

RESOLUTION 49-2011

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, ENTERING INTO AN AGREEMENT WITH PSOMAS, FOR BENSON MASTER DRAINAGE STUDY AREA, COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) #106-11

WHEREAS, the Mayor and City Council of the City of Benson have determined that it is necessary to study the drainage area in the CDBG area of the City; and

WHEREAS, the City of Benson has submitted to the Arizona Department of Housing for a Community Development Block Grant from the Federal Department of Housing and Urban Development; and

WHEREAS, the City of Benson has been awarded a grant by Arizona Department of Housing for a Community Development Block Grant from the Federal Department of Housing and Urban Development to study the drainage area in the CDBG area of the City; and

WHEREAS, Psomas is qualified to provide engineering design services for the above-mentioned study, and has presented an agreement to the staff of the City for such engineering design services, attached hereto as Exhibit "A" and incorporated herein by this reference; and

WHEREAS, the City Council has determined that the proposed agreement with Psomas represents the best and most cost effective method to provide this service to the City and its residents.

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

- Section 1. The City is hereby authorized to enter into the Agreement between Psomas and the City of Benson, attached hereto as Exhibit "A" and incorporated herein by this reference.
- Section 2. The Mayor of the City of Benson is hereby authorized and directed to execute said Agreement on behalf of the City of Benson, and the City staff is hereby authorized and directed to take all steps necessary and proper to implement said Agreement and give it effect.
- Section 3. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this Resolution.
- Section 4. All ordinances, resolutions, or motions and parts of ordinances, resolutions or motions of the Council in conflict with the provisions of this Resolution are hereby repealed, effective as of the effective date of this Resolution.
- Section 5. If any section, subsection, sentence, clause, phrase or portion of this Resolution is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF
BENSON, ARIZONA, This 25th day of July, 2011.



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
Benson Master Drainage Study, CDBG #106-11

**CITY OF BENSON
CONTRACT FOR ENGINEERING SERVICES
CDBG CONTRACT #106-11**

This agreement (the "Agreement") is made and entered into as of the 25 day of July, 2011, between the City of Benson ("Grantee" or the "City") and PSOMAS Engineering, (the "Engineer").

Recitals:

- A. The City is the recipient of a community development block grant ("CDBG") from the Arizona Department of Housing concerning street and drainage improvements in an area within the City known as 5th Street; and
- B. The City is in need of professional engineering services in order to design and oversee the reconstruction of 5th Street with improved drainage.
- C. The City desires to implement such improvements under the general direction of the Arizona Department of Housing, Community Development Block Grant Program, and the SouthEastern Arizona Governments Organization ("SEAGO"); and
- D. The Engineer has offered to provide the necessary engineering services for the project in accordance with this Agreement.

NOW, THEREFORE, the parties mutually agree and contract as follows:

- 1. The Engineer promises and agrees to perform the work, as described in this Agreement in a good, competent and professional manner to the complete satisfaction of the Grantee and its designees.
- 2. The Engineer shall provide all of the materials and services required by this Agreement in accordance with recognized professional standards, and in a competent and acceptable form and manner, including:
 - a) The Engineer shall provide project coordination with the City Engineer and staff in the completion of the project including arranging project meetings, compiling existing data, and providing project status reports. Project invoices shall be submitted in a task breakdown format with percent complete for each task and a progress report which clearly explains the work completed on each task for that billing period. The Engineer shall provide adequate QA/QC of the project deliverables to ensure they meet industry standards. Documentation of project QA/QC shall be provided to the City upon request.
 - b) The Engineer shall complete a thorough site reconnaissance to verify drainage conditions in the field. City staff will accompany the Engineer upon request to provide background information on the location and nature of known drainage issues, and to assist in interviewing local residents knowledgeable about historic flooding conditions. The City will also provide the Engineer with available plans, reports, work orders and other information relevant to existing

drainage and flooding issues in the study area. The Engineer will visually verify and document through field notes and photographs the locations, sizes, and condition of all significant existing (and visible) drainage infrastructure within the study limits. This includes engineered channels, culverts, catch basins, stormdrains, retention basins and other relevant features. A photo log of these features will be created for inclusion in the Master Drainage Plan report.

- c) The Engineer shall complete limited field survey to collect key elevation data required for the hydraulic analysis and evaluation of potential drainage alternatives. This will included primarily the collection of invert and flowline elevation data on existing drainage structures and surface elevations at possible locations of split flow.
- d) The Engineer shall create topography for the project area utilizing the 2008 PAG DEM data. The topography shall be used to assist with the delineation of watersheds impacting the study area. The Engineer shall also prepare utility base mapping and record right-of-way mapping which will be limited to those areas where proposed drainage mitigation alternatives are being evaluated. This mapping will be based on available existing data, and the accuracy and extent of the mapping will be based on the quality of that existing data. No formal right-of-way survey, monument survey, or utility potholing is included in this scope of work.
- e) The Engineer shall complete a hydrologic analysis of the study area to determine design peak discharges for the 10-, 25- and 100-year storm events. Peak discharges will be calculated using the HEC-HMS computer software, and will be provided at key points of concentration within the study limits. Hydrologic parameters used in the model will be consistent with Pima County methodology. The Engineer shall perform an analysis of existing and significant hydraulic structures within the project limits to estimate conveyance capacity. This includes existing culverts, catch basins, stormdrains and engineered conveyance channels.
- f) The Engineer shall prepare an existing conditions Drainage Base Map which includes aerial photography, topography, watershed delineations, peak discharges and associated points of concentration, flow patterns, existing hydraulic structures, and other relevant drainage related data. This map will serve as the base for the Alternative Analysis Concept Plans as discussed in Task 7.0.
- g) The Engineer shall complete FLO-2D modeling on two distinct areas within the overall study limits as delineated on the figure provided as Exhibit C. The models will provide the extents, depths and velocities of shallow sheet flooding in the areas of interest and will assist in identifying the most appropriate location for possible flood mitigation measures. The models will utilize the PAG DEM data to establish model grid cell elevations. The area reduction factor capability within the program will be used to simulate

reduced conveyance areas associated with the presence of existing structures in the floodplain. Analysis will be completed for the 10-, 25- and 100-year storm events. The results of the analysis, which are in the form of maximum flood depths, will be mapped on the existing conditions base mapping. Areas of residual post-flood ponding will also be identified, if applicable.

- h) The Engineer shall utilize the HEC-RAS computer program to model the 100-year floodplain of the major unnamed located within the project limits. The extents of the floodplain modeling are shown on the attached Exhibit C. Cross-sections for the models will be derived from the 2008 PAG DEM data. Hydraulic structures will be modeled based on available record drawings, field observations and as-built survey data.
- i) The Engineer shall develop drainage mitigation alternatives for selected problem areas as defined by the City and by the results of the FLO-2D and floodplain analysis. The general locations for the assessment of drainage mitigation alternatives are shown on Exhibit C. The assessment will include a concept plan of each alternative, as well as any associated hydraulic analysis needed to demonstrate the effectiveness of the alternative. This could include proposed conditions FLO-2D and HEC-RAS modeling. Potential utility, ROW, and other physical conflicts will be evaluated for each alternative to the extent available data allows. A preliminary opinion of probable cost will be developed for each alternative which is broken down by unit cost consistent with Pima County bid items.
- j) The Engineer shall provide a bound report documenting the Master Drainage Study. The report shall detail the methodologies and results associated with hydrologic and hydraulic calculations, provide suitable graphics for floodplain mapping, concept plans for each of the potential drainage mitigation alternatives, preliminary cost estimates and other relevant data and information. The report will be submitted in draft form for review and comment by the City. The Engineer shall review comments provided by the City, attend a meeting to discuss the comments, and provide a final report in both hardcopy and digital (PDF) format.

4. All of the professional services required by Engineer under this Agreement shall be completed within one hundred and eighty (180) days of the date of the notice to proceed. Time is of the essence.

6. The Grantee will compensate the Engineer for its performance, and the Engineer agrees to accept as complete payment for such full performance, an amount not to exceed the sum of Seventy-Four Thousand, Seven Hundred Ninety-Five Dollars (\$74,795.00). A detailed estimate of the cost of the work to be done under this Agreement, and the rate of compensation to Engineer is set forth in Exhibit A attached hereto.

Charges for additional services that constitute a requested increase in scope of work shall be negotiated. Such additional services shall be requested in writing by the Engineer and must be approved by the City Council.

7. Payment shall be made by the Grantee to the Engineer on a monthly basis..The Engineer shall provide the Grantee with monthly billing statements in a form acceptable to the Grantee listing each task undertaken, the identity of the person performing the task, the time expended, and the cost of such task. Each invoice must bear a written certification by an authorized employee of the Engineer confirming the professional services for which payment is requested. Invoices must also include the contract price, an itemization of all work, amount billed to date, and amount paid to date. All invoices are subject to review and certification of the Grantee's authorized representative and/or SEAGO prior to payment.

8. The Grantee, or its designee, shall have the right to reject all or any work or work product submitted under this Agreement which does not meet the required specifications. In the event of any such rejection, the Engineer agrees to promptly remedy any and all deficiencies. No compensation shall be due for any rejected work until such deficiencies have been corrected, and corrected at the Engineer's sole cost.

9. All notices, invoices and payments shall be made in writing and may be given by personal delivery or by mail. The designated recipients for such notices, invoices and payments are as follows:

If to Engineer: Psomas
Attention: Alejandro Angel, Vice President
800 E Wetmore Road
Tucson, AZ 85718
Phone: (520) 292-2300

If to Grantee: City of Benson
Attention: Brad Hamilton, PW Director
P.O. Box 2223
Benson, Arizona 85602
Phone: (520) 586-2245

10. The Engineer, at Engineer's sole cost and expense, shall purchase and maintain the following minimum insurance with companies duly licensed in the state of Arizona, possessing a current A.M. Best, Inc. Rating of B++6, and with policies and forms satisfactory to the Grantee:

All insurance required shall be maintained in full force and effect until all work or service required to be performed under the terms of this Agreement is satisfactorily completed and formally accepted. Failure to fully maintain all insurance may, at the sole discretion of the Grantee, constitute a material breach of this Agreement.

The Engineer's insurance shall be primary insurance with respect to the Grantee, and any insurance or self-insurance maintained by the Grantee shall not contribute to it.

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 Grantee.

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

The insurance policies may provide coverage that contains deductibles or self-insured retentions; however, such deductible and/or self-insured retentions shall not be applicable with respect to the coverage provided to the Grantee under such policies. The Engineer shall be solely responsible for the deductible and/or self-insured retentions and the Grantee, at its option, may require the Engineer to secure payment of such deductible or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

The Grantee shall have the right to request and to receive, within 10 working days, certified copies of any or all of the insurance policies and/or endorsements required under this Agreement. The Grantee shall not be obligated, however, to review the same or to advise the Engineer of any deficiencies in such policies and endorsements, and such receipt shall not relieve the Engineer from, or be deemed a waiver of, the Grantee's right to insist on strict fulfillment of the Engineer's obligations under this Agreement.

The insurance policies, except professional liability and workers compensation, required by this Agreement, shall name the Grantee, its agents, officers, officials and employees as an "Additional Insured".

REQUIRED COVERAGE:

Commercial General Liability:

The Engineer shall maintain commercial general liability insurance with a limit of not less than \$1,000,000 for each occurrence, with a \$1,000,000 products/completed operations aggregate and a \$1,000,000 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 Agreement, which coverage will be at least as broad as Insurance Service Office, Inc. Policy Form CG 00011093 or any replacements thereof. The coverage shall not exclude X, C, and U. Such policy shall contain a severability of interest provisions, and shall not contain a sunset provision or commutation clause; nor any provision that would serve to limit third party action over claims. The commercial general liability additional insured endorsement shall be at least as broad as the Insurance Service Office, Inc.'s Additional Insured, Form B, CG 20111185, and shall include coverage for the Engineer's operations and products and completed operations.

In the event the Engineer sublets any part of the work, services or operations, as awarded to the Engineer, it shall purchase and maintain, at all times during

prosecution of the work, services or operations under this Agreement, an owner and Engineer's protective liability insurance policy for bodily injury and property damage, including death, which may arise in the prosecution of the Engineer's work, service or operations under the contract. Coverage shall be on an occurrence basis with a limit not less than \$1,000,000 per occurrence, and the policy shall be issued by the same insurance company that issues the Engineer's commercial general liability insurance.

Automobile Liability:

The Engineer shall maintain commercial/business automobile liability insurance with a combined single limit for bodily injury and property damage of not less than \$1,000,000 each occurrence with respect to the Engineer's any owned, hired, and non-owned vehicles assigned to or used in performance of the Engineer's work. Coverage will be at least as broad as coverage code 1, "any auto" (Insurance Service Office, Inc. Policy Form CA 00011293, or any replacements thereof). If hazardous substances, materials or wastes are to be transported, MCS 90 endorsement shall be included and \$5,000,000 per accident limits for bodily injury and property damage shall apply.

Workers Compensation:

The Engineer shall carry worker's compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of the Engineer's employees engaged in the performance of the work or services under this Agreement, with employer's liability insurance of not less than the statutory limits..

In case any work is subcontracted, the Engineer will require the sub-firm(s) to provide worker's compensation and employer's liability insurance to at least the same extent and amounts as required of the Engineer under this Agreement.

Professional Liability:

The Engineer shall maintain professional liability insurance covering acts, errors, mistakes and omissions arising out of the work or services performed by the Engineer, or any person employed by the Engineer, with a limit of not less than \$500,000 each claim.

Certificates of Insurance:

Prior to commencing work or services under this Agreement, the Engineer shall furnish the Grantee with certificates of insurance, or formal endorsements as required by this Agreement, issued by the Engineer's insurer(s), as evidence that policies provide the coverage, conditions and limits required by this Agreement and are in full force and effect.

In the event any insurance policy (ies) required by this Agreement is (are) written on a "claims made" basis, coverage shall extend for two years past completion and

acceptance of the Engineer's work or services and as evidenced by annual certificates of insurance.

If a policy does expire during the life of this Agreement, a renewal certificate must be received by the Grantee fifteen (15) days prior to the expiration date.

Cancellation and Expiration Notice:

Insurance required under this Agreement shall not expire, or be canceled without thirty (30) days prior written notice to the Grantee, except that ten (10) days' prior written notice of cancellation may be given for nonpayment of premium.

11. This Agreement shall be effective upon its approval by the parties, as indicated by the signatures of their representatives hereto. This Agreement and its attachments and those documents incorporated by reference represent the entire agreement and understanding between the parties. There are no verbal terms, conditions, or provisions. No amendment shall be effective unless properly authorized and executed by the parties in writing and in the same manner as this Agreement was executed.

12. This Agreement includes the terms, conditions, and provisions entitled Standard Contract Terms and Conditions attached hereto as Exhibit B. In the event the Standard Contract Terms and Conditions conflict with this Agreement, this Agreement controls.

IN WITNESS WHEREOF, the duly authorized representatives of the parties have executed this Agreement as indicated below:

City of Benson

By: 
Toney D. King, Sr., Mayor

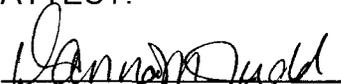
PSOMAS Inc.

By: 
Thomas P. McGovern, P.E.
Vice President

Date: 7-25-11

Date: 6/27/11

ATTEST:


Vicki L. Vivian, CMC, City Clerk

APPROVED AS TO FORM:


Michael J. Masee, City Attorney

EXHIBIT B

CITY OF BENSON STANDARD CONTRACT TERMS AND CONDITIONS CDBG CONTRACT #106-11

THE FOLLOWING TERMS AND CONDITIONS ARE AN EXPLICIT PART OF THE CONTRACT FOR ENGINEERING SERVICES BETWEEN THE CITY OF BENSON AND PSOMAS ENGINEERING, DATED AS OF _____, 2011.

1. **CERTIFICATION:** The Agreement is subject to the provisions entitled "Certifications," which are incorporated herein by this reference. By execution of the Agreement, the Engineer certifies that all laws, rules and regulations pertaining to civil rights, equal employment opportunity, affirmative action for handicapped workers, access to records and records retention, conflict of interest, lobbying, and drug free workplace, as mentioned in the "Certifications", shall be followed by the Engineer. Furthermore, the Engineer will cause the provisions of the referenced "Certifications" to be inserted in all subcontracts for any work covered by under the Agreement, so that such provisions will be binding upon each sub firm.
2. **GRATUITIES:** The Grantee may, by written notice to the Engineer, cancel the Agreement if Grantee determines that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Engineer or any agent or representative of the Engineer, to any officer, agent or employee of the Grantee with a view toward securing any contract, securing favorable treatment with respect to the awarding, amending, or the making of any determinations with respect to the performing of such contact. In the event the Agreement is canceled by the Grantee pursuant to this provision, Grantee shall be entitled in addition to any other rights and remedies, to recover or withhold from the Engineer the amount of the gratuity.
3. **APPLICABLE LAW:** The Agreement shall be governed by the laws of the state of Arizona.
4. **LEGAL REMEDIES:** The parties hereby agree to make a good faith effort to resolve any controversy or claim through informal negotiations. Any claim or controversy must first be presented in writing, with supporting documentation, to the other party or its authorized agent. The recipient shall have seven (7) days to prepare and deliver a response. Thereafter, if the parties fail to resolve the claim or controversy following a reasonable period for such resolution, but not less than ten (10) days, the aggrieved party may request the presiding judge of the Superior Court of Cochise County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

5. **CONTRACT:** The Contract Documents between the Grantee and the Engineer shall consist of:
 - A. these Standard Contract Terms and Conditions;
 - B. the "Certifications"
 - C. General and Special Provisions, if any; and
 - D. the executed Agreement.

All of these documents shall cumulatively constitute "the Agreement," as used herein.

6. **CONTRACT AMENDMENTS:** The Agreement may be modified only by a written amendment authorized by the City Council.
7. **CONTRACT APPLICABILITY:** The Engineer shall substantially conform to the terms, conditions, specifications, and other requirements found within the text of the contract documents.. All previous agreements, contracts, understandings or other documents between the Engineer and the Grantee which are not expressly part of the Agreement are not applicable and are not part of this Agreement.
8. **PROVISIONS REQUIRED BY LAW:** Each and every provision of law and any clause required by law to be in the Agreement will be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted or is not correctly inserted, then upon the application of either party the Agreement will forthwith be expressly amended to make such insertion or correction.
9. **SEVERABILITY:** The provisions of this Agreement are severable to the extent that any provision or application held to be invalid shall not affect any other provision or applications of the Agreement which may remain in effect without the invalid provision or application.
10. **RELATIONSHIP OF PARTIES:** It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. The Engineer is an independent contractor in the performance of this Agreement. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other party for any purpose whatsoever. The Engineer is advised that taxes or social security payments will not be withheld from a payment issued hereunder, and that the Engineer should make arrangements to directly pay such expenses, if any.
11. **INTERPRETATION-PAROL EVIDENCE:** This Agreement is intended by the parties as a final expression of their Agreement, and is intended also as a complete and exclusive statement of the terms of the Agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the Agreement. Acceptance or acquiescence in a course of performance rendered under the Agreement shall not be relevant to determine the meaning of the Agreement, even though the accepting or acquiescing party had knowledge of the nature of the performance and opportunity to object.

12. **ASSIGNMENT-DELEGATION:** No right or interest in this Agreement shall be assigned by the Engineer without prior written permission of the Grantee, and no delegation of any duty of the Engineer shall be made without prior written permission of the Grantee.
13. **RIGHTS AND REMEDIES:** No provision in this document or in the Engineer's offer shall be construed, expressly or by implication, as a waiver by the Grantee of any existing or future right and/or remedy available by law in the event of any claim or default or breach of contract. The failure of the Grantee to insist upon the strict performance of any term or condition of the Agreement, or to exercise or delay the exercise of any right or remedy provided in the Agreement, or by law, or the acceptance of materials or services, or the payment for materials or services, shall not release the Engineer from any responsibilities or obligations imposed by the Agreement or by law, and shall not be deemed a waiver of any right of the Grantee to insist upon the strict performance of the Agreement.
14. **INDEMNIFICATION:** To the fullest extent permitted by law, the Engineer shall indemnify and hold harmless the Grantee, 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, the negligent acts, errors, mistakes, omissions, work or services of the Engineer, its agents, employees, or any of Engineer's sub-firms in the performance of this Agreement. Engineer's duty to hold harmless and indemnify the Grantee, its agents, officers, officials and employees shall arise in connection with any 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, to the extent caused by any Engineer's negligent acts, errors, mistakes, omissions, work or services in the performance of this Agreement, including any employee of the Engineer, any of Engineer's sub-firms, or any other person for whose acts, errors, mistakes, omissions, work or services the Engineer may be legally liable. The amount and type of insurance coverage requirements set forth in the Agreement will in no way be construed as limiting the scope of the indemnity in this paragraph.
15. **OVERCHARGES BY ANTITRUST VIOLATIONS:** The Grantee maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, to the extent permitted by law, the Engineer hereby assigns to the Grantee any and all claims for such overcharges as to the goods or services used to fulfill the Agreement.
16. **FORCE MAJEURE:**
- a. Except for payment of sums due, neither party shall be liable to the other, nor deemed in default under this Agreement, if, and to the extent that, such party's performance of the Agreement is prevented by reason of Force Majeure. The term "Force Majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, Force Majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; floods; lockouts; injunctions,

intervention, acts, or failures or refusal to act by government authority; and other similar occurrences beyond the control of the party declaring Force Majeure, which such party is unable to prevent by exercising reasonable diligence. The Force Majeure shall be deemed to commence when the party declaring Force Majeure notifies the other party in writing of the existence of the Force Majeure and shall be deemed to continue as long as the results or effects of the Force Majeure prevent the party from resuming performance in accordance with this Agreement.

- b. Force Majeure shall not include late performance by a subfirm, unless the delay arises out of a Force Majeure occurrence in accordance with this Force Majeure term and condition.
 - c. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that, such delay or failure is caused by Force Majeure.
 - d. If either party is delayed at any time in the progress of the work by Force Majeure, then the delayed party shall notify the other party in writing of such delay within forty-eight (48) hours of commencement thereof, and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it had done so. The time of completion shall be extended by contract modification for a period of time equal to the time that the results or effects of such delay prevent the delayed party from performing in accordance with this Agreement.
17. **RIGHT TO ASSURANCE:** Whenever one party to this Agreement in good faith has reason to question to other party's intent to perform, he may demand that the other party give a written assurance of this intent to perform. In the event that a demand is made and no written assurance is given within five (5) days, the demanding party may treat this failure as an anticipatory repudiation of the Agreement.
18. **RECORDS:** The Engineer shall retain, and shall contractually require each sub firm to retain, all books, account, reports, files, and other records relating to the acquisition and performance of the Agreement for a period of five (5) years after the completion of the Agreement. All such documents shall be subject to inspection and audit at reasonable times during normal business hours. Upon request, a legible copy of any or all such documents shall be produced at the request of the Grantee, Arizona Department of Housing, the Office of the Inspector General (HUD), and any other person or agency authorized by the Grantee.
19. **WARRANTIES:** The Engineer warrants, in addition to any representation or other express warranties contained in this Agreement, that all services delivered under this Agreement shall conform to the requirements of this Agreement. Mere acceptance of the service specified, and any inspection incidental thereto by the Grantee, shall not alter or affect the obligations of the Engineer or the rights of the Grantee under the foregoing warranties.

20. **TITLE AND RISK OF LOSS:** The title and risk of loss of material or service shall not pass to the Grantee until final inspection and acceptance.
21. **LIENS:** After the project is completed, the Engineer will assure that all materials, service or construction shall be free of all liens, and if the Grantee requests, a formal release of all liens shall be delivered to the Grantee.
22. **ADVERTISING:** Engineer shall not advertise or publish information concerning this Agreement without prior written consent of the Grantee.
23. **TERMINATION BY THE GRANTEE:** The Grantee may cancel this Contract without penalty or further obligation pursuant to A.R.S. §38-511, if any person significantly involved in initiating, negotiating, securing, drafting, or creating the Agreement on behalf of the Grantee is or becomes, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement in any capacity, or a consultant to any other party to this Agreement with respect to the subject matter of the Agreement. Such cancellation shall be effective when written notice from the Grantee is received by the Engineer, unless the notice specifies a later time.
24. **TERMINATION BY THE GRANTEE FOR CAUSE:**
 - a. Grantee, in its sole discretion, may terminate the Agreement if the Engineer:
 - (1) fails to make payment to sub firms in accordance with the respective agreements between the Engineer and the sub firm, as applicable;
 - (2) disregards laws, ordinances, rules, regulations or orders of a public authority having jurisdiction;
 - (3) otherwise is guilty of a breach of a provision of the Agreement or other contract documents; or
 - (4) fails or refuses to provide detailed billing invoices verifying work tasks accomplished.
 - b. When any of the above reasons exist, the City may without prejudice to the other rights or remedies of the Grantee, and after giving the Engineer seven (7) days written notice, terminate the Agreement with the Engineer, and may finish the work by whatever reasonable method the Grantee may deem expedient. If the unpaid balance of the Agreement exceeds costs of finishing the Agreement, including all expenses made necessary thereby, the Engineer shall be entitled to receive payment for its performance and for reasonable overhead, profit, and damages associated with such, up to the amount of such excess. If such completion costs exceed the unpaid balance, the Engineer shall pay the difference to the Grantee within thirty (30) days of invoice from Grantee.

- c. In the event of any termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Engineer under this Agreement shall, at the option of the Grantee, become its property, and the Engineer shall be entitled to receive just and equitable compensation for any work satisfactorily completed.
 - d. Notwithstanding the above, the Engineer shall not be relieved of liability to the Grantee for damages sustained by the Grantee by virtue of any breach of the Agreement by the Engineer, and the Grantee may withhold any payments to the Engineer for the purpose of set-off, until such time as the exact amount of damages due the Grantee from the Engineer is determined.
25. **SUSPENSION BY THE GRANTEE FOR CONVENIENCE:** The Grantee may, without cause, order the Engineer, in writing, to suspend, delay, or interrupt its performance, in whole or in part, for such period of time as the Grantee may determine. An adjustment shall be made for increases in the cost of performance of the Agreement, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent:
- a. that performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which the contractor is responsible; or
 - b. that an equitable adjustment is made or denied under another provision of the Agreement.
26. **TERMINATION BY GRANTEE FOR CONVENIENCE:** The Grantee, by written notice to the Engineer, may terminate this Agreement, in whole or in part, when, in the sole discretion of the Grantee, it is in the Grantee's best interests to do so. In such case, the Engineer shall be paid for all services provided, and reasonable termination expenses; provided, however, that such payments, exclusive of termination expenses, shall not exceed the total contract price(s) reduced by other contract payments previously made to the Engineer, and as further reduced by the value of the performance as yet not completed. The parties expressly agree that this termination right is not a mutual right.
27. **TERMINATION NOTICE:** Upon receipt of a termination notice, the Engineer shall: a) promptly discontinue all services affected (unless the notice directs otherwise); and b) deliver or otherwise make available to the Grantee, at the Grantee's cost, copies of data, design calculations, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Engineer in performing this Agreement.
28. **TERMINATION BY THE ENGINEER:**
- a. The Engineer may terminate the Contract if the performance is stopped for a period of ninety (90) days through no act or fault of the Engineer, its agents or employees, or any other persons performing portions of the project, for any of the following reasons:

- (1) issuance of an order of a court or other public authority having competent jurisdiction;
- (2) an act of government, such as a declaration of national emergency, making materials unavailable;
- (3) because the Grantee has not made payment within the time stated in the contract documents;
- (4) if repeated suspensions, delays or interruptions by the Grantee constitute in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion.

b. If one of the above reasons exists, the Engineer may, upon seven (7) additional days written notice to the Grantee, terminate the Contract and recover from the Grantee payment for its performance and for proven loss, including reasonable overhead, profit and damages attributable to the performance rendered.

29. **ACCESS TO INFORMATION:** It is agreed that all reasonable information, data reports, records, and maps as are existing, available, and necessary for the carrying out of the work outlined above shall be furnished to the Engineer by the Grantee, provided Engineer safeguard the same and not otherwise disclose the same to a third party without Grantee's written permission. No charge will be made to the Engineer for such information, and the Grantee will cooperate with the Engineer in every way possible to facilitate that performance of the work described in the Agreement.
30. **COPYRIGHT:** No reports, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Engineer, as specified in the Grantee's CDBG Contract with the state of Arizona.
31. **INTEREST OF ENGINEER AND EMPLOYEES:** The Engineer covenants that it presently has no interest and shall not acquire interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of their services hereunder. The Engineer further covenants that in the performance of this Agreement, no person or agent having any such interest shall be employed or retained.
32. **GRANTEE'S PROPERTY:** All of the reports, information, data, etc., prepared or assembled by the Engineer under this Agreement ("Work Product") are the property of the Grantee and the Engineer agrees that it shall not make available any such materials to any individual or organization without the prior written approval of the Grantee.
33. **REPORTS AND INFORMATION:** The Engineer, at such times and in such forms as the Grantee may require, shall furnish the Grantee such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the

costs and obligations incurred, or to be incurred in connection therewith, and any other matter covered by this Agreement.

34. **CHANGES:** The Grantee may, from time to time, request changes in the work or scope of the services of the Engineer to be performed under this Agreement. Such changes, including any increase or decrease in the amount of the Engineer's compensation, which are mutually agreed upon by and between the Grantee and the Engineer, shall be incorporated in written amendments to the Agreement.

35. **PERSONNEL:**

a. The Engineer represents that it has, or will secure at his own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of, or have any contractual relationship with, the Grantee.

b. All of the services required hereunder will be performed by the Engineer, or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

36. **SUBCONTRACT:** No subcontract shall be entered into by the Engineer with any other party to furnish any of the services specified herein without the advance written approval of the Grantee. All subcontracts shall comply with Federal and state laws and regulations which are applicable to the services covered by the subcontract, as if the sub firm were the Engineer referred to herein. The Engineer is responsible for contract performance whether or not sub firms are used.

37. **MISCELLANEOUS PROVISIONS:**

a. This Agreement shall be binding upon and ensure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns where permitted by this Agreement.

b. In any case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, it shall not affect any other provision thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

c. Subject to the provisions of paragraph 4 of these Standard Contract Terms and Conditions, should any action at law or in equity be necessary to enforce or interpret the terms of the Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled.

38. **SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT (HUD) ACT OF 1968 - COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES (APPLICABLE ONLY IF A SECTION 3 COVERED CONTRACT):**

a. The work to be performed under this Agreement is subject to the requirements of Section 3 of the HUD Act of 1968, as amended, 12 United States Code (U.S.C.)

1701u, Section 3. The purpose of Section 3 is to ensure that opportunities for training and employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low income persons, particularly persons who are recipients of HUD assistance for housing.

- b. The parties to this Agreement agree to comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of Housing and Urban Development set forth in 24 C.F.R. Part 135, and all applicable rules and orders of the Department issued, there under, as evidenced by the execution of this Agreement. The parties to the Agreement certify and agree that they are under no contractual or other impediment that would prevent them from complying with these requirements.
- c. The Engineer agrees to send to each labor organization or representative of workers with which he/she has a collective bargaining or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of their commitments under this Section 3 clause and shall post copies of the notice at the worksite and in conspicuous places where employees and applicants for employment or training can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, plus the anticipated date the work shall begin.
- d. The Engineer will include this Section 3 clause in every subcontract for work in connection with the project and will take appropriate action pursuant to the applicable provision of the subcontract or in this Section 3 clause, upon a finding that the sub firm is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 C.F.R. Part 135. The Engineer will not subcontract with any sub firm where it has notice or knowledge that the latter has been found in violation of regulations under 24 C.F.R. Part 135.
- e. The Engineer will certify that any vacant employment positions, including training positions, that are filled (1) after the Engineer is selected, but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Engineer's obligations under 24 CFR part 135.
- f. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this Agreement for default, and debarment or suspension from future HUD assisted contracts.
- g. With respect to work performed in connection with Section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this Agreement. Section 7(b) requires that to the greatest extent feasible (a) preference and opportunities for training and employment shall be given to Indians, and (b) preference in the award of contracts and subcontracts shall be given to Indian

organizations and Indian-owned economic enterprises. Parties to this Agreement that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

39. COMPLIANCE WITH IMMIGRATION LAWS and E-VERIFY REQUIREMENT: As mandated by Arizona Revised Statutes (“A.R.S.”) Section 41-4401, the City 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 City 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 City, 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 City 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).

40. SCRUTINIZED BUSINESS OPERATIONS: 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 City determines that the contractor submitted a false certification, the City may impose remedies as provided by law including termination of this Contract.

END OF CONTRACT