separate item shall not indicate approval of an assembly in which the item functions.

7.12.6 The Contractor shall make any corrections required by the Project Administrator to comply with the Contract Documents and shall resubmit the required number of corrected copies of Shop Drawings, Product Data or new Samples until approved. The Contractor shall direct specific attention in writing or on resubmitted Shop Drawings or Product Data to revisions other than the corrections requested by the Project Administrator on previous submissions.

7.12.7 The Project Administrator 's approval of Shop Drawings, Product Data or Samples shall not relieve the Contractor of responsibility for any deviation from the requirements of the Contract Documents unless the Contractor has informed the Project Administrator in writing of such deviation at the time of submission and the Project Administrator has given written approval to the specific deviation, nor shall the Project Administrator's approval relieve the Contractor from responsibility for errors or omissions in the Shop Drawings or Samples.

7.12.8 No portion of the Work requiring a Shop Drawing, Product Data or Sample submission shall be commenced until the submission has been approved by the Project Administrator. All such portions of the Work shall be in accordance with approved Shop Drawings, Product Data and Samples.

7.13 CLEANING UP

7.13.1 The Contractor at all times during the progress of the Work shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. At the completion of the Work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials specified to be left at the site, and shall clean all glass surfaces.

7.13.2 If the Contractor fails to satisfactorily clean up, the Owner will do so and the cost thereof shall be charged to the Contractor as provided in Paragraph 10.6.

7.14 COMMUNICATIONS

7.14.1 The Contractor shall forward all communications to the Project Administrator except where otherwise required herein or otherwise directed by the Owner.

7.15 INDEMNIFICATION CLAUSE

7.15.1 Indemnification. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, its agents, officers, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of or alleged to have resulted from the acts, errors, mistakes, omissions, work or services of the Contractor, its

agents, employees, or any tier of Contractor's Subcontractors in the performance of this Contract. Contractor's duty to defend, hold harmless and indemnify the Owner, its agents, officers, officials and employees shall arise in connection with any tort claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property including loss of use resulting there from, caused by the Contractors' acts, errors, mistakes, omissions, work or services in the performance of this Contract including any employee of the Contractor, any tier of Contractor's Subcontractor or any other person for whose acts, errors, mistakes, omissions, work or services the Contractor may be in legally liable.

7.15.2 The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

ARTICLE 8
SUBCONTRACTORS

8.1 DEFINITION

8.1.1 A Subcontractor is a person or organization who has a direct contract with the Contractor to supply materials or equipment or to perform any of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and masculine in gender and means a Subcontractor or his authorized representative.

8.1.2 A Sub-subcontractor is a person or organization who has a direct or indirect contract with the Subcontractor to perform any of the Work at the site, or to supply any materials or equipment to be used in the Project. The term "Sub-subcontractor" is referred to throughout the Contract Documents as singular in number and masculine in gender, and means a Sub-subcontractor or an authorized representative thereof.

8.1.3 Nothing contained in the Contract Documents shall create any contractual, master-servant or principal-agent relationship between the Owner and any Subcontractor or Sub-subcontractor.

8.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

8.2.1 Prior to the award of the contract, the Contractor shall supply to the Owner a complete list of subcontractors and material vendors. The Project Administrator shall notify the apparent successful bidder in writing if the Owner has reasonable objection to any person or organization on the list of subcontractors and material vendors. Failure of the Owner to make an objection to any person or organization on the list prior to the award shall constitute acceptance of such person or organization.

8.2.2 If, prior to the award of the Contract, the Owner has a reasonable and substantial objection to any person or organization of such list, and refuses in writing to accept such person or organization, the apparent successful bidder may prior to the award, withdraw his bid without forfeiture of bid security. If the bidder submits an acceptable substitute with an increase in his bid price to cover the difference in cost occasioned by such substitution before the award, the Owner

may, at his discretion accept the increased bid price or he may disqualify the bid. If, after the award, the Owner refuses to accept any person or organization on such list, the Contractor shall submit an acceptable substitute and the Contract Amount shall be increased or decreased by the difference in cost occasioned by such substitution and an appropriate Change Order shall be issued; however, no increase in the Contract Amount shall be allowed for any such substitution unless the Contractor has acted promptly and responsibly in submitting a name with respect thereto.

8.2.3 The Contractor shall not contract with any Subcontractor proposed for portions of the Work designated in the bidding requirements or if none is so designated, with any Subcontractor proposed for the principal portions of the Work who has not been accepted by the Owner. The Contractor will not be required to contract with any Subcontractor against whom he has a reasonable objection.

8.2.4 If the Owner, without cause, requires a change of any proposed Subcontractor previously accepted by it, the Contract Amount shall be increased or decreased by the difference in cost occasioned by such change and an appropriate Change Order shall be issued.

8.2.5 The Contractor shall not make any substitution for any Subcontractor who has been accepted by the Owner unless the substitution is approved in writing by the Owner.

8.3 SUBCONTRACTUAL RELATIONS

8.3.1 All work performed for the Contractor by a Subcontractor shall be pursuant to an appropriate written agreement between the Contractor and the Subcontractor (and where appropriate between Subcontractors and Sub-subcontractors) which shall contain provision that:

.1 preserve and protect the rights of the Owner under the Contract with respect to the Work to be performed under the subcontract so that the subcontracting thereof will not prejudice such rights.

.2 require that such work be performed in accordance with the requirements of the Contract Documents, including, but not limited to:

a. require submission to the Contractor of applications for payment under each subcontract to which the Contractor is a party, in reasonable time to enable the Contractor to apply for payment in accordance with Article 12;
b. require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor where appropriate) in the manner provided in the Contract Documents for like claims by the Contractor upon the Owner pursuant to Paragraph 15.2;
c. obligate such Subcontractor specifically to consent to the provisions of this Paragraph 8.3;
d. require such Subcontractor to submit a lien waiver and release of claim in a form prescribed by the Owner along with each application for payment, which release and waiver shall in turn be given to the Owner and which shall cover all Work done prior to the date of the application for payment;

e. require such Subcontractor to comply with all laws, indemnify Owner and agree to the provision of Paragraphs 7.2.4 and 7.15;

f. require such Subcontractor to comply with all Labor Standards and other Federal regulations required by the Arizona Department of Housing, CDBG Program in accordance with Paragraph 7.2.4.

.3 waive all rights the contracting parties may have against one another for damages caused by fire or other perils covered by the property insurance described in Article 14, except such rights as they may have to the proceeds of such insurance held by the Owner as trustee under Article 14.

8.4 PAYMENTS TO SUBCONTRACTORS

8.4.1 The Project Administrator may, on request and at this discretion, furnish to any Subcontractor, if practicable, information regarding percentages of completion certified to the Contractor on account of work done by such Subcontractors.

8.4.2 The Owner shall not have any obligation to pay or to see to the payment of any monies to any Subcontractor except as may otherwise be provided in this Contract.

ARTICLE 9
SEPARATE CONTRACTS

9.1 OWNER'S RIGHT TO AWARD SEPARATE CONTRACTS

9.1.1 The Owner reserves the right to award other contracts in connection with other portions of the Project under conditions similar to this Contract.

9.2 MUTUAL RESPONSIBILITY OF CONTRACTORS

9.2.1 The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly connect and coordinate his Work with theirs.

9.2.2 If any part of the Contractor's Work depends for proper execution or results upon the work of any other separate contractor, the Contractor shall inspect and promptly report to the Project Administrator any apparent discrepancies or defects in such work that render it unsuitable for such proper execution and results. Failure of the Contractor to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper to receive his Work, except as to defects which may develop in the other separate contractor's work after the execution of the Contractor's Work.

9.2.3 Should the Contractor cause damage to the Work or property of any separate contractor on the Project, the Contractor shall, upon written notice, promptly settle such other contractor's claim, if he will so settle. If such separate contractor sues the Owner on account of any damage alleged to have been so sustained, the Owner shall defend such proceedings at the Contractor's expense, and if any judgment against the Owner arises there from, the Contractor shall promptly pay or

satisfy it and shall immediately, upon presentation to it of a statement thereof, reimburse the Owner for all attorney's fees and court costs which the Owner has incurred.

9.3 OWNER'S RIGHT TO CLEAN UP

9.3.1 If a dispute arises between the separate contractors as to their responsibility for cleaning up as required by Paragraph 7.13, the Owner may clean up and charge the cost thereof to the several contractors as the Owner shall determine to be just.

ARTICLE 10
MISCELLANEOUS PROVISION

10.1 LAW OF THE PLACE

10.1.1 The contract shall be governed by the law of Arizona and any action relating to this Contract shall be brought in an Arizona court of competent jurisdiction located in the County of jurisdiction for the Owner.

10.2 SUCCESSORS AND ASSIGNS

10.2.1 The Owner and the Contractor each binds himself, his partners, successors, assigns and legal representatives to the other party hereto and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants' agreements and obligations contained in the Contract Documents. The Contractor shall not assign the Contract or any part hereof or sublet it as a whole or in part without the previous written consent of the Owner, nor shall the Contractor assign or pledge any monies due or to become due to him hereunder, without the previous written consent of the Owner.

10.3 WRITTEN NOTICE

10.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual for whom it was intended, or if delivered at or sent by registered or certified mail to the last business address known to him who gives the notice as appropriate. Notice to the Project Administrator is notice to the Owner.

10.4 CLAIMS FOR DAMAGES

10.4.1 Should either party of the Contract suffer injury or damage to person or property because of any act or omission of the other party or of any of his employees, agents or others for whose acts he is legally liable, claim shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage. All claims made by the Contractor under this Contract are subject to the limitations set forth in Paragraph 15.2 herein.

10.5 PERFORMANCE BOND AND LABOR AND MATERIAL PAYMENT BOND

10.5.1 The Contractor shall furnish performance and labor and material payment bonds covering the faithful performance of the Contract and the payment of all obligations arising there under in

such form and amount as the Owner may prescribe and with such sureties as may be agreeable to the Owner. The premiums shall be paid by the Contractor. The Contractor shall, prior to commencement of the Work, submit such bonds to the Owner.

10.6 OWNER'S RIGHT TO COMPLETE THE WORK

10.6.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform any provision of the Contract, the Owner may, after seven (7) days written notice to the Contractor and his surety, and without prejudice to any other remedy he may have, proceed to make such other necessary and reasonable arrangements to carry out the Work in accordance with the Contract Documents, all at the expense of the Contractor, including the attorneys' fees and other costs incurred by Owner.

10.7 ROYALTIES AND PATENTS

10.7.1 The Contractor shall pay all royalties and license fees and shall defend all suits or claims from infringement of any patent right and shall save the Owner harmless from loss of account thereof, including Owner's attorneys' fees and court costs, except that Owner shall be responsible for all such loss when a particular design, process or product of a particular manufacturer or manufacturers is specified. But, if the Contractor has reason to believe that the design, process or products specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives information to the Project Administrator prior to starting the Work.

10.8 TESTS

10.8.1 Where the Contract Documents, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any of the Work to be inspected, tested or approved, the Contractor shall give the Project Administrator timely notice of its readiness and of the date arranged so the Project Administrator may observe such inspection, testing or approval.

10.8.2 The Contractor shall be responsible that all equipment and materials used in the construction of the Project, especially those upon which the strength and durability of the structure may depend, shall be subject to adequate inspection and testing in accordance with accepted standards to establish conformity with Specifications, applicable codes and standards and suitability for use intended.

10.8.3 If after the commencement of the Work the Project Administrator determines that any of the Work requires special inspection, testing, or approval, which subparagraph 10.8.1 does not include, he will, upon written authorization from the Owner, order such special inspection, testing or approval, and the Contractor shall give notice of readiness as in Subparagraph 10.8.1.

10.8.4 If such special inspection or testing reveals a failure of the Work to comply:

.1 with the requirements of the Contract Documents, or
.2 with respect to the performance of the Work, with laws, ordinances, rules regulations or orders of any public authority having jurisdiction over the Work, the Contractor shall bear all costs thereof, and the costs of such inspection or testing; otherwise the Owner shall bear such costs of special inspection.

10.8.5 Required certificates of re-inspections or testing to secure compliance with 10.8.4.1 or 10.8.4.2 above shall be paid for by the Contractor.

10.8.6 If the Project Administrator wishes to observe the inspections, tests or approvals required by this Paragraph 10.8, he will do so promptly and, where appropriate, at the source of supply.

10.8.7 Neither the observations of the Project Administrator in his administration of the Contract, nor inspections, tests or approvals by person other than the Contractor shall relieve the Contractor from his obligations to perform the Work in accordance with the Contract Documents.

10.9 LEGAL FEES AND COSTS

10.9.1 The party substantially prevailing shall be entitled to recover its attorneys' fees, any costs of suit, any expert witness fees and the actual cost of any test or inspection incurred in connection with any effort undertaken to enforce any of the terms of this Contract.

10.10 SEVERABILITY

10.10.1 In the event any provision in this contract is held invalid by any court of competent jurisdiction, the remaining provision in this Contract shall be deemed severable and shall remain in full force and effect.

ARTICLE 11
TIME

11.1 TIME AND LIQUIDATED DAMAGES.

11.1.1 It is understood and agreed that the construction of the Work under the Contract Documents shall be commenced on the date stated in the Notice to Proceed issued by the Project Administrator and shall be completed by the Contractor within the number of calendar days specified in Paragraph 3.3 hereof (the "Finish Date"). The Contract Time is the period of time specified in Paragraph 3.3 hereof running from (1) the date specified in the Notice to Proceed as the date upon which the Contractor is to commence the Work (the "Start Date"), through (2) the Finish Date. The date of beginning, rate of progress, and time for completion are essential conditions of the Contract, and the Contractor agrees that said Work shall be prosecuted regularly, diligently, and uninterruptedly as such rate of progress as will insure full completion thereof within the Contract Time specified. It is expressly agreed that the Contract Time is reasonable.

11.1.2 If the Final Completion Date as defined in Subparagraph 11.1.4, occurs after the expiration of the Contract Time, the Contractor shall pay the Owner the sum specified in Paragraph 3.4 hereof as liquidated damages for each calendar day the Work remains incomplete after expiration of the Contract Time. This amount is agreed upon because of the impracticability and extreme difficulty of ascertaining the actual damages the Owner would sustain. It is expressly agreed that the amount of liquidated damages set forth herein is reasonable. Said amounts may be retained from time to time by the Owner from payments due the Contractor.

11.1.3 The date of Completion of the Work, or designated portion thereof, is the date certified in writing by the Project Administrator when construction is sufficiently complete, in accordance with the Contract Documents as they may have been modified by any Change Orders agreed to by the parties, so that the Owner may occupy the project, or a designated portion thereof, if he so elects, for the use for which it is intended. Certification of a designated portion of the Work by the Project Administrator as being "Complete" and occupancy of that portion thereafter by the Owner shall neither release, or otherwise operate to excuse, the Contractor from his duty to complete the remainder of the Work within the Contract Time nor relieve the Contractor from any liability for not completing the remainder of Work within the Contract Time including liability for liquidated damages.

11.1.4 The Final Completion Date is the calendar date when all items of the Work are one hundred percent (100%) finished, with no items of any scope, large or small, outstanding and remaining to be constructed, and all known defective work has been corrected. When the Project Administrator certifies in writing, pursuant to the terms of paragraph 12.6.2, that the Final Completion Date is reached and it is approved by the Owner, the Contractor may make application for final payment pursuant to Subparagraph 12.6.2.

11.1.5 In any case where the terms of any other provision of the Contract may be construed to be in conflict with any term regarding time for completion of the Project, interpretation of the conflicting terms which gives precedence to the term regarding time for completion shall govern.

11.2 PROGRESS AND COMPLETION

11.2.1 All time limits stated in the Contract Documents are of the essence of the Contract.

11.2.2 The Contractor shall begin the Work on the Start Date as defined in Subparagraph 11.1.1 and shall carry the Work forward expeditiously, uninterruptedly and with adequate forces and shall complete it within the Contract Time.

11.3 DELAYS AND EXTENSION OF TIME

11.3.1 If the Contractor is delayed at any time in the progress of the Work by any cause which the Project Administrator determines may justify the delay, including, but not limited to, acts of God, acts of the public enemy, acts of the Owner, acts of another contract in performance of a contract with the Owner, fires, floods, epidemics, quarantine restriction, freight embargoes and adverse weather detrimental to completion of the Work and, in the aggregate, materially different than weather normally experienced during the entire Contract Time, then the Contract Time shall be extended by Change Order for such reasonable time as the Project Administrator may determine. No extension of the Contract Time pursuant to this paragraph shall be limited to granting a time extension to the Contractor, and there is no other obligation, express or implied, on the part of the Owner to the Contractor for delay from any cause.

11.3.2 All claims for extension of time shall be made in writing to the Project Administrator no more than fourteen (14) days after the occurrence of the delay; otherwise, they shall be waived. In the case of a continuing cause of delay, only one claim is necessary. The Contractor shall promptly notify the Project Administrator in writing of the date of the termination of the continuing cause of delay.

11.3.3 If no schedule or agreement is made stating the dates upon which written interpretations as set forth in Subparagraph 4.11.5 shall be furnished, then no claim for delay shall be allowed on account of failure to furnish such interpretations until fifteen (15) days after demand is made for them, and not then unless such claim is reasonable.

ARTICLE 12
PAYMENTS AND COMPLETION

12.1 CONTRACT AMOUNT

12.1.1 The Contract Amount is as stated in this Contract and General Conditions and is the total amount payable by the Owner to the Contractor for the performance of the Work under the Contract Documents, subject to credits or increases resulting from Change Orders. In no event shall Owner be responsible for more than the Contract Amount.

12.2 SCHEDULE OF VALUES

12.2.1 Before the first Application for Payment, the Contractor shall submit to the Project Administrator a detailed schedule of values reflecting as nearly as reasonably possible the actual values of the various components of the Work aggregating the total Contract Amount, prepared in such detail and such form as the Project Administrator may require, and supported by such data to substantiate its correctness as the Project Administrator may require. Each item in the schedule of values may include its proper share of overhead and profit or such overhead and profit may be shown as separate line items and shall be billed in proportion the percent of the Project completed.

12.3 PROGRESS PAYMENTS

12.3.1 On or about the twenty-fifth day of each calendar month during the course of construction, the Contractor shall submit to the Project Administrator an itemized Application for Payment supported by such data substantiating the Contractor's right to payment as the Project Administrator may require. Contractor shall also submit a release of claim and lien waiver covering all work performed to date, including the work of each Subcontractor and material supplier.

12.3.2 Payments shall be based on the Work actually performed during the preceding calendar month. Payment may be made for materials not incorporated in the Work but delivered and suitably stored at the site, or at some other location under such conditions agreed upon in writing by the Project Administrator to be transported to the site and installed at a later date.

12.3.3 Material delivered and suitably stored at the site, or at some other agreed upon location by the Contractor, subcontractors, sub-subcontractors, or material suppliers shall remain the responsibility of the Contractor until incorporated into the Work, shall be insured for the benefit of the Owner to the full value of the material and shall be suitably stored and protected. Only such material that is in accordance with the Contract Documents shall be installed into the Work. Until the final completion and acceptance of the Work by the Owner, it shall be the Contractor's responsibility to protect all materials to be installed in or delivered to the Project.

12.3.4 The Contractor warrants and guarantees that title for all work, materials and equipment covered by an Application for Payment shall pass to the Owner either by incorporation in the Project or upon receipt of payment by the Contractor, whichever occurs first and that such work, materials and equipment shall be free and clear of all liens, claims, security interests or encumbrances, hereinafter referred to in this Article 12 as "claims."

12.4 APPROVALS FOR PAYMENT

12.4.1 If the Contractor has made application for payment as above, then not later than seven (7) days after the date of submission, the Project Administrator shall issue his approval of the Application for Payment and forward his approval of the Application to the Owner's Finance Department for such amount as he determines to be properly due, or state in writing his reasons for withholding, in whole or in part the amount applied for as provided in Subparagraph 12.5.1.

12.4.2 After the Project Administrator has approved an Application for Payment and has forwarded this approval, the Owner shall make a payment to the Contractor as soon as grant funds become available from the State CDBG Program to the Owner, or sooner, at the OWNER's discretion, and subject to compliance with labor standard requirements. Payment will be based on ninety percent (90%) of the value of the Work actually performed during the preceding calendar month in accordance with Subparagraph 12.3.3 and approved by Project Administrator until the contract is fifty percent (50%) completed. If the Contractor is making satisfactory progress when the contract is fifty (50%) completed, the Contractor shall be entitled to a reduction in the retention amount, as required by ARS § 34-221(C). Any amounts retained by Owner shall be paid to the Contractor, as previously specified, after the Final Completion Date as specified in Paragraph 12.6.1 hereof, provided the Contractor has by that time duly furnished the Owner consent of surety, lien waivers, any and all operating manuals, wiring diagrams, control diagrams, maintenance manuals, equipment and appliance warranties, record drawings, warranties and other documents of any nature called for in the Contract Documents or required for the proper functioning of the Work as a whole and has otherwise performed all of Contractors' obligations under the Contract Documents. In lieu of this retention, the Contractor may provide alternative security in the manner authorized by law.

12.4.3 In this Application for Payment, or in a separate notice, the Contractor shall include and itemize, and furnish such supporting particulars as the Project Administrator shall require, all claims for additional compensation against the Owner arising under the Contract Documents or any covenant thereof, express or implied, or from any cause whatsoever, within the time limits prescribed in Subparagraph 15.2.1. It is expressly covenanted that the purpose of this provision is to guard the Owner against surprise claims, to permit the Owner to investigate claims as the same may arise. It is expressly covenanted that the Owner shall have no liability on any claim unless such claim was approved by Project Administrator and was submitted in writing at the time and in the manner required hereby.

12.4.4 No certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with the Contract Documents.

12.5 PAYMENT WITHHELD

12.5.1 The Project Administrator may decline to approve an Application for Payment and/or withhold his Certificate in whole or in part if in his reasonable opinion he is unable to confirm completion of the Work for which payment is requested. The Project Administrator may also decline to approve any Applications for Payment or, because of subsequently discovered evidence or subsequent inspections, he may nullify the whole or any part of any Certificate for Payment previously issued to such extent as may be necessary in his opinion to protect the Owner from loss because of:

.1 defective work not remedied,
.2 claims filed or reasonable evidence indicating probable filing of claims,
.3 reasonable doubt that the Work can be completed for the unpaid balance of the Contract Amount,
.4 damage to another contractor,
.5 reasonable indication that the Work will not be completed within the Contract Time, or
.6 unsatisfactory prosecution of the Work by the Contractor or other material breach of this Contract.
.7 failure to complete all Labor Standards requirements

12.5.2 When the above grounds in Subparagraph 12.5.1 are removed or in the case of 12.5.1.3 above, when the Owner is satisfied that the Contractor will complete the Project at the agreed upon price, payment shall be made for amounts withheld because of them.

12.6 COMPLETION AND FINAL PAYMENT

12.6.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance, the Project Administrator will promptly make or arrange for such inspection and, when the Project Administrator finds (1) the Work in accordance with and acceptable under the Contract Documents, (2) the Work completed under the Contract fully performed and (3) the Final Completion Date has been reached, as that term is defined in Subparagraph 11.1.4, then, and only then, the Project Administrator shall promptly certify in writing that, to the best of his knowledge, information and belief, and on the basis of observations and inspections, the Work has been fully completed in accordance with the terms and conditions of the Contract Documents, that the entire balance found to be due the Contractor is payable. The Project Administrator's written notice required by this paragraph shall state the Date of Final Completion.

12.6.2 The making of final payment shall constitute a waiver of all claims by the Owner except those arising from:

.1 unsettled claims,
.2 faulty or defective Work,
.3 failure of the Work to comply with the requirements of the Contract Documents, or
.4 terms of any guarantees required by the Contract Documents.

12.6.3 The acceptance of final payment shall constitute a waiver of all claims by the Contractor.

12.6.4 No earlier than three weeks before the expiration of the warranty period for the Work specified in Subparagraph 18.1 herein, or at such other additional earlier time or times as the Owner may agree, the Project Administrator, in company with the Contractor, shall make an inspection of the Project and certify that all defects in material and workmanship occurring during this period have been satisfactorily corrected.

ARTICLE 13
PROTECTION OF PERSONS AND PROPERTY

13.1 SAFETY PRECAUTIONS AND PROGRAMS

13.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work in compliance with all local, state and federal laws and regulations.

13.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss, to:

.1 all employees engaged in the Work and all other persons who may be affected thereby;
.2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the site, under the care, custody or control of the Contractor or any of his Subcontractors or Sub-subcontractors; and
.3 other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

13.2.2 The Contractor shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. He shall erect and maintain, as required by existing conditions and the progress of the Work, all reasonable safeguards for safety and protection, including, but not limited to, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities and property.

13.2.3 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

13.2.4 All damage or loss to any property caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor, except damage or loss attributable to the acts or omissions of the Owner or anyone employed by it or for whose acts it may be liable, and not attributable to the fault or negligence of the Contractor.

13.2.5 The Contractor shall designate a responsible member of his organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's

Superintendent unless otherwise designated in writing by the Contractor or the Project Administrator.

13.2.6 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

13.3 EMERGENCIES

13.3.1 In any emergency affecting the safety of persons or property, the Contractor shall act to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work shall be determined as provided by the applicable provision of the Contract Documents.

ARTICLE 14
INSURANCE

14.1 CONTRACTOR'S INSURANCE

14.2 The Contractor at Contractor's own expense, shall purchase and maintain the herein stipulated minimum insurance with companies duly licensed, possessing a current A.M. Best, Inc. Rate of A10, or approved by Owner in its sole discretion and licensed to do business in the State of Arizona with policies and forms satisfactory to the Owner.

14.3 All insurance required herein shall be maintained in full force and effect until all work or service required to be performed under the terms of the Contract is satisfactorily completed and formally accepted; failure to do so may, at the sole discretion of the Owner, constitute a material breach of this Contract.

14.4 The Contractor's insurance shall be primary insurance as respects the Owner**,** and any insurance or self-insurance maintained by the Owner shall not contribute to it.

14.5 Any failure to comply with the claim reporting provisions of the insurance policies or any breach of an insurance policy warranty shall not affect coverage afforded under the insurance policies to protect the Owner.

14.6 The insurance policies, except Workers' Compensation, shall contain a waiver of transfer rights of recovery (subrogation) against the Owner, its agents, officers, officials and employees for any claims arising out of the Contractor's acts, errors, mistakes, omissions, work or service.

14.7 The insurance policies may provide coverage which contains deductible or self-insured retentions. Such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the Owner under such policies. The Contractor shall be solely responsible for the deductible and/or insured retention and the Owner, at its option, may require the Contractor to secure payment of such deductibles or self-insured retentions by a Surety Bond or an irrevocable and unconditional letter of credit.

14.8 The Owner reserves the right to request and to receive, within ten (10) working days, certified copies of any or all of the herein required insurance policies and/or endorsements. The

Owner shall not be obligated, however, to review same or to advise Contractor of any deficiencies in such policies and endorsements, and such receipt shall not relieve Contractor from, or be deemed a waiver of, the Owner's rights to insist on strict fulfillment of Contractor's obligations under this Contract.

14.9 The insurance policies, except Workers' Compensation and Professional Liability, required by this Contract, shall name the Owner, it agents, officers, officials and employees as Additional Insured.

14.10 REQUIRED COVERAGE

14.10.1 COMMERCIAL GENERAL LIABILIITY

14.10.2 Contractor shall maintain Commercial General Liability insurance with a unimpaired limit of not **less than $2,000,000.00 for each occurrence with a $2,000,000.00 Products/Completed Operations Aggregate** and a **$2,000,000.00 General Aggregate Limit**. The policy shall include coverage for bodily injury, broad form property damage, personal injury, products and completed operations and blanket contractual coverage including, but not limited to, the liability assumed under the indemnification provisions of this Contract which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 0001 or any replacements thereof. The coverage shall not exclude X,C,U.

14.10.3 Such policy shall contain a severability of interest provision, and shall not contain a sunset provision or commutation clause, or any provision which would serve to limit third party action over claims.

14.10.4 The Commercial General Liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc., Additional Insured, Form B, CG 20101185, and shall include coverage for Contractor's operations and products and completed operations.

14.10.5 If required by this Contract, the Contractor subletting any part of the work, services or operations awarded to the Contractor shall purchase and maintain, at all times during prosecution of the work, services or operations under this Contract, an Owner and Contractor's Protective Liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of this Contractor's work, service or operations under this Contract. Coverage shall be on an occurrence basis with **a limit not less than $2,000,000.00 per occurrence**, and the policy shall be issued by the same insurance company that issues the Contractor's Commercial General Liability insurance.

14.11 AUTOMOBILE LIABILITY

14.11.1 Contractor shall maintain Commercial/Business Automobile Liability insurance with a combined single limit for bodily injury and property damage of **not less than $2,000,000.00 each occurrence** with respect to the Contractor's any owned, hired, and non-owned vehicles assigned to or used in performance of the Contractor's work. Coverage will be at least as broad as coverage code 1, "any auto", (Insurance Service Office, Inc. Policy Form CA 0001, or any replacements thereof). Such insurance shall include coverage for loading and off loading hazards. If hazardous substances, materials or wastes are to be transported, MCS 90

endorsement shall be included and **$5,000,000.00 per accident limits for bodily injury and property damage** shall apply.

14.12 WORKER'S COMPENSATION

14.12.1 The Contractor shall carry Workers' Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of the work or services; and, Employer's Liability insurance of **not less than the statutory limits.**

14.12.2 In case any work is sub-contracted, the Contractor will require the Subcontractor to provide Workers' Compensation and Employer's Liability to at least the same extent as required of the Contractor.

14.13 CERTIFICATES OF INSURANCE

14.13.1 Prior to commencing work or services under this Contract**,** Contractor shall furnish the Project Administrator with Certificates of Insurance, or formal endorsements as required by the Contract, issued by Contractor's insurer(s), as evidence that policies providing the required coverages, conditions and limits required by the Contract are in full force and effect.

14.13.2 In the event any insurance policy(ies) required by this Contract, is(are) written on a "claims made" basis, coverage shall extend for two years past completion and acceptance of the Contractor's work or services and as evidenced by annual Certificates of Insurance.

14.13.3 If a policy does expire during the life of the Contract, a renewal certificate must be sent to the Owner fifteen (15) days prior to the expiration date.

14.14 CANCELLATION AND EXPIRATION NOTICE

14.14.1 Insurance required herein shall not expire, be cancelled, or materially changed without thirty (30) days prior written notice to the Owner.

ARTICLE 15
CHANGES IN THE WORK AND CLAIMS

15.1 CHANGE ORDERS

15.1.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Contract Amount and/or the Contract Time shall be adjusted pursuant to the terms of the Contract Documents.

15.1.2 A Change Order is a written amendment to the Contract Documents signed by the Project Administrator, the City Manager and the Contractor, issued after the execution of the Contract, authorizing a Change in the Work or an adjustment in the Contract Amount or the Contract Time. The Contract amount and the Contract Time may be changed only by Change Order.

15.1.3 The cost or credit, as the case may be, to the Owner resulting from a Change in the Work shall be determined in one or more of the following ways as mutually agreed:

.1 by a lump sum properly itemized in a form acceptable to Project Administrator and City Manager including sufficient supporting substantiating data to permit evaluation.
.2 by actual cost and the specified percentage fees covering overhead and profit, less applicable trade discounts, rebates, credits or other such reductions in cost made available to Contractor.
.3 Unit price as stated in the Contract, subject to the provisions of 15.1.5 herein. Unit prices proposed on the bid form and included in the Contract are not subject to further overhead and profit adjustments. The Contract sum will be adjusted by the direct extension of the number of units and unit price.

The amount of Contractor's overhead and profit allowed for any change order, whether increase or decrease shall not exceed the percentages of overhead and profit specified in Paragraph 3.5 hereof on work performed by Contractor; and the percentage for profit specified in Paragraph 3.5 hereof of Subcontractor's quotation on all work performed by Subcontractors for profit, with no markup for overhead. Subcontractor's markup on Change Orders shall be limited by their subcontracts with Contractor to the percentages of direct cost for overhead and for profit as specified in Paragraph 3.5. hereof.

15.1.4 If none of the methods set forth in Subparagraph 15.1.3 is agreed upon to calculate a charge or credit to Owner, the Contractor, provided he otherwise receives a Change Order, shall promptly proceed with the Work involved. The cost of such Work shall then be estimated in good faith by the Project Administrator on the basis of the Contractor's reasonable expenditures and savings, including, an allowance for overhead and profit as provided in 15.1.3. The Project Administrator shall use the unit price basis if available and, if not, then the actual cost basis for this determination. The Project Administrator shall then submit that estimate, with all supporting information, to Owner for approval. In such case, and also under Subparagraph 15.1.3.1 above, the Contractor shall keep and present, in such form as the Project Administrator may prescribe, an itemized accounting together with appropriate supporting data. The amount of credit to be allowed by the Contractor to the Owner for any deletion or change which results in a net decrease in cost will be the amount of the actual net decrease, including an allowance for overhead and profit, as confirmed by the Project Administrator. When both additional costs and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase or decrease, if any.

15.1.5 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if the quantities originally contemplated are so changed in proposed Change Order that application of the agreed unit prices to the quantities or Work proposed will create a hardship on the Owner or the Contractor, the applicable unit prices shall be equitably adjusted to prevent such hardship.

15.1.6 If the Contractor claims that additional cost or time is involved because of:

.1 any written interpretation issued by the Project Administrator,
.2 any order by the Project Administrator to stop the Work pursuant to Paragraph 5.2.11 where the Contractor was not at fault, or

.3 any written order for a minor change in the Work issued pursuant to Paragraph 15.3, the Contractor shall make such claim as provided in Paragraph 15.2.

15.1.7 Impact costs. No claim for impact costs resulting from performance of a Change Order will be permitted against the Owner or any other party in privacy of Contract with the Owner with respect to the project subsequent to the time that the Change Order is signed by the Contractor.

15.1.8 Final Settlement. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change, any impact such change may have on the unchanged Work, and any and all adjustments to the Contract Sum or the Contract Time. In the event a Change Order increases the Contract Sum, the Contractor shall include the Work covered by such Change Orders in Application for Payment as if such Work were originally part of the Contract or in separate notice as provided in 12.4.4. Agreement on any Change Order releases the Owner, and any other party in privacy of Contract with the Owner with respect to the Project from all claims or liabilities arising in any way in the connection with, or in any way associated with, such change.

15.2 CLAIMS FOR ADDITIONAL COST OR TIME

15.2.1 If the Contractor is entitled, under the terms of the Contract, to make a claim for an increase in the Contract Amount or any other claim, he shall give the Project Administrator written notice thereof within fourteen (14) days after the occurrence of the event giving rise to such claim or include such notice in the Application for Payment for the month in which the event giving rise to the claim occurred, whichever is earlier. Any notice other than one made for an extension of the Contract Time shall be given by the Contractor before proceeding to execute the Work which is the subject matter of the claim, except in an emergency endangering life or property, in which case the Contractor shall proceed in accordance with Paragraph 12.4.4 within the time limits prescribed herein and no such claim shall be valid unless so made. Any change in the Contract Amount or Contract Time resulting from such claim to be effective shall be approved by the Owner and authorized by Change Order.

15.3 MINOR CHANGES IN THE WORK

15.3.1 The Project Administrator shall have authority to order minor changes in the Work not involving an adjustment in the Contract Amount or an extension of the Contract Time and not inconsistent with the intent of the Contract Documents.

15.4 FIELD ORDERS

15.4.1 The Project Administrator may issue written Field Orders which interpret the Contract Documents or which order minor changes in the Work in accordance with Paragraph 15.3 without change in Contract Amount or Contract Time. The Contractor shall carry out such Field Orders promptly.

ARTICLE 16
UNCOVERING AND CORRECTION OF WORK

16.1 UNCOVERING OF WORK

16.1.1 If the Contractor causes any Work to be covered contrary to the request of the Project Administrator, it must, if required by the Project Administrator, be uncovered for his observation and replaced all at the Contractor's expense.

16.1.2 If any other Work has been covered which the Project Administrator has not requested to observe prior to being covered, the Project Administrator may request to see such Work and it shall be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement after approval by the Owner shall, by appropriate Change Order, be charged to the Owner. If such Work is found not to be in accordance with the Contract Documents, the Contractor shall pay such costs unless it is found that this condition was caused by a separate contractor employed as provided in Article 9, and in that event the Owner shall be responsible for the payment of such costs.

16.2 CORRECTION OF WORK

16.2.1 The Contractor shall promptly correct all Work rejected by the Project Administrator as defective or as failing to conform to the Contract Documents whether observed before or after Final Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work.

16.2.2 If, within the time provided in Paragraph 18.1 herein or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee required by the Contract Documents, including the original conformance with the Contractor Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor shall, at his sole expense, correct it promptly after receipt of a written notice from the Owner to do so. The Owner shall give such notice promptly after discovery of the condition.

16.2.3 All such defective or non-conforming Work under Paragraphs 16.2.1 and 16.2.2 shall be removed from the site where necessary, and the Work shall be corrected to comply with the Contract Documents without cost to the Owner.

16.2.4 The Contractor shall bear the cost of making good all work of separate contractors destroyed or damaged by such removal or correction.

16.2.5 If the Contractor does not remove such defective or non-conforming Work within a reasonable time fixed by written notice from the Project Administrator, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten (10) days after receipt of a statement of charges therefore, the Owner may, upon ten (10) additional days written notice, sell such Work at auction or at private sale and shall account for the net proceeds thereof after deducting all the costs that should have been borne by the Contractor, including compensation for additional engineering services and any attorneys, fees incurred by Owner in connection therewith. If such proceeds of sale do not cover all costs that the Contractor should have borne, the difference shall

be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner, and all attorneys, fees and other costs that the Owner may incur in collecting same.

16.2.6 If the Contractor fails to correct such defective or non-conforming work, the Owner may correct it in accordance with Paragraph 10.6.

16.2.7 The obligations of the Contractor under this Paragraph 16.2 shall be in addition to and not in limitation of any obligations imposed upon him by special guarantees required by the Contract Documents or otherwise prescribed by law.

16.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK

If the Owner prefers to accept defective or non-conforming Work, he may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect an appropriate reduction in the Contract Amount, or, if the amount is determined after final payment, it shall be paid by the Contractor.

ARTICLE 17
TERMINATION OF THE CONTRACT

17.1 TERMINATION BY THE CONTRACTOR

17.1.1 If the work is stopped for a period of One Hundred and Sixty (160) days, and the Project Administrator is immediately notified of such stopping, under an order of any court or other public authority having jurisdiction through no act or fault of the Contractor or any Subcontractor or their agents or employees or any other persons performing any of the Work under a contract with the Contractor, and by reason of some act or omission of Owner, then the Contractor may, upon seven day's written notice to the Owner as its sole remedy hereunder, terminate the Contract and recover from the Owner payment for all Work approved by Owner and for any proven loss sustained upon any materials, including reasonable profit for Work accomplished through the date the notice of termination is given and approved and accepted by Owner.

17.2 TERMINATION BY THE OWNER

17.2.1 If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner the Contractor’s obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of the Contract, the Owner shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Contractor under this Contract shall, at the option of the Owner, become its property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.

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

17.2.3 The Owner may terminate this Contract at any time by giving at least (10) days notice in writing to the Contractor. If the Contract is terminated by the Owner, the Contractor will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the Contractor, the aforementioned clause relative to termination shall apply.

17.2.4 If the Contractor refuses or fails, except in cases for which extension of time is provided, to supply enough properly skilled workmen or sufficient and proper materials to complete the Work in accord with the Progress Schedule and Contract Time, or he fails to make prompt payments to Subcontractors or for materials or labor, or disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, or fails to uninterruptedly complete the Work once he has the Notice to Proceed, or otherwise is guilty of a material breach of any provision of the Contract Documents, then the Owner may, without prejudice to any other right or remedy and after giving the Contractor and his surety seven (7) days written notice, terminate the employment of the Contractor and take possession of the site and all materials, and may finish the Work by whatever method he may deem expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished. Termination of the Contract under this Paragraph shall not relieve the Contractor of any warranty obligations on Work performed hereunder, and such obligations shall survive termination of this Contract.

17.2.5 If the unpaid balance of the Contract Amount is exceeded by the costs of finishing the Work, including compensation for additional engineering services, attorneys' fees and all other costs incurred by Owner in completion of the Contractor's obligations, the Contractor shall pay the difference to the Owner.

17.2.6 Pursuant to A.R.S. § 38-511, OWNER reserves the right to cancel this Agreement, within three years after the effective date of this Agreement, without penalty or further obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of OWNER is, at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent of CONTRACTOR in any capacity or a sub-contractor to CONTRACTOR with respect to the subject matter of this Agreement. Cancellation under this section by OWNER shall be effective when written notice from the City Manager is received by CONTRACTOR. The OWNER may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the Agreement on behalf of the OWNER from CONTRACTOR arising as the result of the Agreement.

ARTICLE 18
WARRANTY AND SITE CONDITIONS

18.1 TWO-YEAR WARRANTY

18.1.1 The Contractor shall warrant all Work under this Contract to be in accordance with the Contract Documents against defects of material and workmanship for a period of two years from the date of Final Completion; provided, however, that those items of the Work specified as having longer warranties shall be warranted for the period specified.

18.1.1.1 The Contractor shall be responsible for the total cost of repairing and restoring any Work found not in compliance with the Contract Documents or any defective Work to a new condition, at no cost to Owner.

18.1.1.2 In any case where the subject matter of the non-compliance or defect relates to Work done under a subcontract between the Contractor and any subcontractor, it is the responsibility of the Contractor, not the Owner, to secure the Subcontractor's performance in compliance with this paragraph and, in the event of the Subcontractor's failure or refusal within a reasonable time to perform after notice, it shall be the Contractor's responsibility to repair and restore such non-complying or defective Work to a new condition, at no cost to Owner.

18.1.1.3 In any case where the failure in complying or defective Work has been brought to the attention of the Contractor by the Owner and the Contractor fails or refuses to correct it within five (5) days of such notice, the Owner may elect, without precluding any other remedy it may have available to it, to have the defective Work repaired and restored to a new condition in whatever reasonable manner it deems appropriate, regardless of the cost, and the Contractor shall be liable to the Owner for the total cost thereof, including, by way of example only, any engineering and legal fees related to effecting the repair, plus 10% of the total costs incurred.

18.1.2 Material and workmanship made good through compliance with such warranty shall be subject to the same warranty period as the original materials and workmanship. Such warranty period shall begin on the date the replaced material and work is certified as acceptable in writing by the Project Administrator.

18.2 SANITATION

18.2.1 The Contractor shall provide temporary sanitation facilities for the use of employees on this construction. Following the period of necessity for such facilities, they shall be removed and all evidence thereof effaced.

18.3 JOB OFFICE

18.3.1 A job office as approved by the Project Administrator shall be provided on the project site. The Contractor shall install at his own expense a job telephone for use of all trades in connection with the work and shall pay for all local calls. All long-distance calls and toll calls shall be paid for by the person making the call.

18.4 USE OF PREMISES

18.4.1 The Contractor shall confine his equipment and plant, the storage of materials, and the operations of his workmen to limits indicated by law, ordinances, permits, or directions of the Project Administrator and shall not unreasonably encumber the premises with materials or equipment.

18.4.2 The Contractor shall enforce the Project Administrator's instructions regarding signs, advertisement, fires, and smoking.

18.5 SEVERABILITY

18.5.1 In the event any provision in this Contract is held invalid by any court of competent jurisdiction, the remaining provisions in this Contract shall be deemed severable and shall remain in full force and effect.

ARTICLE 19
RECORDS ACCESS AND RETENTION REQUIREMENTS

19.1 Records Retention: The Contractor shall maintain and shall contractually require each subcontractor to maintain accounts and records including personnel, property and financial records adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the Owner to assure proper accounting for all project funds both Federal and non-Federal shares. These records will be retained for five (5) years after the expiration of this Contract unless permission to destroy them is granted in writing by the Owner.

19.2 Access to Records: Legible copies of all records maintained by the Contractor shall be made available, upon request, to the Owner, the Arizona Department of Housing, the Office of the Inspector General (HUD), and any other body authorized by the Owner.

ARTICLE 20
COMPLIANCE WITH IMMIGRATION LAWS and E-VERIFY REQUIREMENT

20.1 As mandated by Arizona Revised Statutes ("A.R.S.") Section 41-4401, the Owner is prohibited from awarding a contract to any contractor or subcontractor that fails to comply with A.R.S. Section 23-214(A). (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program.) The Owner must also ensure that every contractor and subcontractor complies with federal immigration laws and regulations that relate to their employees and A.R.S. Section 23-214(A). Therefore, in signing or performing any Contract (including this Agreement) for the Owner, the Contractor fully understands that:

a. It warrants that both it and any subcontractors it may use comply with all federal immigration laws and regulations that relate to their employees and their compliance with A.R.S. Section 23-214(A);

b. A breach of the warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the Contract that is subject to penalties up to and including termination of the Contract; and

c. The Owner or its designee retains the legal right to inspect the papers or any contractor or subcontractor employee who works on the Contract to ensure that the contractor or subcontractor is complying with the warranty under paragraph (a).

ARTICLE 21
SCRUTINIZED BUSINESS OPERATIONS

21.1 Pursuant to A.R.S. Section 35-391.06 and 35-393.06, the contractor certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in A.R.S. Section 35-391 and/or 35-393 as applicable. If the Owner determines that the contractor submitted a false certification, the Owner may impose remedies as provided by law including termination of this Contract.

IN WITNESS WHEREOF, three (3) identical counterparts of this Agreement, each of which shall for all purposes be deemed original thereof, have been duly executed by the Parties herein above named, on the day and year first above written.

OWNER – City of Benson**:**

By: _____
James F. Cox, Interim City Manager

Date: _____

Attest: _____
Vicki L. Vivian, CMC, Clerk, City of Benson

APPROVED AS TO FORM:

By: _____
Michael J. Massee, Attorney

Date: _____

CONTRACTOR:

By: _____
Kurt A. Mee
CXT Concrete Buildings.

Date: _____

END OF CONTRACT