1. Town Council - Agenda

   Documents:

   2019_07_09_CC_RG_AG.PDF

2. Town Council - Packet

   Documents:

   2019_07_09_CC_RG_PK.PDF

3. Item 7b Appendix A - Jebco Agreement

   Documents:

   D·B · JEBCO · OLD MANOR UTILITIES SHOP AND MEMORY PARK RESTROOMS.PDF
Town of Chino Valley

MEETING NOTICE
TOWN COUNCIL

REGULAR MEETING
TUESDAY, JULY 9, 2019
6:00 P.M.

Council Chambers
202 N. State Route 89
Chino Valley, Arizona

A majority of the Councilmembers may attend a private invocation in the Council Conference Room immediately prior to the Council meeting. No Town business will be discussed.

AGENDA

1. CALL TO ORDER, PLEDGE OF ALLEGIANCE; ROLL CALL

2. INTRODUCTIONS, PRESENTATIONS, AND PROCLAMATIONS

3. CALL TO THE PUBLIC

Call to the Public is an opportunity for the public to address the Council on any issue within the jurisdiction of the Council that is not on the agenda. Public comment is encouraged. Individuals are limited to speak for three (3) minutes. The total time for Call to the Public may be up to 30 minutes per meeting. Council action taken as a result of public comment will be limited to directing staff to study the matter, scheduling the matter for further consideration and decision at a later date, or responding to criticism.

4. RESPONSE TO THE PUBLIC

Response to the Public is an opportunity for the Mayor to inform the public about how Town officials addressed matters raised during Call to the Public at a previous meeting.

a. William Nick, Co-owner of the CBD Connection, had concerns regarding the inability to post signage out on the street.

5. CURRENT EVENT SUMMARIES AND REPORTS

This item is for information only. The Mayor, any Councilmember, or Town Manager may present a brief summary or report of current events. If listed below, there may also be a presentation on information requested by the Mayor and Council and questions may be answered. No action will be taken.

a. Status reports by Mayor and Council regarding current events.
b. Status report by Town Manager Cecilia Grittman regarding Town accomplishments, and current or upcoming projects.

6. CONSENT AGENDA

All those items listed below are considered to be routine and may be enacted by one motion. Any Councilmember may request to remove an item from the Consent Agenda to be considered and discussed separately.

a. Consideration and possible action to adopt Resolution No. 2019-1144, levying and assessing an ad valorem tax on the assessed value of all real and personal property within the boundaries of the Town of Chino Valley Street Lighting Improvement Districts (CVSLID) for fiscal year 2019-2020, pursuant to Section 48-616, Arizona Revised Statutes. (Joe Duffy, Finance Director)

b. Consideration and possible action to accept the June 18, 2019, study session minutes. (Jami Lewis, Town Clerk)

7. ACTION ITEMS

The Council may vote to recess the public meeting and hold an Executive Session on any item on this agenda pursuant to A.R.S. § 38-431.03(A)(3) for the purpose of discussion or consultation for legal advice with the Town Attorney. Executive sessions are not open to the public and no action may be taken in executive session.

a. Consideration and possible action to approve the License and Concessionaire Agreement between the Town of Chino Valley and Compass Training Center Arizona related to the management of the Chino Valley Shooting Facility. (Joe Duffy, Finance Director)

Recommended Action: Approve the License and Concessionaire Agreement between the Town of Chino Valley and Compass Training Center Arizona related to the management of the Chino Valley Shooting Facility.

b. Consideration and possible action to award a Design-Build contract to JEBCO Construction Companies, LLC for the Utility's Shop Building at Old Home Manor and Memory Park Restrooms in the amount of $103,320.00 for Pre-Construction Services. (Frank Marbury, Public Works Director/Town Engineer)

Recommended Action: Award a Design-Build contract to JEBCO Construction Companies, LLC for the Utility's shop building at Old Home Manor and Memory Park restrooms in the amount of $103,320.00 for Pre-Construction Services.

8. EXECUTIVE SESSION

Council may vote to recess the Regular Meeting and hold an executive session, which will not be open to the public, for the following purposes.
a. An executive session pursuant to A.R.S. § 38-431.03(A)(4) for discussion or consultation with attorneys for the Town in order to consider the Town’s position and instruct the attorneys for the Town regarding the Town’s position regarding a potential intergovernmental agreement with the City of Prescott relating to water service.

9. ACTION ITEMS RESUMED

*After the Executive Session, Council will reconvene the Regular Meeting.*

10. ADJOURNMENT

Dated this 3rd day of July, 2019.

By: Jami C. Lewis, Town Clerk

The Town of Chino Valley endeavors to make all public meetings accessible to persons with disabilities. Please call 636-2646 (voice) or 711 (Telecommunications Arizona Relay Service) 48 hours prior to the meeting to request a reasonable accommodation to participate in this meeting.

Supporting documentation and staff reports furnished to the Council with this agenda are available for review on the Town website at [http://www.chinoaz.net/agendacenter](http://www.chinoaz.net/agendacenter) and in the Public Library and Town Clerk’s Office.

<table>
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<tr>
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<tr>
<td>The undersigned hereby certifies that a copy of this notice was duly posted at Chino Valley South Campus, Chino Valley Post Office, and Chino Valley North Campus in accordance with the statement filed by the Town Council with the Town Clerk.</td>
</tr>
<tr>
<td>Date:_____________________ Time:__________________ By:______________________________________</td>
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<tr>
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Jami C. Lewis, Town Clerk
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AGENDA ITEM TITLE:
Consideration and possible action to adopt Resolution No. 2019-1144, levying and assessing an ad valorem tax on the assessed value of all real and personal property within the boundaries of the Town of Chino Valley Street Lighting Improvement Districts (CVSLID) for fiscal year 2019-2020, pursuant to Section 48-616, Arizona Revised Statutes. (Joe Duffy, Finance Director)

RECOMMENDED ACTION:
Adopt Resolution No. 2019-1144, levying and assessing the ad valorem tax for the Town of Chino Valley Street Lighting Improvement Districts for fiscal year 2019-2020 and ordering copies of the resolution to be delivered to the County Board of Supervisors and the Arizona Department of Revenue.

Fiscal Impact

Fiscal Impact?: Yes
If Yes, Budget Code: Available:
Funding Source: Approval will create a levy to pay for street lighting within the CVSLID street lighting districts. The districts are accounted for in a separate fund by the Town.

Attachments

RES 2019-1144 - CVSLID Levy
RESOLUTION NO. 2019-1144

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF CHINO VALLEY, COUNTY OF YAVAPAI, ARIZONA, ORDERING THAT AN AD VALOREM TAX BE FIXED, LEVIED AND ASSESSED ON THE ASSESSED VALUE OF ALL THE REAL AND PERSONAL PROPERTY WITHIN THE BOUNDARIES OF THE TOWN OF CHINO VALLEY STREET LIGHTING IMPROVEMENT DISTRICTS IN AMOUNTS SPECIFIED IN THE APPROVED STATEMENTS AND ESTIMATES FOR FISCAL YEAR 2019/2020; PROVIDING FOR REPEAL OF CONFLICTING RESOLUTIONS; AND PROVIDING FOR SEVERABILITY.

WHEREAS, the provisions of A.R.S. § 48-616 require the governing body to levy taxes upon all property in a municipal street lighting improvement district in an amount necessary to pay the annual expenses of said districts; and

WHEREAS, the Mayor and Council of the Town of Chino Valley, having adopted annual statements and estimates of expenses of the Chino Valley Street Lighting Improvement Districts as the final budgets for the districts for fiscal year 2019/2020 on June 25, 2019, after a public hearing on the statements and estimates was held on June 25, 2019; and

WHEREAS, Yavapai County is the assessing and collecting authority for the Town of Chino Valley; the Town is required to transmit a certified copy of this Resolution to the Assessor and Board of Supervisors of Yavapai County, Arizona by the third Monday in August.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the Town of Chino Valley, County of Yavapai, Arizona, as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. For each street lighting improvement district within the Town of Chino Valley listed on the Schedule of Estimated Assessments, attached hereto as Exhibit A and incorporated herein by reference, a tax rate sufficient to provide funds for the annual expenses of each such street lighting improvement district is hereby levied on all property, both real and personal, within the boundaries of said districts, except such property which is, by law, exempt from taxation. Said levy shall not exceed $1.20 per $100 assessed valuation as specified in the column labeled 2019/2020 Levy Request.

SECTION 3. Certified copies of this Resolution shall be delivered to the Yavapai County Board of Supervisors and to the Arizona Department of Revenue before the third Monday in August, 2019 (August 19, 2019).

SECTION 4. All resolutions or parts of resolutions in conflict with the provisions of this Resolution are hereby repealed.

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 Common Council of the Town of Chino Valley, Arizona this 9th day of July, 2019.

______________________________
Darryl Croft, Mayor

ATTEST:

______________________________
Jami C. Lewis, Town Clerk

APPROVED AS TO FORM:

______________________________
Andrew J. McGuire, Town Attorney
Gust Rosenfeld, PLC

I hereby certify the above foregoing Resolution No. 2019-1144 was duly passed by the Council of the Town of Chino Valley, Arizona, at a regular meeting held on July 9, 2019, and that quorum was present thereat and that the vote thereon was ____ ayes and ____ nays and ____ abstentions. ____ Council members were absent or excused.

______________________________
Jami C. Lewis, Town Clerk
EXHIBIT A
TO
RESOLUTION NO. 2019-1144

[Schedule of Estimated Assessments]

See following page.
# Statement of Estimates and Expenses

**Fiscal Year - 2019/2020**

<table>
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Town Council Regular Meeting

Meeting Date: 07/09/2019
Contact Person: Jami Lewis, Town Clerk
    Phone: 928-636-2646 x-1208
Department: Town Clerk
Item Type: Consent

AGENDA ITEM TITLE:
Consideration and possible action to accept the June 18, 2019, study session minutes. (Jami Lewis, Town Clerk)

RECOMMENDED ACTION:
Accept the June 18, 2019, study session minutes.

Attachments
Draft Minutes
The Town Council of the Town of Chino Valley met for a Study Session in the Chino Valley Council Chambers, located at 202 N. State Route 89, Chino Valley, Arizona, on Tuesday, June 18, 2019.

Present: Mayor Darryl Croft; Vice-Mayor Jack Miller; Councilmember Mike Best; Councilmember Cloyce Kelly; Councilmember Corey Mendoza; Councilmember Lon Turner

Absent: Councilmember Annie Perkins

Staff Present: Finance Director Joe Duffy; Public Works Director/Town Engineer Frank Marbury; Development Services Director Joshua Cook; Planner Alex Lerma; Economic Development Project Manager Maggie Tidaback; Administrative Technician Kathy Frohock (videographer); Deputy Town Clerk Vickie Nipper (recorder)

1) CALL TO ORDER; ROLL CALL

Mayor Croft called the meeting to order at 6:00 p.m.

2) Review and discussion regarding draft text amending the Town of Chino Valley Unified Development Ordinance, by amending Section 3, by adding Subsection 3.19: BP (Business Park) zoning district. (Alex Lerma, Planner)

Planner Lerma presented on this item:

- **Scope of New District**: The Business Park Zoning District could be used in areas outside Old Home Manor (OHM) but would have to be approved by the Council.
- **Development Standards**: The proposed development standards that set the Business Park Zone apart from other zones and would decrease the impact on surrounding neighborhoods included: property to be at least 20-acres in size; 50-foot setbacks from all perimeter property lines; maximum building heights not to exceed 35 feet without a conditional use permit; required fencing and chain-link fence not permitted; and additional landscaping requirements from UDO Section 4.26.
- **Noise Level Standards**: Staff gave an overview of the proposed noise level standards that had been removed at the request of the Town Attorney. The Town Code already had a provision that commercial and industrial uses were exempt from the noise ordinance. If the district was approved, staff wanted to bring back the noise standards once the Town Code was modified.
- **Version Options**: After Staff drafted the text amendment, the Steering Committee and Planning and Zoning Commission (“Commission”) reviewed it. The Commission requested that outdoor uses for animal clinics, hospitals, and kennels become conditional uses instead of prohibited uses. Staff then presented both Staff and Commission versions to Council. Council preferred the Staff version but had concerns with permitted uses.
Similar Zoning Districts in Arizona: Staff researched the goals and purposes of similar zones from other municipalities. The City of Maricopa had a similar situation as the Town and had the same goals. Their three main uses were office buildings, flex manufacturing, and warehouse distribution.

Council and Staff reviewed the proposed text amendment in detail to get a consensus on the content and address Council’s previous concerns.

Conditional Use Permits (CUP): Staff explained that CUPs went with the land, not the owners, and timeframes were to review the CUP, which would only be pulled if conditions that had been set by the Town were not met. Building heights were added as a CUP so the Town could attach additional conditions on the building which would add better leverage for Town than buildings that were 35 feet or under.

Business Park Uses and Definitions: Council commented on the uses of other communities’ business parks being more commercially oriented than the Town’s more foot traffic related businesses. They discussed having the purpose of a business park clearly defined as opposed to a list of business types. The group discussed the differences between a business park and a commercial subdivision. Staff explained that other municipalities had a purpose statement, and included allowed and prohibited uses, conditional uses, and design standards. The Town’s purpose statement was short and could be modified to better reflect the Town’s desires. Council wanted to see a clearer purpose statement for the zone, like those of the other communities presented.

Commercial Zoning and Business Park Zoning: Council discussed commercial zones with one building not constituting a business park that was made up of multiple buildings and businesses; and each large lot being able to contain a certain business type without mixing business types on to one lot. Staff explained that the Business Park district would also allow businesses that were not allowed elsewhere and a property owner could potentially zone land as a business park to have only one use that was not allowed in any other zone. The new business park zone came with stricter design standards. A business park development could be five 40-acre lots with a separate zoning district for each lot (commercial, commercial light, etc.) and could have multiple buildings on each lot.

Spec Buildings: Staff spoke about the potential opportunities of having spec buildings for interested business owners.

Text Amendment: Staff believed the Business Park Zone was ready for use because it gave the tools needed to create a strategic plan for OHM and it would set a precedent for the Town to require developers to develop future business parks to a certain standard. Council still had issues with the zoning district as it was written.

Commission Process: Council questioned Staff providing their own zoning version along with the version recommended by the Commission. Council discussed the Staff and Commission recommendation process.

Business Park Uses: Council and staff reviewed and discussed the following edits to the uses and standards of the zoning district:

- Item B Permitted Uses: Remove #11 - Commercial greenhouses and accessory uses; Remove #21 Call Centers (already included in #2);
- Item C Conditional Uses: Add Hotel/Motel, RV Park; Remove #8 Veterinary Clinic and Animal Hospitals; Remove #9 Commercial Outdoor Kennels
- Item D Prohibited Uses: Add Greenhouses; Public Works will research #13 Excessive Water Usage and #14 Excessive Particulates to get a clearer idea on the
definition of excessive and possibly move both items to conditional uses to be considered on a case-by-case basis; #15 will be readdressed once the noise decibel standard was added back into the code.

- Item E Development Standards: The group discussed setback requirements and the definition of internal circulation systems, which ultimately meant the development’s curb/road system. Although OHM lots would not be subdivided and individually sold, private developers of a business park could subdivide and sell off portions of the 20 plus acres of their business park and there would be defined lot lines and rights-of-way. Developers must comply with the development standards despite how the 20 acres were subdivided and used. Building code standards and fire codes stipulated building distances.

- Item G Performance Standards: Move #7 Outdoor Storage to a conditional use because some wholesale businesses stored their products behind their buildings and the storage went above the 6-foot required fencing. These should be reviewed on a case-by-case basis.

3) Review and discussion regarding a fleet vehicle lease proposal. (Frank Marbury, Public Works Director/Town Engineer)

Director Marbury and Finance Director Duffy introduced Tim Warren with Enterprise Fleet Management, who had been working with Staff for over a year regarding the Town’s fleet. They reported that:

- The Town had only three vehicles out of 28 that were less than ten years old. The age of the fleet was increasing service and maintenance costs. The proposed program would allow for upgrading the fleet with newer, safer, more fuel-efficient and environmentally friendly vehicles.

- The lease program provided the least cost for the Town and it was a method used by other cities in the area.

- This program provided a lower cost of ownership per year of $1,000 or more per vehicle. It would also alleviate staff time that had been used for maintenance, titling, MVD, and auctioning and selling equipment.

Mr. Warren introduced himself, spoke about Enterprise Fleet Management, a privately owned company, and presented an overview of the vehicle lease program. Key points were:

- Enterprise would help the Town find ways to save money in the future through a personalized program. The focus would be the public works and general fleet vehicles, which were fairly old. Experience had shown that older vehicles had higher maintenance and fuel costs, less safety features and longer down time.

- Previous vehicle replacements in the Town were budget driven, rather than based on strategy or analysis on the right time to replace vehicles when the existing fleet still had value. The Town’s fleet was older with higher maintenance and fuel costs with a low overall value. The expense of maintenance and fuel could be used on the acquisition of newer vehicles more often.

- The proposed program would utilize an open-ended equity lease to stretch budget dollars to replace more vehicles with the funding currently available to the Town. The Town would retain all rights of ownership, have no contract mileage, or no wear and tear penalties. At the end of the lease, the book value would enable the Town to have a lower payment and stretch the budget dollars. The key was to sell at the right time and capitalize on the value of the vehicle to help buy down the replacement vehicle cost, which then provided an even lower payment per vehicle. The Town would consistently build equity and at the end of the
five-year time period, the Town would get the difference between what the vehicle sold for and the residual book value, which averaged about 20%. On average, for every vehicle the Town purchased, five vehicles could be leased.

- Benefits were that the Town would get into a cycle of getting newer vehicles with the best technology, higher fuel economy, which was approximately 25% better than 10 years ago, and safer and more reliable vehicles. New vehicles lost most of their value within the first couple of years and fuel economy was best when a vehicle was newer.

- Governments received a significant cost savings from dealers, which helped give credit to the lost value of a vehicle from depreciation in the first few years. Selling the vehicle at the right time allowed local governments to capitalize on that savings. Most local governments did not have a good way to sell vehicles and lost money through the process. Through the Enterprise process, vehicles could be sold at approximately 13% above black book, the nationwide auction index value. Working with Staff, they determined a $38,519 in annual savings over the inhouse projections.

Council, Mr. Warren, and Staff further discussed the purchase process, pricing, ownership, selling process, and overall costs to the Town:

- **Savings:** Both mileage and age affected the overall value of the vehicle. Leasing would save the Town $1,000 per vehicle annually because the Town had held on to their vehicles until there was no value left. Staff gave an example and timeline of purchasing a vehicle, the depreciation process and loss of value compared to using the Enterprise package and selling mechanism.

- **Savings Example:** If the Town purchased 27 vehicles on their own, it would cost approximately $178,000, but to save $38,000, the vehicles would need to be sold at the end of the first five years. If the Town did not sell the vehicles, they would still have all rights of ownership and retained the equity. The timeline for replacing the 27 vehicles was flexible. Also, Enterprise offered a maintenance program that was a lower cost than most businesses and local governments could do on their own.

- **Costs:** The Town was not obligated to sell any vehicle through Enterprise if it was paid down to zero. Leasing the vehicle allowed the Town to pay down the vehicle in a five-year timeframe and retain the 20% residual instead of the full amount upon purchase. There was also an interest cost built into the lease payment, and it was based on the Sourcewell Cooperative Purchasing’s national cooperative contract pricing structure.

- **Staff Recommendation:** While Council had previously discussed purchasing one to two vehicles per year, Staff explained that through the Enterprise package, the current fleet could be replaced faster and recommended starting with replacing three to five vehicles per year.

- **Lemon Law:** If the Town purchased a vehicle that turned out to be a lemon, there was a warranty and Enterprise would help the Town if a vehicle did turn out to be a lemon.

Finance Director Duffy will put together further information on the financial savings of the Enterprise Lease Package based on the purchase of four to five actual Town vehicles.

4) Review and discussion regarding a proposal to develop land use engineering and development standards. (Joshua Cook, Development Services Director; Frank Marbury, Public Works Director/Town Engineer)

Staff and Council preferred to continue Item 4 to the next study session in July.

5) **ADJOURNMENT**
MOVED by Vice-Mayor Jack Miller, seconded by Councilmember Cloyce Kelly to adjourn the meeting at 8:10 p.m.

AYE: Mayor Darryl Croft, Vice-Mayor Jack Miller, Councilmember Mike Best, Councilmember Cloyce Kelly, Councilmember Corey Mendoza, Councilmember Lon Turner

Vote: 6 - 0 PASSED - Unanimously

ATTEST:

Darryl L. Croft, Mayor

Jami C. Lewis, Town Clerk

CERTIFICATION:

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Study Session of the Town Council of the Town of Chino Valley, Arizona held on the 18th day of June, 2019. I further certify that the meeting was duly called and held and that a quorum was present.

Dated this 9th day of July, 2019.

Jami C. Lewis, Town Clerk
AGENDA ITEM TITLE:
Consideration and possible action to approve the License and Concessionaire Agreement between the Town of Chino Valley and Compass Training Center Arizona related to the management of the Chino Valley Shooting Facility.

RECOMMENDED ACTION:
Approve the License and Concessionaire Agreement between the Town of Chino Valley and Compass Training Center Arizona related to the management of the Chino Valley Shooting Facility.

SITUATION AND ANALYSIS:
The Town of Chino Valley issued a Request for Proposal (RFP) for the management of the Chino Valley Shooting Range Facility.

The RFP's were opened on March 28, 2019. Two RFP's were received.

Staff, Councilmember Lane, and a volunteer reviewed and scored the RFP's. Staff then began negotiating the contract with the recommended organization.

Legal drafted the agreement which was reviewed by Council on June 25, 2019, in executive session.

Fiscal Impact
Fiscal Impact?: No
If Yes, Budget Code:
Available:
Funding Source:
Attachments

CVSF License Agreement
LICENSE AND CONCESSION AGREEMENT
FOR
THE CHINO VALLEY SHOOTING FACILITY

THIS LICENSE AND CONCESSION AGREEMENT (this “Agreement”) is made July 1, 2019, by and between the Town of Chino Valley, an Arizona municipal corporation (the “Town”), and Compass Training Center AZ, an Arizona nonprofit corporation (“Concessionaire”).

RECITALS

A. The Town owns the facility commonly known as the Chino Valley Shooting Facility consisting of approximately 40 acres of real property, which is depicted and legally described on Exhibit A, attached hereto and incorporated herein by this reference, and the shade structures, office, restrooms, storage units and parking area improvements located thereon (the “Facility”).

B. The Town solicited the services of an experienced entity to operate the Facility pursuant to a request for proposals, attached hereto as Exhibit B and incorporated herein by reference (the “RFP”).

C. Concessionaire responded to the RFP by submitting a proposal, in the form attached hereto as Exhibit C and incorporated herein by reference (the “Proposal”), to manage and operate the Facility. The Town desires to have Concessionaire render such services upon the terms and conditions set forth in this Agreement (the “Permitted Use”).

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing introduction and recitals, which are incorporated herein by reference, the following mutual covenants and conditions, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Concessionaire hereby agree as follows:

1. License and Term.

   1.1 Grant of License. The Town hereby grants to the Concessionaire a temporary, non-exclusive license (the “License”) on, over, through and across the Facility for the Permitted Use. This License shall be for the benefit and use of the Concessionaire, its employees, subcontractors and assigns (including without limitation employees, officers and agents) and no others. The License period shall run conterminously with the term of this Agreement. In the event of termination of this Agreement for any reason, the License shall immediately terminate without further act of the parties.
1.2 **Term of License.**

A. **Initial Term.** This Agreement shall be effective from the date first set forth above and shall remain in effect until May 27, 2029, unless terminated or canceled earlier as set forth below (the “Initial Term”).

B. **Renewal Terms.** After the expiration of the Initial Term, this Agreement may automatically renew for up to five successive one-year terms (each, a “Renewal Term”) unless (i) renewal is deemed to not be in the best interests of the Town, subject to availability and appropriation of funds for renewal in each subsequent year, or (ii) either party gives notice to the other, at least 90 days prior to the end of the then-current term of this Agreement, that it desires to allow this Agreement to terminate at the end of the then-current Term. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon renewal, the terms and conditions of this Agreement shall remain in full force and effect.

C. **Non-Default.** By requesting extension for a Renewal Term as set forth above, or by consenting to a Renewal Term in any manner, Concessionaire shall be deemed to affirmatively assert that (i) the Town is not currently in default, nor has been in default at any time prior to the Renewal Term, under any of the terms or conditions of the Agreement and (ii) any and all Concessionaire claims, known and unknown, relating to the Agreement and existing on or before the commencement date of the Renewal Term, are forever waived.

1.3 **Manner of Use of the Facility.** Concessionaire shall use due care and diligence in the use of the Facility for the duration of the Term and in the exercise of its rights hereunder, and it will at all times exercise its rights hereunder at such times and in such manner as approved by the Town and will not cause (i) any interference with the business operations (if any) of the Town on or near the Facility, (ii) any interference with the Town’s customary access to or from the Facility, or (iii) any damage or injury to the Facility, or to any agents, employees or invitees of the Town, ordinary wear and tear to the Facility excepted. Additionally, Concessionaire, at its sole expense, without reimbursement from the Town, shall adhere to all of the following:

A. **Property Protection.** Concessionaire shall ensure that all physical improvements on or near the Facility are protected from damage by Concessionaire’s use of the Facility. If Concessionaire’s use of the Facility results in damage to the improvements thereon, Concessionaire shall repair or replace such damages to the satisfaction of the Town, at no cost to the Town. Prior to first utilizing the Facility pursuant to this Agreement, Concessionaire shall provide photographic evidence to the Town of all existing damage to improvements to the Facility, if any. Photographs will clearly show the location of existing damage to the Facility.

B. **Property Restoration.** Concessionaire shall restore or cause to be restored the portions of the Facility accessed or utilized by Concessionaire pursuant to
this Agreement to substantially its original condition prior to the completion of the Term, ordinary wear and tear excepted.

C. **No Hazardous Materials.** Concessionaire shall not release, discharge or deposit any toxic, hazardous or petroleum products onto the Facility or emit any obnoxious or offensive odor, dust, smoke, gas, noise, vibration, electromagnetic disturbance, radiation or other similar matter that is detrimental to the public health, safety or general welfare. Notwithstanding the foregoing, the Town recognizes that certain hazardous materials are inherently related to a shooting facility, and that so long as Concessionaire complies with the Environmental Stewardship Plan (the “ESP”) set forth in Exhibit D, attached hereto and incorporated herein by reference, it shall not be in violation of this subsection with respect to the substances referred to in the ESP.

D. **Limitations on Use; Security.** Concessionaire shall not use any portion of the Facility for staging or storage of materials or equipment other than those necessary for operation of the Facility. Upon exiting the Facility, and at the end of each day during the Term, Concessionaire shall secure the Facility to prevent access by unauthorized persons.

E. **On-Site Storage.** Concessionaire’s equipment may be stored at the Facility only in such areas and by such methods as approved by the Town. All weapons and ammunition stored at the Facility must be properly secured at all times, with access to such locked areas only permitted for Concessionaire’s officers and employees.

1.4 **Changes to Town Property.** In no event shall Concessionaire make any alterations or improvements to any portion of the Facility except as permitted by the Town, in writing, or as expressly permitted under this Agreement. The Town, in its sole discretion, may allow Concessionaire to modify the Facility to accommodate the Concessionaire’s use or development of the Facility. Any improvements to the Facility to accommodate the Concessionaire’s use thereof shall be at the Concessionaire’s sole cost and expense, unless, at its sole discretion, the Town agrees to participate in the cost thereof.

1.5 **Permits; Compliance with Laws.** The Concessionaire shall secure, maintain and comply with all required licenses, permits and certificates relating to, or otherwise necessary or appropriate for Concessionaire’s use of the Facility during the Term. Concessionaire shall comply with all applicable federal, state and local laws, rules, regulations, statutes, codes, orders and ordinances, including, but not limited to, those governing the prevention, abatement and elimination of pollution and/or protection of the environment, and the employment of workers. In exercising any rights and privileges under this Agreement, the Concessionaire shall comply fully with all applicable permits, authorizations, approvals and other requirements.

1.6 **Liens and Encumbrances.** The Concessionaire represents and warrants that it will maintain the Facility free and clear from any liens or encumbrances of any nature whatsoever in connection with the Concessionaire’s use of the Facility.
1.7 **Reservation of Rights.** The Town hereby reserves all such rights and privileges in the Facility as may be used and enjoyed by the Town without interfering with or abridging the rights conveyed to the Concessionaire.

1.8 **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of any Facility to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any party hereto shall inure to the benefit of any third party person, nor shall any third party person be deemed to be a beneficiary of any of the provisions contained herein.

1.9 **No Rights to Facility.** Concessionaire acknowledges that it is acquiring no rights whatsoever in the Facility, or any portion thereof, except a nonexclusive and revocable license, during the Term, to enter upon the Facility to carry out its obligations pursuant to this Agreement. In acknowledging that Concessionaire is acquiring no rights whatsoever in the Facility, Concessionaire further agrees that it will not assert, in any legal action or otherwise, any right or interest in the Facility, or any portion thereof.

2. **Concessionaire Agreement.**

2.2 **Grant of Concession; Purpose.** The Town grants to Concessionaire the privilege of a concession for the purpose of managing the Facility, including shooting range operations, equipment rentals, food/beverage sales (specifically excluding alcoholic beverages, other than those permitted pursuant to a special event permit approved by the Town in its sole discretion), pro shop administration and operation, membership administration, marketing, maintenance, and administrative services for day-to-day management and for special events utilizing the Facility.

2.3 **Location of Concession.** The Concession shall be operated only within the boundary of the Facility, and Concessionaire shall ensure that its employees, agents, contractors, members, guests and invitees do not utilize any portion of the adjacent Town property.

2.4 **Performance Standards; Relationship between the Parties.** Concessionaire accepts the relationship of trust and confidence established between Concessionaire and the Town by the terms of this Agreement. Concessionaire covenants with the Town to furnish its best skill and judgment in performing its obligations hereunder, and shall at all times provide such consulting, operational and managerial services in a manner that maintains the good name and business reputation of the Town and the Facility. Concessionaire shall perform its duties and obligations under this Agreement in an efficient, expeditious, prudent and economical manner, consistent with the best interests of the Town, in accordance with the standards followed by Concessionaire in its role as manager of similarly-situated facilities operated by Concessionaire, in such manner so as to maximize all gross revenues and minimize expenses and otherwise in connection with operation and maintenance of the Facility.
A. Quality of Service.

(1) Quality Standards. It is the intention of the Town that the Facility concession service be of the highest quality attainable. All concession service areas shall be kept clean, orderly and sanitary at all times and in strict accordance with all applicable laws, ordinances, rules and regulations.

(2) Regulatory Requirements. All refreshments sold or kept for sale shall be first quality, wholesome and pure and shall conform in all respects to federal, state, county and municipal food and other laws, ordinances, and regulations and shall be comparable in quality to similar items sold in other recreational facilities in the Yavapai County area. No imitation, adulterated or misbranded article shall be sold or kept for sale. All refreshments kept on hand shall be stored and handled with due regard for sanitation. In the event that the Town notifies the Concessionaire that the quality of a food or beverage item is below the standard outlined herein, Concessionaire shall forthwith cease the sale of such item and the parties shall negotiate in good faith regarding the proper remedy for the matter.

(3) Health Department Rating. If applicable to products sold at the Facility, Concessionaire shall maintain a rating with the Yavapai County Health Department to permit the continuous sale of refreshments in accordance with the Yavapai County Health Code at all times during the Term of this Agreement. Concessionaire shall provide the Town with a copy of any inspection report within three business days after receipt thereof.

(4) Inspections. All refreshments kept for sale by Concessionaire shall be subject to inspection and approval or rejection by the Town and duly authorized representatives of appropriate governmental agencies in the reasonable discharge of their governmental responsibilities.

(5) Prohibited Practices. The Town shall have the right to require that practices of Concessionaire or its employees and agents which are prohibited or unauthorized by this Agreement be discontinued or remedied. Failure of Concessionaire to take appropriate corrective action after notification from the Town shall constitute a breach of this Agreement.

(6) Sanitary Conditions. Concessionaire shall be responsible for the sanitary condition and cleaning of all food service production, storage, and service areas within the Facility.

(7) Waste Removal. Concessionaire shall provide a complete and proper arrangement for the adequate and sanitary handling of all garbage and trash and other refuse caused as a result of the operation of the Facility and shall provide for its timely removal from the concession areas to a central point designated for removal from the Facility. Concessionaire shall provide and use suitable covered, leak-proof receptacles for all trash and barrels, or other similar items when trash is in view of the
public. Concessionaire shall keep any areas for trash and garbage storage prior to removal from Facility in a clean and orderly condition so as not to attract rodents, pests, or birds and shall have all trash and refuse transferred to collection areas designated by the Town. In transporting garbage, trash, and refuse from the Facility, Concessionaire shall use only carts, vehicles, or conveyances that are leak-proof.

B. General Operating Requirements.

(1) Opening Date. Concessionaire shall be open and ready for business (able to receive customers) at the Facility not later than July 1, 2019.

(2) Non-Interference. The public’s right to reasonably enjoy the event for which it is in attendance shall not be infringed upon by any activity of Concessionaire or any of its employees or agents. The activities of Concessionaire shall be such as to render service to the public in a dignified manner and no pressure, coercion or persuasion shall be used by Concessionaire in an attempt to influence the public to use the services or product of Concessionaire. All sales shall be conducted and operated in such a manner so as to not interfere with the orderly operation of any event. Neither Concessionaire nor its employees shall distribute campaign or political literature or any literature of any kind at any time in or on the Facility.

(3) No Town Responsibility for Inventory. The Town shall not be responsible for any inventory of refreshments, merchandise, supplies or concession equipment or other assets used or stored by Concessionaire at the Facility, nor will the Town be responsible for damage resulting from a power failure, flood, fire, explosion and/or other causes. However, the Town will use all reasonable efforts to reestablish power in the event of a loss.

(4) Town Entry. Representatives of the Town shall have the reasonable right to enter upon, and inspect all spaces occupied by Concessionaire during the time events are in operation and at all other times when Concessionaire’s employees are present, as long as they do not interfere with the operations of Concessionaire. The Town, upon reasonable notice to Concessionaire and in the company of a Concessionaire employee, shall have the right to inspect all locked areas of the Facility and storage areas used by Concessionaire.

C. Employees. Concessionaire shall be the employer of all employees at the Facility, and shall be solely responsible for all human resource issues, including but not limited to wages, payroll taxes, tax withholding, worker’s compensation, hiring and firing, compliance with applicable federal occupational, health, and safety laws and regulations, and all other matters. Concessionaire shall be responsible for any employment-related liability, fine, penalty or award (including the cost of defense and attorney fees) with respect to claims, demands, arbitration or litigation brought by an employee or employees of Concessionaire at the Facility resulting from violations of federal, state or local laws, ordinances or regulations governing the employment or working conditions of the employees at the Facility (“Damages”) by Concessionaire’s
corporate office, and/or Facility supervisory staff. Concessionaire shall not be entitled to any reimbursement by the Town for such Damages unless such Damages were the result of a policy or procedure that was required in writing by the Town.

(1) **Sufficient Personnel.** Concessionaire shall employ and supervise such personnel as shall be necessary for the safe and efficient performance of its obligations under this Agreement.

(2) **Employee Appearance.** Concessionaire’s employees shall be appropriately attired in apparel identifying such persons as Concessionaire employees.

D. **Observance of Laws, Rules and Regulations, Permits.** Concessionaire shall, at all times, observe and comply, at its own expense, with all statutes, ordinances, orders, regulations and requirements of all governmental authorities (including without limitation, the requirements of Title I of the Americans With Disabilities Act) that may be applicable to this Agreement. Concessionaire shall use the Facility only for the Permitted Use and for no unlawful purposes whatsoever.

E. **Payment of Impositions.** Concessionaire shall pay when they become due and payable, all assessments, excises, license and permit fees, real and personal property taxes, transaction privilege (“sales”) taxes and other governmental levies of any kind whatsoever (collectively, “Impositions”) which may be assessed or levied by a governmental agency against Concessionaire or grow or become due and payable by Concessionaire out of or caused by this Agreement or any activity or use of the Facility by Concessionaire, its employees, contractors, agents and invitees.

F. **Nondiscrimination.** Concessionaire shall not discriminate against any worker, employee or applicant, or any member of the public, because of race, color, religion, gender, sexual orientation, national origin, age or disability nor otherwise commit an unfair employment practice. Concessionaire will take action to ensure that applicants are employed, and that employees are dealt with during employment, without regard to their race, color, religion, gender, sexual orientation, or national origin, age or disability. Concessionaire further agrees that this clause will be incorporated in all subcontracts with all labor organizations furnishing skilled, unskilled and union labor, or who may perform any such labor or services in connection with this Agreement.

G. **Compliance with Immigration Reform and Control Act of 1986 (IRCA).** Concessionaire understands and acknowledges the applicability of the IRCA to it and agrees to comply with the IRCA in performing under this Agreement. Concessionaire warrants that verification checks have been put into effect by Concessionaire. Concessionaire agrees to indemnify the Town against damages arising from any verification violations or violations arising from the hiring of undocumented workers.

H. **Operational Requirements.** Concessionaire shall operate and maintain the Facility in a manner and on a schedule that is substantially similar to that of other similar facilities in Yavapai County.
(1) Maintenance. Concessionaire shall be responsible for regular and continuous maintenance of the Facility, including but not limited to, the interior and exterior of all structures, the grounds and other amenities, and all equipment and fixtures. Subject to Town approval, Concessionaire will implement a maintenance plan, and shall thereafter regularly and continuously maintain the Facility and all landscaped areas in accordance with the approved plan.

(2) Inspections. Concessionaire shall consent to and provide access for Town inspection of the Facility to confirm continued compliance with the approved maintenance plan. Said inspections shall, if possible, be timed so as not to interfere with the regular operation of the Facility.

(3) Costs and Expenses. Concessionaire shall be solely responsible for all costs and expenses incurred in the operation, management, and maintenance of the Facility, including, but not limited to, (a) all expenditures incurred by Concessionaire in the performance of its obligations under this Agreement; (b) the costs and expenses of re-ordering, restocking, maintaining, repairing and/or replacing equipment and supplies; (c) the costs and expenses of ordering/reordering foodstuffs and beverages; and (d) all other related expenses.

(4) Financial Reporting. Within 45 days after the end of each calendar quarter, Concessionaire shall deliver to Town the following information, in a form reasonably acceptable to Town: (a) a profit and loss statement, balance sheet, cash flow statement, and budget variance report showing the results of operation of the Facility for such quarter and for the operational year to date; and (b) a report indicating the number of general public patrons who use the Facility.

(5) Marketing. Concessionaire shall be responsible for the development of all marketing materials, including brochures, promotional fliers, scorecards, etc., and shall be responsible for all advertising and marketing, including but not limited to website, internet and/or email marketing efforts. The parties agree that the Town may use, at no cost, Concessionaire’s marketing and advertising materials on the Town’s website, billboards, publications and in other promotional materials.

(6) Utilities. Concessionaire shall be responsible for establishing and paying for all utilities at the Facility.

(7) Signs. Concessionaire shall provide a minimum of two signs on the premises identifying the Concessionaire as managing the Facility and providing for the days and hours of operation. The signs shall list a telephone number and website address where the Concessionaire may be reached. Concessionaire shall erect no advertising signs on the Facility except with the written consent of the Town Manager and in accordance with the Town’s sign regulations. Concessionaire shall also install at least one permanent sign, in a form and at a location approved by the Town, crediting the Arizona Game and Fish Department for its contributions to the Facility.
(8) **User Fees.** Concessionaire shall be permitted to establish rates and fees for use of the Facility, provided such fees are reasonable. The Town and Concessionaire agree that the initial rates and fees to be charged by Concessionaire at the Facility, as set forth in Exhibit E and incorporated herein by reference, are hereby determined to be reasonable, and all future increases shall be justified in relation to the rates and fees in Exhibit E. Concessionaire shall provide the Town with prior, written notice of any proposed rate or fee change, which notice shall be delivered to the Town Manager not later than 6 days prior to the proposed date of the rate or fee change.

I. **Taxes, Compensation Insurance, Licenses.** Concessionaire shall pay promptly all taxes and excise or license fees of whatever nature, applicable to this concession, and obtain and keep current all licenses required for the conduct of this concession. Concessionaire shall not permit any of said taxes, or excise or license fees to become delinquent. Concessionaire shall at all times maintain adequate Workers Compensation Insurance and ensure the payment of compensation to all employees engaged in the operation of said concession.

2.5 **Restricted Activities of Concessionaire.** Without the prior, written consent of the Town, which consent may be granted or withheld in Town’s sole discretion, Concessionaire shall not do, or cause or permit to be done, any of the following throughout the Term:

A. **Borrow or Lend.** Borrow or lend money in the name of the Facility or the Town.

B. **Leases or Agreements.** Enter into any lease, license, management or other agreement or contract relating, directly or indirectly, to occupancy or operation of the Facility, other than rental agreements related to private parties.

C. **Assignment of Interests.** Make, execute or deliver in Town’s name, or with respect to any of Town’s assets or the Facility, any assignment for the benefit of creditors or any bond, confession of judgment, chattel mortgage, security instrument, deed, guarantee, indemnity bond or surety bond.

D. **Guaranty.** In the name of or on behalf of the Town, endorse any note, or become a surety, guarantor, or accommodation party to any obligation.

E. **Legal Action.** Commence or maintain in the name of or on behalf of the Town any action or proceeding, whether judicial, administrative or otherwise.

F. **Protected Marks.** Use any trade names, trademarks, logos, emblems or similar identifying marks of the Town.

2.6 **Not a Lease.** Concessionaire shall not by virtue hereof be deemed to have become the tenant of Town; provided, however, that as to the location of the concession as
described below in this Agreement, Concessionaire is entitled to use such premises and shall be deemed merely to be a licensee entitled to enter therein for the purpose of exercising the rights and privileges granted by the concession. Upon any termination of this Agreement, Town shall have the right through such means as it sees fit to remove and exclude therefrom Concessionaire and any of Concessionaire’s employees without being deemed guilty of any unlawful entry, trespass or injury of any sort whatsoever.

3. Town Obligations.

3.1 Condition of Facility. At the time Town turns over possession and control of the Facility to Concessionaire, all portions of the Facility shall be fully functional and operational, in a condition that comports with industry standards.

3.2 Capital Improvements. It is expressly understood and agreed by the parties that all capital improvement projects to the Facility are solely in the Town’s control and discretion. All costs and expenses of capital improvement projects shall be paid from Concessionaire funds, unless otherwise agreed in writing by the parties. Ownership of all capital improvements shall remain with the Town at all times during and after the Term of this Agreement.

4. Compensation; Invoices: Concessionaire shall pay the Town an amount for the privilege of occupying the Facility (the “License Fee”) according to the calculation procedure and schedule of payment set forth below:

4.1 License Fee Calculation. The License Fee shall be 5% of Gross Revenues (defined below) for all activities at the Facility.

4.2 License Fee Payment. The License Fee shall be calculated annually; however Concessionaire shall pay the License Fee to the Town in quarterly estimates, with an annual reconciliation amount equal to the difference between the quarterly estimates and the actual, calculated License Fee. Concessionaire shall pay to the Town quarterly in arrears with respect to each calendar quarter during the Term, an estimate of the License Fee due for that calendar year based on Gross Revenues earned to date (each, an “Estimated Payment”), less prior Estimated Payments thereof. Each Estimated Payment shall be due within 45 days after the end of the quarter. Concessionaire shall pay to the Town annually in arrears any License Fee due for that calendar year less prior Estimated Payments. Each annual payment shall be due within 90 days after the end of the calendar year. In the event this Agreement is terminated prior to the end of the Term hereof, Concessionaire shall pay the Town, not later than 30 days after the early termination date, any portion of the License Fee due on the date of such early termination.

4.3 Liquidated Damages. If Concessionaire fails to operate the Facility or breaches the terms of this Agreement at any time prior to the natural expiration of the Agreement, Concessionaire hereby agrees that, upon its default hereunder and expiration of the cure period set forth in Section 5 below, it shall pay the Town, as liquidated damages and in addition to any amounts otherwise due, within 30 days of receipt of the Town’s written demand therefore, an amount equal to 100% of the License Fee for the prior six-month period, according
4.4 Gross Revenues.

A. Operating Account. Prior to July 1, 2019, Concessionaire shall establish an interest-bearing account with a financial institution of its choice (the “Operating Account”) to be used in the operation of the Facility. All Gross Revenues from the operations of the Facility shall be paid into the Operating Account and all Facility Expenses (as defined in Section 4.5 below) shall be paid from the Operating Account. Concessionaire shall own the Operating Account, shall have check writing authority with respect to it and shall be entitled to all interest accruing on it. Funds in the Operating Account in excess of those necessary to pay for Facility Expenses, to pay fees and to provide adequate cash reserves may be withdrawn by Concessionaire.

B. Gross Revenues Defined. “Gross Revenues” means and includes all receipts and revenues received by Concessionaire or any affiliate relating to or derived from the Facility, in whatever form, unless such item of revenue is specifically excepted or excluded below. By way of example, and in no way limiting the all-inclusive nature of the term, “Gross Revenues” expressly include all of the following:

1. Commissions, fees or profit shares received by Concessionaire (or any affiliate) from revenues generated from sales by concessionaires at the Facility where the gross revenues from such sales are not received by or payable to Concessionaire or any affiliate, including, for example, vending machine commissions, ATM commissions, etc.

2. All finance charges to customers, in case of sales on credit, whether or not payment is actually made, at, in, on or from the Facility.

3. Revenues from the sale of gift certificates, when such revenues are received.

4. All service fees or other consideration paid to Concessionaire as compensation for Concessionaire’s sale or distribution of any item approved by the Town to be sold or distributed at the Facility.

5. All charges for services, alterations or repairs made at, in, on or from the Facility.

6. The proceeds of business interruption insurance, if applicable, received by Concessionaire with respect to the Facility.

7. Payments or other compensation from any user of all or part of the Facility (including, without limitation, compensation for interior signage), unless the revenues derived by such user’s operations from the Facility have already been included in the calculation of Gross Revenues.
C. Exclusions from Gross Revenues. Gross Revenues shall exclude (or be reduced by, as the case may be) all of the following:

(1) The amount of all sales tax receipts required to be accounted for by Concessionaire and paid to any government or governmental agency, but not the amount of any excise tax (except a consumer excise tax) or other governmental obligation in the nature of a tax on the privilege of doing business.

(2) The amount of any sales initially included in Gross Revenues that are subsequently subject to refund or credit.

(3) The amount of any revenues received by any licensee, contractor or concessionaire (unless such licensee, contractor or concessionaire is an affiliate) operating in or from the Facility which are not paid or required to be paid to Concessionaire.

(4) The amount of any revenues received by non-affiliate special, corporate or group business events or tournament promoters, impresarios, outside catering companies or similar third party independent contractors (including revenues derived from the sale of food or beverages) involved in the promotion or conduct of special, corporate or group business events or tournaments, which revenues are not paid or required to be paid to Concessionaire; provided, however that any fees paid to Concessionaire by such group for use of the Facility shall be included in Gross Revenues.

(5) The amount of sponsorship or advertising revenues generated from the Facility which are received by Concessionaire from sponsors or advertisers but are paid to advertising agencies or brokers as commissions.

(6) Gratuities paid or given by customers to employees of Concessionaire or food and beverage service charges billed to group business clients.

(7) Proceeds of insurance other than business interruption insurance applicable to the Facility.

(8) Loan proceeds, if any.

(9) Credits or refunds received from vendors or other third parties as a result of damage claims made by Concessionaire with respect to defective goods or services previously purchased.

(10) Checks or other instruments returned for insufficient funds.

(11) Late charges or interest assessed and received on delinquent accounts receivable, and merchant card fees paid by Concessionaire.
(12) Grants or donations received by Concessionaire from unrelated third parties for capital improvements at the Facility.

D. Special Rules regarding Gross Revenues.

(1) Multi-Facility Tournaments. Concessionaire and its affiliates may seek to organize jointly tournaments, camps or clinics to be held at the Facility and one or more other facilities (the “Joined Facilities”) as a sponsor. In such event, the revenues from such Joined Facilities tournament, camp or clinic shall be allocated among the Joined Facilities on the basis of the number of hours used in each Joined Facilities (or other equitable basis, subject to Town approval), and Gross Revenues will include only the revenues allocated to the Facility.

(2) Multi-Facility Sponsorships. Concessionaire and its affiliates may seek “Sponsorships” meaning any agreement entered by Concessionaire and its affiliates with any entity by which such entity is given the right to identify commercially with Joined Facilities as a sponsor, preferred company or other designation of similar import. In such case, the Sponsorship revenues shall be allocated among the Joined Facilities equally (or other equitable basis, subject to Town approval), and Gross Revenues will include 90% of such revenues from National or Regional Sponsors (such “National or Regional Sponsors” means, for the purposes of this Agreement, sponsors with operations in areas outside of Arizona), and 100% of such revenues from other sponsors, allocated to the Facility.

(3) Facility-Only Sponsorships. For Sponsorships applicable only to the Facility, Gross Revenues will include 90% of such revenues from National or Regional Sponsors, and 100% of such revenues from other sponsors.

4.5 Facility Expenses. During the Term, Concessionaire shall bear and pay all of the following (“Facility Expenses”): all routine and ordinary maintenance and repairs to the Facility required to preserve them in good working repair during their projected useful life, including (A) any costs incurred by or imposed on Concessionaire in the performance of its obligations under this Agreement, (B) all fees payable to Town under this Agreement, and (C) any cost expressly identified as a Facility Expense in this Agreement.

4.6 Financials

A. Sales Recording and Records. Concessionaire shall record at the time of sale, in the presence of the customer, receipts from sales or other transactions, whether cash or credit, in a cash register or registers, or a point of sale terminal or terminals, having a tape or recording device that accumulates and consecutively numbers all transactions. A receipt from any transaction showing the correct amount of purchase shall be offered to the customer at the time of any transaction, including any cash sale. Transactions not ordinarily recorded in a cash register or point of sale terminal shall be noted on and kept in a ledger format. The Annual P&L Statement and the Balance Sheet to be furnished to the Town as provided herein shall be prepared in accordance with
generally accepted accounting principles (either cash or accrual basis). Concessionaire shall keep all of the following for the purpose of audit by the Town:

1. **Accounting Records.** Full and accurate books of account and records including, without limitation, a sales journal, general ledger and all bank account statements showing deposits of Gross Revenues.

2. **Receipts.** All cash register or point of sale terminal receipts with regard to the Gross Revenues, credits, refunds and other pertinent transactions made from on the Facility.

3. **Record of Exclusions.** Detailed original records of any exclusions or deductions from Gross Revenues.

**B. Quarterly and Annual P&L Statements and Balance Sheets.**

1. **Quarterly Financial Reports.** Within 45 days after the end of each calendar quarter during the Term, commencing with respect to the first calendar quarter of the first full calendar year, Concessionaire shall furnish the Town with a Quarterly P&L Statement and a Quarterly Balance Sheet certified as correct by an authorized member or officer of Concessionaire.

2. **Annual Financial Reports.** Within 90 days following the end of each calendar year commencing with respect to the first full calendar year, Concessionaire shall furnish the Town with an Annual P&L Statement and an Annual Balance Sheet certified as correct by an authorized member or officer of Concessionaire.

3. **Form and Content.** Each Quarterly P&L Statement and Annual P&L Statement shall be in the form acceptable to the Town Mayor or authorized designee. The parties may change the form of the P&L Statements from time to time by mutual agreement. The P&L Statements and the Balance Sheets shall be prepared on a cash or accrual basis, as determined by Concessionaire, provided the method chosen for a particular calendar year shall be consistently used throughout such calendar year.

**C. Audit and Examination Rights.**

1. **Audit Procedures.** The Town shall be entitled at any time and from time to time during the Term, until three years after the end of the calendar year for which any Annual P&L Statement relates, to question the sufficiency or accuracy of the Gross Revenue and License Fee calculations. At any time during the Term and within one year after the end of the Term, the Town may cause an audit or examination of Concessionaire’s Gross Revenue and License Fee calculations by Town employees or an independent accountant of the Town’s own selection for the three most recently ended calendar years. If Gross Revenues for such calendar year(s) delivered by Concessionaire to the Town are found to be less than the amount of Concessionaire’s actual Gross Revenues, Concessionaire shall immediately pay to the Town earned but unpaid
payments of License Fees due to the Town. If the audit reveals an understatement of Gross Revenues for such calendar year(s) by more than 5%, Concessionaire shall immediately pay to the Town the reasonable cost of the audit. Otherwise, the cost of the audit shall be paid by the Town. If, 10 days after written request therefor, Concessionaire fails to provide to the Town any Quarterly P&L Statement or Annual P&L Statement in the manner specified in this Agreement, this failure shall constitute a default under this Agreement. In such an event, the Town shall have the right in addition to any other rights or remedies it may have under this Agreement, to conduct an audit to enable the Town independently to determine the Gross Revenues for the Facility. Concessionaire shall reimburse the Town for the cost of such audit within 10 days of written demand by the Town.

(2) Examination of Books. Concessionaire shall, for a period of seven years following the delivery of each Annual P&L Statement, including the seven year period following the end of the Term, keep and maintain, safe and intact, all of the records, books and accounts required under this Section, and shall from time to time, upon request, make these records available to the Town, the Town’s auditor, representative or agent for examination at any reasonable time on five days advance written notice. Concessionaire’s books and records shall be made available for inspection by the Town or its representative at the Facility at Chino Valley, Arizona. The Town shall also have the right to make abstracts from the records, to make copies of any or all of the records and to examine and make copies of any or all contracts, licenses and concession agreements. In addition, on request of the Town or the Town’s representatives, Concessionaire shall furnish copies of Concessionaire’s state and local sales and use tax returns.

(3) Town Staff Inspections. Concessionaire hereby waives, for the term of this Agreement any rights it may have to keep confidential any records indicating the amount of sales generated by at or related to the Facility. Concessionaire further agrees to (a) take all steps necessary and to execute any required documents to permit the Town’s authorized representative to examine any such records and (b) require, as part of any contract or agreement between Concessionaire and any person, firm or entity operating any business related to the Facility (the “Facility Occupants”), that such Facility Occupants agree to waive, for the term of this Agreement, any rights it may have to keep confidential any records indicating the amount of taxable activity relating to the Facility. Town staff shall have the right, from time to time to visit and inspect the operations of the Facility to confirm compliance with this Agreement.

4.7 Capital Improvements and Repairs.

A. Capitalized Repairs. “Capitalized Repair” means any maintenance and repair expense required to be capitalized in accordance with sound accounting practice, including without limitation (1) major repair or reconstruction of the Facility’s mechanical, electrical or plumbing systems and structural items, including building roofs, slabs, foundations or walls, (2) heating, ventilation, air conditioning, plumbing, sewer, utility, irrigation and drainage systems, (3) parking lot paving and slurrying, (4) perimeter
lighting, (5) paved areas other than parking areas, (6) kitchen equipment and (7) safety beams and fencing.

(1) Capitalized Repairs and Replacements. Concessionaire shall be responsible for all Capitalized Repairs, which shall be attended to according to the procedure set forth in this subsection.

(a) Concessionaire shall notify the Town Manager or authorized designee, in writing, of the nature, extent and cost of any Capitalized Repairs not later than 10 business days prior to undertaking any such repair. The Town Manager or authorized designee shall evaluate Concessionaire’s assessment of the need for and cost of a Capitalized Repair and shall notify Concessionaire of the Town’s approval or disapproval of the Capitalized Repair, in writing, within 10 business days after receipt of Concessionaire’s notification.

(b) Once approved by the Town, Concessionaire shall contract for and make all Capitalized Repairs without undue interruption or delay, with due diligence and in a good, workmanlike manner, using first class quality construction practices and materials.

B. Capital Improvements. Concessionaire shall, on an annual basis (or more frequently if circumstances require), provide the Town with a report regarding any improvements that reasonably in accordance with sound practice should be made to the Facility, if any, to ensure that it remains a competitive, first-class venue (“Capital Improvements”). If Concessionaire recommends that any Capital Improvements projects should be completed within any full calendar year, it shall provide the Town with an estimate the cost of doing so. All Capital Improvements projects shall require the Town’s prior authorization, which shall not be unreasonably withheld. The Town may, at its sole discretion, choose to contribute to the cost of Capital Improvements.

4.8 Damage or Destruction. If the Facility is damaged prior to July 1, 2019, the Town shall repair such damage at its expense. Thereafter, should the Facility be substantially damaged by a Force Majeure Event, either the Town or Concessionaire, by written notice to the other given within 60 days following the occurrence of such event, shall have the right to terminate this Agreement. If either does so, neither party shall have any further obligation to the other party under this Agreement, except with respect to liabilities accruing, or based upon events occurring, prior to the effective date of such termination. The Facility shall be deemed to have been “Substantially Damaged” if: (A) the cost of restoring the Facility to their condition immediately before such damage, after applying any insurance proceeds (“Casualty Cost”), is 50% or more of the replacement cost of the Facility Improvements or (B) the Casualty Cost is more than 25% of the replacement cost of the Facility Improvements and the Term has less than three years remaining. If this Agreement is not terminated in the event of damage to the Facility either because the damage does not amount to “substantial damage” as described above, or notwithstanding substantial damage to the Facility, neither party elects to terminate this Agreement, then the Town shall proceed, at the Town’s own expense (after application of any insurance proceeds), with all due diligence to commence and complete restoration of the Facility

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to its condition and character just prior to the occurrence of such casualty. During any repair period resulting from an event causing the Facility to be Substantially Damaged, the License Fee shall not apply, but only for such time until such repairs have been substantially completed in a manner that would allow for the primary uses of the Facility to be conducted.

5. Default; Termination; Cancellation.

5.1 Default; Cure Period.

A. Default and Cure Process. Failure or delay by either party to perform or otherwise act in accordance with any term or provision hereof shall constitute a breach of this Agreement. Any breach not cured within 30 days after written notice is received from the non-breaching party, shall constitute a default under this Agreement, provided, however, that if the failure is such that more than 30 days would reasonably be required to perform such action or comply with any term or provision hereof, then the breaching party shall have such additional time as may be necessary to perform or comply so long as the breaching Party commences performance or compliance within said 30-day period and diligently pursues such cure to completion; provided, however, that no “Cure Period” shall exceed 90 days. Any notice of a breach shall specify the nature of the alleged breach and the manner in which said breach may be satisfactorily cured, if possible. The 30-day period shall not apply where an ordinance or statute requires the Town to perform or otherwise act in a period in excess of 30 days.

B. Parties' Remedies. In the event of a default, the non-defaulting party may, in that party’s sole discretion, terminate this Agreement. Upon such termination, all rights and obligations under this Agreement shall become null and void (except for those rights and obligations designated in this Agreement to survive the termination of this Agreement), and the defaulting party shall be liable to the non-defaulting party for any damages resulting from the breach.

5.2 Additional Termination Rights for Town. In addition to the rights set forth in Section 5.1 above, the Town shall have the right to immediately terminate this Agreement without regard to the Cure Period if any of the following events shall occur:

A. Insolvency. Concessionaire shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property.

B. Court Order. By order or decree of the court Concessionaire shall be adjudged bankrupt or an order shall be made approving a petition filed by any of its creditors or by any of its stockholders or partners, seeking its reorganization or the
readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States or any State thereof.

C. Petitions Against Concessionaire. A petition under any part of the Federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against Concessionaire and shall not be dismissed or stayed within 30 days after the filing thereof.

D. Unauthorized Assignment. Concessionaire, without having obtained the consent of the Town as required in this Agreement, Assigns (as such term is defined below) any interest requiring the consent of the Town.

E. Health Conditions Failure. Concessionaire, as a result of Concessionaire’s actions or inaction within the Concessionaire’s control, fails to maintain a rating in accordance with the Yavapai County Health Code that would permit continued sale of refreshments at the Facility and after finally exhausting all of the Concessionaire’s rights to appeal before the Yavapai County Health Department, Concessionaire has failed to cure such default with a time, period acceptable to the Yavapai County Health Department.

5.3 Continued Operation by Town. In the event this Agreement is terminated pursuant to any of the provisions of this Section 5, the Town shall have the right to operate the Facility or to separately contract with an entity to provide services at the Facility; Concessionaire shall have no right to any revenues therefrom.

5.4 Due to Work Stoppage. This Agreement may be terminated by the Town upon 30 days’ written notice to Concessionaire in the event that the Services are permanently abandoned. In the event of such termination due to work stoppage, Concessionaire shall immediately surrender to the Town any proceeds existing from the Facility’s operations as of the termination date.

5.5 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. The Town may cancel this Agreement without penalty or further obligations by the Town or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Town or any of its departments or agencies is, at any time while this Agreement or any extension of this Agreement is in effect, an employee of any other party to this Agreement in any capacity or a contractors to any other party of this Agreement with respect to the subject matter of this Agreement.

5.6 Gratuities. The Town may, by written notice to the Concessionaire, cancel this Agreement if it is found by the Town that gratuities, in the form of economic opportunity, future employment, entertainment, gifts or otherwise, were offered or given by the Concessionaire or any agent or representative of the Concessionaire to any officer, agent or employee of the Town for the purpose of securing this Agreement. In the event this Agreement is canceled by the Town pursuant to this provision, the Town shall be entitled, in addition to any
other rights and remedies, to recover and withhold from the Concessionaire an amount equal to 150% of the gratuity.

5.7 Agreement Subject to Appropriation. The Town is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the Town’s then current fiscal year. The Town’s obligations under this Agreement are current expenses subject to the “budget law” and the unfettered legislative discretion of the Town concerning budgeted purposes and appropriation of funds. Should the Town elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the Town shall be relieved of any subsequent obligation under this Agreement. The parties agree that the Town has no obligation or duty of good faith to budget or appropriate the payment of the Town’s obligations set forth in this Agreement, if any, in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The Town shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The Town shall keep the Concessionaire informed as to the availability of funds for this Agreement. The obligation of the Town to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the Town. Concessionaire hereby waives any and all rights to bring any claim against the Town from or relating in any way to the Town’s termination of this Agreement pursuant to this Section.

5.8 Transition to New Management Company or Operator. Subsequent to Concessionaire receiving written notification of the termination or expiration of this Agreement as set forth above, Concessionaire shall cooperate reasonably with the Town in the transition of management responsibility to a new management company or operator. In connection therewith, Concessionaire shall provide reasonable training, assistance, and direction to the new management company or operator, and shall, in good faith, endeavor to facilitate a smooth, seamless and efficient transition of management responsibility. Concessionaire’s failure to comply with this Section shall constitute a material default of this Agreement. The Concessionaire and the Town acknowledge that in the event that the Concessionaire fails to perform its obligations under this Section 5.8, the Town will incur substantial damages and the extent of such damages shall be incapable of accurate measurement. Nonetheless, the parties acknowledge that on the date of this Agreement, an amount of liquidated damages of $5,000 represents a good faith estimate as to the actual potential damages that the Town would incur as a result of Concessionaire’s breach of its obligations under this Section 5.8. Such liquidated damages shall be the sole and exclusive remedy of the Town for Concessionaire’s breach of its obligations under this Section 5.8, and the Town hereby waives all other remedies available at law or in equity. The amount of the liquidated damages calculated hereunder does not include any penalty.

5.9 Right to Exclude Concessionaire. In the event of any breach of any of the terms and conditions of this Agreement, the Town shall have, in addition to any other recourse, the right to terminate this Agreement and remove and exclude any and all persons from the premises and to remove and exclude all property of Concessionaire therefrom.
6. Limitations on Assignment of Agreement.

6.1 Prior Consent Required. Concessionaire shall not have the right to “Assign” this Agreement, without having first obtained prior, written consent thereto from the Town. Such consent may be based, in part, on whether the proposed purchaser, assignee or transferee (A) is capable of meeting the Concessionaire’s obligations, and (B) has acknowledged in a form satisfactory to the Town that it shall assume all obligations hereunder of the Concessionaire. For purposes of this Agreement, “Assign” (or as the context may require, “Assignment”) shall be defined as (A) transferring or conveying any interest in, or transferring or delegating responsibilities under, this Agreement, or (B) the occurrence of a merger, change of control, or transfer of substantially all the assets of a party, whether by operation of law or otherwise.

6.2 Effect of Denial of Consent. If the Town decides to withhold its consent, then Concessionaire’s only remedy shall be to terminate this Agreement by giving 90 days’ prior, written notice thereof to the Town. Such termination shall be effective at the end of the then-current Town fiscal year.

6.3 Assignment to Affiliate. Notwithstanding anything herein to the contrary, Concessionaire shall have the right to assign, transfer or convey this Agreement to an affiliate of Concessionaire, provided that Concessionaire shall guarantee thereafter the payment and performance obligations of such affiliate. Such guarantee shall be given in a form that is satisfactory to the Town.

6.4 Subcontracts. Notwithstanding anything herein to the contrary, Concessionaire shall have the right to enter into subcontracts for vendors to provide any portion or all of the concession services set forth above; provided, however, that such subcontract shall not act as an assignment of this Agreement and Concessionaire shall remain solely responsible for the obligations set forth in this Agreement.

7. Indemnification. To the fullest extent permitted by law, the Concessionaire shall indemnify, defend and hold harmless the Town and each Council Member, officer, employee or agent thereof (the Town and any such person being herein called an “Indemnified Party”), for, from and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys’ fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (“Claims”), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the negligent acts, intentional misconduct, errors, mistakes or omissions, in connection with the work or services of the Concessionaire, its officers, employees, agents, or any tier of subcontractor in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.
8. Insurance.

8.1 General.

A. Insurer Qualifications. Without limiting any obligations or liabilities of Concessionaire, Concessionaire shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the Town. Failure to maintain insurance as specified herein may result in termination of this Agreement at the Town’s option.

B. No Representation of Coverage Adequacy. By requiring insurance herein, the Town does not represent that coverage and limits will be adequate to protect Concessionaire. The Town reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement, but have no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Concessionaire from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

C. Additional Insured. All insurance coverage, except Workers’ Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees as Additional Insured as specified under the respective coverage sections of this Agreement. Concessionaire shall ensure all necessary endorsements are executed related to the Additional Insured coverage.

D. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the Town, unless specified otherwise in this Agreement.

E. Primary Insurance. Concessionaire’s insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the Town as Additional Insured.

F. Claims Made. In the event any insurance policies required by this Agreement are written on a “claims made” basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance and endorsements citing applicable coverage is in force and contains the provisions as required herein for the three-year period.
G. Waiver. All policies, except for Professional Liability, including Workers’ Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the Town, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Concessionaire. Concessionaire shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

H. Policy Deductibles and/or Self-Insured Retentions. The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the Town. Concessionaire shall be solely responsible for any such deductible or self-insured retention amount.

I. Use of Subcontractors. If any work under this Agreement is subcontracted in any way, Concessionaire shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Section and insurance requirements set forth herein protecting the Town and Concessionaire. Concessionaire shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance and endorsements verifying the insurance requirements.

J. Evidence of Insurance. Prior to commencing any work or services under this Agreement, Concessionaire will provide the Town with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Concessionaire’s insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages (including necessary endorsements), conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The Town shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Concessionaire’s responsibility to forward renewal certificates and declaration page(s) to the Town 30 days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing this Agreement. A $25.00 administrative fee shall be assessed for all certificates or declarations received without a reference to this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing this Agreement will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:
(1) The Town, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

(a) Commercial General Liability – Under Insurance Services Office, Inc., (“ISO”) Form CG 20 10 03 97 or equivalent.

(b) Auto Liability – Under ISO Form CA 20 48 or equivalent.

(c) Excess Liability – Follow Form to underlying insurance.

(2) Concessionaire’s insurance shall be primary insurance with respect to performance of this Agreement.

(3) All policies, except for Professional Liability, including Workers’ Compensation, waive rights of recovery (subrogation) against the Town, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Concessionaire under this Agreement.

(4) ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

8.2 Required Insurance Coverage.

A. Commercial General Liability. Concessionaire shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than $2,000,000 for each occurrence, $2,000,000 Products and Completed Operations Annual Aggregate and a $5,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.
B. Vehicle Liability. Concessionaire shall maintain Business Automobile Liability insurance with a limit of $1,000,000 each occurrence on Concessionaire’s owned, hired and non-owned vehicles assigned to or used in the performance of the Concessionaire’s work or services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

C. Professional Liability. If this Agreement is the subject of any professional services or work, or if the Concessionaire engages in any professional services or work in any way related to performing the work under this Agreement, the Concessionaire shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the professional services performed by the Concessionaire, or anyone employed by the Concessionaire, or anyone for whose negligent acts, mistakes, errors and omissions the Concessionaire is legally liable, with an unimpaired liability insurance limit of $2,000,000 each claim and $2,000,000 annual aggregate.

D. Workers’ Compensation Insurance. If Concessionaire employs anyone who is required by law to be covered by Workers’ Compensation Insurance, Concessionaire shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Concessionaire’s employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than $500,000 for each accident, $500,000 disease for each employee and $1,000,000 disease policy limit.

8.3 Cancellation and Expiration Notice. Insurance required herein shall not expire, be canceled, or be materially changed without 30 days’ prior, written notice to the Town.


9.1 Independent Contractor.

A. Business Operations. 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. An employee or agent of one party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. Concessionaire is not an agent or employee of the Town, for all purposes including the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, the withholding of income tax under the Income Tax Act, the Arizona Workers Compensation Act, the Arizona Economic Security Act, and any and all other applicable
Federal or State statutes, rules or regulations. The Concessionaire acknowledges and agrees that the services provided under this Agreement are being provided as an independent contractor, not as an employee or agent of the Town. Concessionaire is neither prohibited from entering into other contracts nor prohibited from practicing its profession elsewhere. Town and Concessionaire do not intend to nor will they combine business operations under this Agreement.

B. Concessionaire Employees. Concessionaire, its employees and subcontractors are not entitled to workers’ compensation benefits from the Town. The Town does not have the authority to supervise or control the actual work of Concessionaire, its employees or subcontractors. The Concessionaire, and not the Town, shall determine the time of its performance of the services provided under this Agreement so long as Concessionaire meets the requirements of this Agreement. Town shall not be responsible for the wages or salaries of any employee or representative of Concessionaire, nor for any debts, liabilities or other obligations of Concessionaire. Concessionaire’s employees shall not be considered as Town’s employees and shall not be eligible for the benefits incident to Town’s employees or subject to supervision by Town officials; provided that the Town reserves the right to require Concessionaire to employ in and about the operation of this concession only persons who in appearance, character, general manner and conduct are suitable to employment in the capacities in which they are engaged, and to require Concessionaire to promptly discharge any employee who in the judgment of the Town is not suitable for the work in which such employee is engaged, or does not conduct himself in a manner suitable and appropriate to the concession. The Town shall have the right through its officers and agents, including its police officers, to eject from the premises any employee of Concessionaire whose conduct is improper, inappropriate or offensive, and Concessionaire for itself and for such employee or employees waives any and all claims for damages against the Owners, their officers and agents on account thereof.

9.2 Applicable Law; Venue. This Agreement shall be governed by the laws of the State of Arizona and suit pertaining to this Agreement may be brought only in courts in the Yavapai County, Arizona.

9.3 Laws and Regulations. Concessionaire shall keep fully informed and shall at all times during the performance of its duties under this Agreement ensure that it and any person for whom the Concessionaire is responsible abides by, and remains in compliance with, all rules, regulations, ordinances, statutes or laws affecting the services, including, but not limited to, the following: (A) existing and future Town and County ordinances and regulations, (B) existing and future State and Federal laws and (C) existing and future Occupational Safety and Health Administration standards.

9.4 Amendments. This Agreement may be modified only by a written amendment signed by persons duly authorized to enter into contracts on behalf of the Town and the Concessionaire.
9.5 **Provisions Required by Law.** Each and every provision of law and any clause required by law to be in this 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, this Agreement will promptly be physically amended to make such insertion or correction.

9.6 **Severability.** The provisions of this Agreement are severable to the extent that any provision or application held to be invalid by a Court of competent jurisdiction shall not affect any other provision or application of this Agreement which may remain in effect without the invalid provision or application.

9.7 **Entire Agreement; Interpretation; Parol Evidence.** This Agreement represents the entire agreement of the parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Agreement are hereby revoked and superseded by this Agreement. No representations, warranties, inducements or oral agreements have been made by any of the parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Agreement. This Agreement shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of, or against the party drafting this Agreement. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this Agreement.

9.8 **Subcontracts.** No subcontract shall be entered into by the Concessionaire with any other party to furnish any of the material or services specified herein without the prior, written approval of the Town. The Concessionaire is responsible for performance under this Agreement whether or not subcontractors are used. Failure to pay subcontractors in a timely manner pursuant to any subcontract shall be a material breach of this Agreement by Concessionaire.

9.9 **Rights and Remedies.** No provision in this Agreement shall be construed, express or by implication, as waiver by the Town of any existing or future right and/or remedy available by law in the event of any claim of default or breach of this Agreement. The failure of the Town to insist upon the strict performance of any term or condition of this Agreement or to exercise or delay the exercise of any right or remedy provided in this Agreement, or by law, or the Town’s acceptance of and payment for services, shall not release the Concessionaire from any responsibilities or obligations imposed by this Agreement or by law, and shall not be deemed a waiver of any right of the Town to insist upon the strict performance of this Agreement.

9.10 **Attorneys’ Fees.** In the event either party brings any action for any relief, declaratory or otherwise, arising out of this Agreement or on account of any breach or default hereof, the prevailing party shall be entitled to receive from the other party reasonable attorneys’ fees and reasonable costs and expenses, determined by the court sitting without a jury, which shall be deemed to have accrued on the commencement of such action and shall be enforced whether or not such action is prosecuted through judgment.

9.11 **Liens.** All materials or services shall be free of all liens and, if the Town requests, a formal release of all liens shall be delivered to the Town.

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9.12 Offset.

A. Offset for Damages. In addition to all other remedies at law or equity, the Town may offset from any money due to the Concessionaire any amounts Concessionaire owes to the Town for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. Offset for Delinquent Fees or Taxes. The Town may offset from any money due to the Concessionaire any amounts Concessionaire owes to the Town for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

9.13 Notices and Requests. Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to Town: Town of Chino Valley
202 N. State Route 89
Chino Valley, Arizona 86323
Attn: Cecilia Grittman, Town Manager

With copy to: GUST ROSENFELD P.L.C.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004-2553
Attn: Andrew McGuire

If to Concessionaire: Compass Training Center AZ
3392 Wendingo Trail
Chino Valley, Arizona 86323
Attn: John Stankewicz, Chief Executive Officer

or at such other address, and to the attention of such other person or officer, as any party may designate in writing by notice duly given pursuant to this subsection. Notices shall be deemed received (A) when delivered to the party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a party’s counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a party shall mean and refer to the date on which the party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.
9.14 **Confidentiality of Records.** The Concessionaire shall establish and maintain procedures and controls that are acceptable to the Town for the purpose of ensuring that information contained in its records or obtained from the Town or from others in carrying out its obligations under this Agreement shall not be used or disclosed by it, its agents, officers, or employees, except as required to perform Concessionaire’s duties under this Agreement. Persons requesting such information should be referred to the Town. Concessionaire also agrees that any information pertaining to individual persons shall not be divulged other than to employees or officers of Concessionaire as needed for the performance of duties under this Agreement.

9.15 **Records and Audit Rights.** To ensure that the Concessionaire and its subcontractors are complying with the warranty under subsection 9.16 below, Concessionaire’s and its subcontractors’ books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Concessionaire and its subcontractors’ employees who perform any work or services pursuant to this Agreement (all of the foregoing hereinafter referred to as “Records”), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Concessionaire’s and its subcontractors’ actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Concessionaire’s and its subcontractors’ compliance with the Arizona employer sanctions laws referenced in subsection 10.16 below. To the extent necessary for the Town to audit Records as set forth in this subsection, Concessionaire and its subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Town shall have access to said Records, even if located at its subcontractors’ facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the Town to Concessionaire pursuant to this Agreement. Concessionaire and its subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this subsection. The Town shall give Concessionaire or its subcontractors reasonable advance notice of intended audits. Concessionaire shall require its subcontractors to comply with the provisions of this subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

9.16 **E-verify Requirements.** To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Concessionaire and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Concessionaire’s or its subcontractor’s failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

9.17 **Israel.** Concessionaire certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a “boycott,” as that term is defined in ARIZ. REV. STAT. § 35-393, of Israel.
9.18  **Conflicting Terms.** In the event of any inconsistency, conflict or ambiguity among the terms of this Agreement, the Town’s Request for Proposal issued in connection herewith, or the Concessionaire’s Proposal, the documents shall govern in the order listed herein.

9.19  **Equal Treatment of Workers:** Concessionaire shall keep fully informed of all federal and state laws, county and local ordinances, regulations, codes and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the conduct of the concession operations. Concessionaire shall at all times observe and comply with all such laws, ordinances, regulations, codes, orders and decrees; this includes, but is not limited to laws and regulations ensuring equal treatment for all employees and against unfair employment practices, including the Fair Labor Standards Act. Concessionaire shall protect and indemnify the Town and its representatives against any claim or liability arising from or based on the violation of such, whether by Concessionaire or its employees.

9.20  **Subcontractor Solicitation; Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the Concessionaire for services to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Concessionaire of Concessionaire’s obligations under this Agreement and any regulations relative to nondiscrimination on the grounds of race, color or national origin.

9.21  **Examination of Records:** Concessionaire agrees that duly authorized representatives of Town shall, until the expiration of three years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of Concessionaire involving transactions related to this Agreement.

[SIGNATURES ON FOLLOWING PAGES]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

“Town”

TOWN OF CHINO VALLEY, an Arizona municipal corporation

______________________________
Darryl L. Croft, Mayor

ATTEST:

______________________________
Jami Lewis, Town Clerk

APPROVED AS TO FORM:

______________________________
Andrew McGuire, Town Attorney
Gust Rosenfeld, PLC

[SIGNATURES CONTINUE ON FOLLOWING PAGE]
“Concessionaire”

COMPASS TRAINING CENTER AZ,  
an Arizona nonprofit corporation

By: ________________________________

Name: ______________________________

Title: ________________________________

(ACKNOWLEDGMENT)

STATE OF _________________  
__________________________) ss.
COUNTY OF _____________)

On ________________________, 2019, before me personally appeared ________________, the _____________________ of COMPASS TRAINING CENTER AZ, an Arizona nonprofit corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he/she claims to be, and acknowledged that he/she signed the above document on behalf of the corporation.

______________________________

Notary Public

(Affix notary seal here)
EXHIBIT A
LICENSE AGREEMENT
AND
SHOOTING FACILITY CONCESSION AGREEMENT

[Facility]

See following pages.
EXHIBIT “A”

LAND DESCRIPTION

PRESCOTT SPORTSMEN’S CLUB

THAT PORTION OF THE LAND DESCRIBED IN DEED TO THE TOWN OF CHINO VALLEY
RECORDED IN BOOK 1175, PAGE 192, OFFICIAL RECORDS, LOCATED IN THE
SOUTHEASTER QUARTER OF SECTION 7, TOWNSHIP 16 NORTH, RANGE 1 WEST, GILA
AND SALT RIVER BASE AND MERIDIAN, IN THE TOWN OF CHINO VALLEY, COUNTY OF
YAVAPAI, STATE OF ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS……

BEGINNING AT THE EAST QUARTER CORNER OF SAID SECTION 7;

THENCE ALONG THE EASTERLY LINE OF SAID SECTION 7 SOUTH 00° 15’ 45” WEST A
DISTANCE OF 2,672.12 FEET TO THE SOUTHEAST CORNER OF SAID SECTION 7;

THENCE ALONG THE SOUTHERLY LINE OF SAID SECTION 7 SOUTH 89° 09’ 28” WEST A
DISTANCE OF 1,238.73 FEET;

THENCE NORTH 00° 50’ 32” WEST A DISTANCE OF 445.52 FEET;

THENCE NORTH 57° 07 58” EAST A DISTANCE OF 618.35 FEET;

THENCE NORTH 28° 00’ 00” EAST A DISTANCE OF 275.63 FEET;

THENCE NORTH 88° 32’ 20” EAST A DISTANCE OF 176.06 FEET TO A LINE WHICH IS
PARALLEL WITH AND DISTANT 425.00 FEET WESTERLY (MEASURED AT RIGHT ANGLES)
OF SAID EASTERLY LINE OF SECTION 7;

THENCE NORTH 00° 15’ 45” EAST ALONG SAID PARALLEL LINE A DISTANCE OF 1,652.71
FEET TO THE NORTHERLY LINE OF SAID SOUTHEAST QUARTER;

THENCE ALONG SAID NORTHERLY LINE NORTH 88° 49’ 39” EAST 425.13 FEET TO THE
POINT OF BEGINNING.

CONTAINING 1,742,400 SQUARE FEET, OR 40.000 ACRES, MORE OR LESS.
LEGEND

PROPOSED SPORTSMEN'S CLUB
AREA DESCRIBED PER THIS DOCUMENT

S.E. 1/4
SEC. 7
T 16 N
R 01 W

S.E. 1/4 SECTION 7 TO TOWN OF CHINO VALLEY PER BOOK 1175, PAGE 192, O.R.

N88° 49' 39"E
425.13'

N00° 15' 45"E
1652.71'

N88° 32' 20"E
176.06'

S89° 09' 28"W

CHINO VALLEY, AZ
TOWN OF CHINO VALLEY
PRESCOTT SPORTSMEN'S CLUB
LEGAL DESCRIPTION
EXHIBIT B
EXHIBIT B
LICENSE AGREEMENT
AND
SHOOTING FACILITY CONCESSION AGREEMENT

[Town’s RFP]

See following pages.
Town of Chino Valley

Request for Proposal (RFP)

Management of The Chino Valley Shooting Range Facility

Bid Start Date:

Bid End Date:

Bid Contact:

1.0 Request for Proposals

The Town of Chino Valley invites proposals from interested parties to assist the Town of Chino Valley operating the Towns Shooting Range Facility. Interested parties will assist the Town in identifying potential non-profit, private and public partnership opportunities for the operation, management, maintenance, improvement and expansion of the existing public shooting facility located at 3926 Shooting Range Road, Chino Valley, Arizona.

The facility was constructed in 2010 with assistance of a range development grant from the Arizona Game and Fish Department. The facility opened to the public in 2011. The facility consists of a fifty (50) yard pistol range, one hundred (100) yard rifle range, range master office and restrooms. Construction of a two hundred yard (200) in a third bay has been started. Previously, the range was operated by a local shooting club. The Town took over operations in 2019. The Town has dedicated 40 contiguous acres allowing for additional expansion.

2.0 Instructions and Submittal Requirements

Sealed Proposals will be received at the Town Clerk’s Office, 202 North State Route 89, Chino Valley, AZ 86323 until 0:00 p.m. MST, March , 2019. One (1) original and three (3) copies of the proposal must be submitted in a sealed envelope clearly marked on the lower left hand corner of the sealed mailing envelope: “RFP for Chino Valley Shooting Range”.

Any Statement of Qualifications received at the wrong location, unsealed or after the time specified will not be accepted and shall be returned without being opened.

Only one submittal set shall be submitted per interested party, firm or company.
All submittals shall follow the format and sequence described below. Failure to follow the instructions may result in rejection of the proposal. Please limit requested information to not more than fifteen (16) 8 1/2" x 11" pages, not including front or back covers, and not smaller than 11 point font. The RFP must include the following items in the order indicated:

A. Cover letter (one page only) addressed to: Cecilia Grittman, Town Manager.

B. Proposing Entities Capabilities: Provide a brief description of the proposing entities capabilities including the number and types of personnel who would provide services. Provide a list of relevant projects in which the proposing entity has had significant contribution with an emphasis on local experience. Include references and telephone numbers of individuals familiar with the proposing entity and capabilities (Two pages maximum).

C. Staff qualifications (in house): General or specific experience, certifications, licenses and memberships in professional associations, societies or boards. Provide resumes of personnel who will serve in key positions including specific experience for each person. (Five pages maximum).

D. Describe the entities ability to provide day to day management of the facility. Describe how the range will be operated. Detail the planned operating schedule, operating hours and fee schedule. (Three pages maximum)

E. Describe the entities vision for future expansion and improvements to the facility. Describe each improvement in detail, the planned timing, financial investment required and the benefit to the facility. (Three pages maximum)

F. Detail the entities financial ability to operate the facility and make the planned improvements. (One page maximum)

G. Detail how the organization will balance the needs of public shooting match shooting and training classes. (One page maximum)
Please be advised that failure to comply with the following criteria will result in disqualification:

- Receipt of submittal by the cut-off date and time specified.
- Receipt of submittal at the proper location.
- Receipt of a sealed submittal package.
- The number of originals and/or copies of the submittal specified.
- Adherence to maximum page requirements.
- Acknowledgement of all addenda in the cover letter.

Entities wishing to submit an RFP may pick up the Request for Proposals instructions/information packet at the Town Clerk’s Office, Town of Chino Valley 202 North State Route 89, Chino Valley, AZ 86323 or online at www.chinoaz.net. Information regarding this project may be obtained by contacting Joe Duffy, Finance Director at 928-636-2646, jduffy@chinoaz.net.

3.0 RFQ EVALUATION AND SCORING

The selection criteria and relative weights for selecting the Consultants on the final list are as follows:

<table>
<thead>
<tr>
<th>CRITERIA</th>
<th>POINTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Entities relevant experience, availability and capability (Item B)</td>
<td>20</td>
</tr>
<tr>
<td>Personnel qualification and pertinent experience (Item C)</td>
<td>10</td>
</tr>
<tr>
<td>Entities ability to perform day to day operations (Item D)</td>
<td>20</td>
</tr>
<tr>
<td>Entities vision for future expansion (Item E)</td>
<td>10</td>
</tr>
<tr>
<td>Entities financial ability to operate facility (Item F)</td>
<td>20</td>
</tr>
<tr>
<td>Entities ability to balance the needs (Item G)</td>
<td>10</td>
</tr>
<tr>
<td>Overall response to RFP</td>
<td>10</td>
</tr>
</tbody>
</table>

TOTAL POINTS POSSIBLE 100
4.0 SELECTION PROCESS

4.1 Selection Committee: A Selection Committee will review the Request for Proposals and develop a list of qualified entities. The Town will then conduct interviews with each qualified entity.

5.0 TERMS AND CONDITIONS

This RFP does not commit Chino Valley to award a contract, to defray any costs incurred in the preparation of a response to this request, or to procure or contract for services.

5.1 Chino Valley reserves the right to extend the date by which the submittals are due.

5.2 Chino Valley reserves the right to cancel, in part or in its entirety, this RFP including but not limited to: selection schedule, submittal date, and submittal requirements. If Chino Valley cancels or revises the RFP, all respondents of record will be notified in writing by Chino Valley.

5.3 All submittals become the property of Chino Valley. Information contained in a Request for Proposals shall be made public after the final list is verified and approved by the Town Manager.

5.4 Chino Valley reserves the right to request additional information and/or clarifications from any or all Respondents to this RFP.

6.0 EQUAL OPPORTUNITY

Chino Valley is an equal opportunity employer. Minority and women’s business enterprises are encouraged to submit Requests for Proposals for this Project.

7.0 PRE-BID CONFERENCE

There will be a pre-bid conference at the shooting facility, 3926 Shooting Range Road, Chino Valley, AZ 86323 on ______________ at ______ a.m. Organizations considering submitting a proposal are encouraged to attend to tour the facility and ask questions.
EXHIBIT C
LICENSE AGREEMENT
AND
SHOOTING FACILITY CONCESSION AGREEMENT

[Concessionaire’s Proposal]

See following pages.
CHINO VALLEY SHOOTING FACILITY

CECILIA GRITTMAN

TOWN MANAGER,

CHINO VALLEY, ARIZONA

Dear CECILIA GRITTMAN,

All of us at Nielsen Training & Consulting thank you for the opportunity to manage and run the Chino Valley Shooting Facility (CVSF). We believe we are uniquely suited to both manage the range operations as they previously existed and greatly expanding the properties use.

Nielsen Training Associates (NTA, LLC) was founded by Todd Nielsen in 2008. NTA, LLC then incorporated in 2016 and became Nielsen Training & Consulting, Inc. after Mr. Nielsen's and my own retirement from Law Enforcement. We currently provide professional firearms training across the United States and consulting work with corporations in the firearms and associated industries. Todd and I also had full time Law Enforcement careers and played major roles in running private businesses and involvement in non-profit organizations. Todd was Vice President of a major body armor manufacturer and is heavily involved with the Boy Scouts of America shooting program in Utah. I was the COO of a firearms parts manufacturer and NT&C is the sponsor of the Friends of the NRA event in Chino Valley. Additionally, I am a US Navy Veteran and a prior commander of two Veterans of Foreign Wars Posts in California and Prescott, Arizona.

Upon acceptance of this RFP, we will immediately bring the facility back to what the town had before, a safe shooting range open to the public during the week and on weekends and get the operation of the facility, “off the plate” of the town’s personnel.

We plan to create a Non-Profit Organization, with a properly functioning Board of Directors, to be the entity that physically runs, maintains and improves the Chino Valley range facility. Use of a non-profit will enable grant writing for range improvements we have planned. Several professional grant writers have already been contacted and expressed interest in working with us. We all look forward to working with the Town of Chino Valley and improving our future.

Sincerely,

John Stankiewicz and Todd Nielsen
B. PROPOSED ENTITIES CAPABILITIES: Provide a brief description of the proposing entities capabilities: Including the number and types of personnel who would provide services. Provide a list of relevant projects in which the proposing entity has had significant contribution with an emphasis on local experience. Include references and telephone numbers of individuals familiar with the proposing entity and capabilities. (two pages maximum)

References:
- Mike Kenny – CEO, KE Arms/M&B Manufacturing, Phoenix, AZ. – 602 400-7725
- Winston Pendleton – Friends of the NRA Coordinator, Arizona – 602 565-8916
- Jeff Quan – Owner Loaded and Safe Concealment, Gilbert, AZ. – 510 604-1622
- Cole Kynaston – Owner, Shadow Valley Weapons, Hereford, AZ. – 801 928-0126
- Mike Moyer – Owner, Moyer’s Heating & Cooling, Prescott Valley, AZ. – 928 237-0838
- Kamran Pazdel – Sr. VP, Morgan Stanley, northern California - 408 859-6188
- Duane Smith – National Park Service, Grand Canyon, Arizona – 760 855-0885
- Andrew Van Dyke – Prior Service with Mr. Stankewicz, Arizona - 520 280-1492
- Gary Carpenter – Owner, Traditional Wood Interiors, Prescott, AZ. – 928 713-0661
- Glenn Ignacio – Retired USAF Pilot/NT&C Student – 650 245-3383
- Cory Nykoluk – Vice President, First Tactical, Modesto, CA. - 209 380-6281
- Joel Boswell – CEO Mechanics Hill Marketing, Robbins, NC. – 910 690-6650

Corporate Sponsors - These companies provide NT&C with their products and frequently provide discounts to our students/clients, most if not all would be present in the facilities retail store when proper indoor space is acquired.
Mean Gene Leather – www.meangeneleather.com
Loaded and Safe Concealment – www.lasconcealment.com
KE Arms www.kearms.com
First Tactical (apparel) – www.firsttactical.com
Black Rifle Coffee – www.blackriflecoffee.com
Peak Performance Ammunition – www.peakperformanceammo.com
B5 Systems – www.b5systems.com
Shadow Valley Weapons – www.shadowvalleyweapons.com
Culper Precision – www.culperprecision.com
LRK Mechanical – www.lrkmechanical.com
FireClean – www.cleangerun.com
Triumph Systems – www.triumph-systems.com

“Number and types of personnel who would provide services:”

Todd Nielsen – Corporate Founder, CEO and Master Instructor of Nielsen Training & Consulting – Overall leadership and management of the Chino Valley Shooting Facility turnover and co-coordinator of future development plans. Mr. Nielsen currently resides in Utah and travels throughout the country to conduct training. Upon obtaining a fixed training site, Mr. Nielsen’s priorities would shift to less cross-country travel and significant time at the Chino Valley facility. Mr. Nielsen is also an NRA Certified Chief Range Safety Officer.
**John Stankewicz** – Chief Operations Officer, Co-Owner and Master Instructor for Nielsen Training & Consulting. Mr. Stankewicz lives in Chino Valley approximately 3 minutes from the CVSF. Mr. Stankewicz would be the primary manager of the facility to include the current public shooting ranges, as well, as future shooting matches and training classes conducted by Nielsen Training & Consulting and other trainers throughout the country. Mr. Stankewicz is an NRA Certified Chief Range Safety Officer.

**Regina Pecoraro** – Firearms Instructor and Administrative Coordinator. Ms. Pecoraro serves Nielsen Training & Consulting as one of our professional firearms instructors and as the corporation’s records keeper and travel coordinator. Ms. Pecoraro is an NRA Certified Chief Range Safety Officer. Ms. Pecoraro served in leadership positions with several veteran’s organizations, including Veterans of Foreign Wars (VFW) Posts in California and Prescott, Arizona as a Service Officer. Ms. Pecoraro has assisted hundreds of veterans throughout the country with their Veterans Administration (VA) disability claims. Regina is an NRA Certified Chief Range Safety Officer.

**Wayne Hawley** – Firearms Instructor. Mr. Hawley has served as an Assistant Instructor/Instructor for Nielsen Training & Consulting in Arizona and around the country for the last four years. Mr. Hawley has worked at Ruger Firearms for approximately 9 years as a Lead Final Inspector. Mr. Hawley also has an extensive background in professional residential and commercial construction and landscaping. Mr. Hawley lives in Paulden, Arizona and will likely become a full-time employee of Nielsen Training & Consulting when an Arizona facility is obtained.

**Woody Cannon** – Consultant/Instructor/NRA Training Counselor – While Mr. Cannon resides in Utah, we have taken him on as our staff NRA Instructor and he will be available to travel to Chino Valley to instruct NRA Certification classes at the range and/or in the facilities classroom, as soon as we have that building installed.

**Russell Phagan** – Shooting Match Coordinator. Mr. Phagan has worked in the firearms industry since 2001 where he was introduced to action shooting sports. In 2004 Mr. Phagan the founders of “Trooper Class” that is now an equipment class/division at 3 Gun matches. Mr. Phagan resides in Phoenix, Arizona where he manages KE Arms, a manufacturer specializing in products for the firearms industry, including complete firearms and components. KE Arms produces firearms and components for competition shooting teams, Law Enforcement agencies, Military Units and the civilian market. All products are all made in USA, specifically in Arizona.

In addition to the staff listed above a minimum of one Range Safety Officer (RSO) will be present in every bay in use. During heavy use periods at least two RSO’s will be active and present at the 50 yard pistol and 100 yard rifle public ranges.

Locally, Nielsen Training & Consulting has actively organized or participated in the following projects: National Night Out (previous three years), Friends of NRA Dinner, Benefit Shoot for two Chino Valley Officer’s/families in need (October of 2016), Member, Chino Valley Chamber of Commerce, offering discounts to all local Law Enforcement including a standing offer of tuition free spots in all classes for Chino Valley Police Department, and their spouses.
SECTION C. STAFF QUALIFICATIONS (IN-HOUSE): General or specific experience, certifications, licenses and memberships in professional associations, societies or boards. Provide resumes of personnel who will serve in key positions including specific experience for each person. (five pages maximum)

Todd Nielsen - Corporate Founder, CEO, Director of Training Nielsen Training & Consulting:
- Overall leadership and management of the Chino Valley Shooting Facility turnover.
- Co-coordinator of future development plans for the Chino Valley facility.
- NRA Certified Chief Range Safety Officer.

Mr. Nielsen currently resides in Utah and travels throughout the country to conduct training and consulting work. Upon obtaining a fixed training site, such as the Chino Valley Shooting Facility, Mr. Nielsen’s priorities would shift to less cross-country travel and significant time attending to and being at the Chino Valley facility.

Professional Summary:
Mr. Nielsen has a very diverse background that includes: Firearms and Tactical Training, Special Operations Law Enforcement careers, Stunt and technical advisory work on movie sets, Team Leadership, Management positions, Entrepreneurship, Building and designing products for tactical teams and procurement of items for those teams.

Core Qualifications:
Supervisory roles, Tactical Team Management, Management of over 90 personal for 3-day Breast Cancer walk, Crisis Negotiations, Procurement of equipment for a 90 person tactical team, Law Enforcement Team Leadership experience along with small team management, Developing and implementing training programs for a 1400 member police department.

Experience:
- Nielsen Training and Consulting – Owner, Chief Executive Officer/Director of Training, San Jose, CA./Spanish Fork Utah - 2008 to Present: Instructing responsible civilians, Law Enforcement and Military personnel in basic, intermediate and advanced pistol, shotgun and rifle courses. As the founder or NTAC I have developed programs that have been tested and reliable to be effective ways for humans to learn and maintain the knowledge needed to survive stress related events and prevail in them. I have several of my students/clients come back and tell me that I saved their lives with what I taught them.
- San Jose Police Department - Officer – 1990-2015 I maintained a career that spanned many facets of law enforcement. I did Bicycle Patrol and Instructor, Narcotics, Prostitution, Field Training Officer, Critical Incident Team, Crowd Control (Team Leader) Fugitive Apprehension, Less Lethal Operations, Rapid Containment Teams, Critical Response Team, Specialist Program (Trainer and Team Leader for 17 years) and Human trafficking with Bay Area Joint Terrorism Task Force.
- Gladiator Protective Products and Services - 2013 to 2016: Vice President/ Products and Development. I designed body armor and training programs for law enforcement and
ems personnel to go into hostile environments and secure adversary’s and injured persons.

- **Any Mountain LTD** -- 1988-1994 Service manager of the Ski and Bicycle service area with 9-14 persons on my team depending on the season.

**Professional Affiliations:**
- California Narcotics Officer Association 1998-2016.
- National Rifle Association Life Member
- Professional Association of Dive Instructors 2005-present Assistant Dive Instructor/Dive Master/Rescue Diver
- Utah Gun Owners Group
- Boy Scouts of America
- Young Men’s Group Leader with the Church of Jesus Christ of Latter-Day Saints (14 and 15 year old’s) 2016-present

**John Stankiewicz** -- Chief Operations Officer, Co-Owner and Master Instructor for Nielsen Training & Consulting.

- Primary Manager of the facility including:
- Public Range management and Chief Range Safety Officer
- Range Safety Officer hiring, scheduling and training
- Future shooting matches/competitions in conjunction with the Match Coordinator
- Nielsen Training & Consulting Training classes
- Facilitate range rental agreements/contracts for other instructors from throughout the country.

**Professional Summary:**
A very diverse background that includes: Military, Business Management, Sales/Purchasing, Firearms Training and Law Enforcement careers.

**Core Qualifications:**
Account Management, Personnel Management of 10 to 100 employees, Contract Negotiations, Purchasing and Sales of Firearms Accessories, Military, Law Enforcement and civilian Team Leadership Experience.

**Experience:**
- **Nielsen Training and Consulting** -- Co-Owner, Chief Operations Officer, Instructor -- San Jose, CA./Chino Valley, AZ. - 2013 to Present: Instructing responsible civilians, Law Enforcement and Military personnel in basic, intermediate and advanced pistol, shotgun and rifle courses. As a Co-Owner and COO, John books and participates in firearms training nation-wide. John manages the company’s social media, radio and print marketing campaigns.
• **Battlecomp Enterprises** - Chief Operations Officer – South San Francisco, CA. / Prescott, AR. - 2012 to 2015: Account Management, Product Development, Manufacturing Plant - coordination/management, Sales, Purchasing and Marketing. Liaison to Distributors, Dealers and Retail Customers.

• **South San Francisco Police Department** - 1999 to 2013: Police Association President, Patrol Officer, Motor Officer, Field Training Officer, Department’s Chief Firearms Instructor, Active Shooter Instructor, Patrol Rifle Instructor (Created program), Armorer for Glock and AR15 platforms, Hostage Negotiator, Patrol Bicycle Instructor. Education: Criminal Justice – College of San Mateo (California), California POST Intermediate Police Academy – 2005, California POST Basic Police Academy - 1999

• **Charles Schwab & Company** – Manager - San Francisco, CA - 1997 to 1999: Directed up to 100 employees and an approximate 11 million dollar annual budget for the company’s high speed print and mail operation and document delivery services.

• **Franklin Templeton Group** - Supervisor - Foster City, CA. - 1991 to 1997: Supervised from 5 to 25 employees in the high speed print and mail operation of the company. Analyzed, planned and implemented new projects including a complete move of the operation.


**Professional Affiliations:**

• Commander - Veterans of Foreign Wars Post 4103 - South San Francisco CA. - 2013 to 2015.

• Commander - Veterans of Foreign Wars Post 541 – Prescott, AZ. - 2016 to 2018.

• President - South San Francisco Police Association. - 2007 – 2011

• NRA Certified Basic Pistol Instructor, 2013 to Present.

• National Rifle Association

• Gun Owners of America

Mr. Stankiewicz lives in Chino Valley approximately 3 minutes from the CVSF. Mr. Stankiewicz is an NRA Certified Chief Range Safety Officer.

**Regina Pecoraro** – Firearms Instructor and Administrative Coordinator. Ms. Pecoraro serves Nielsen Training & Consulting as one of our professional firearms instructors and as the corporation’s records keeper and travel coordinator. Ms. Pecoraro is combat veteran and has served in leadership positions with several veteran’s organizations, including Veterans of Foreign Wars (VFW) Posts in California and most recently Prescott, Arizona as a Service Officer. Ms. Pecoraro, a disabled veteran herself, has assisted hundreds of veterans throughout the country with their Veterans Administration (VA) disability claims. Regina is an NRA Certified Chief Range Safety Officer and NRA Basic Pistol Instructor. Both John Stankiewicz
and Regina Pecoraro will certify/re-certify Range Safety Officers as needed. Ms. Pecoraro resides in Chino Valley. Regina has her AA Degree from Skyline College in northern California.

**Wayne Hawley** – Nielsen Training & Consulting Firearms Instructor. Mr. Hawley has served as an Assistant Instructor/Instructor for Nielsen Training & Consulting in Arizona and around the country for the last four years. Mr. Hawley has worked at Ruger Firearms for approximately 9 years as a Lead Final Inspector. Mr. Hawley also has an extensive background in professional residential and commercial construction and landscaping. Mr. Hawley lives in Paulden, Arizona and will likely become a full-time employee of Nielsen Training & Consulting when an Arizona facility is obtained.

*Sturm, Ruger & Co., Inc. 01/2011-Present*
- Responsible for rapid, accurate assembly of a variety of pistols in various calibers.
- Advanced to function fire tech in 04/2011, responsible for proof testing and overall functionality of newly assembled pistols.
- Advanced to final inspector in 07/2013, responsible for final inspection for overall appearance and safety functionality of newly assembled and test-fired pistols.
- Advanced to lead final inspector 11/2016, responsible for oversight of a 4-man team in firing range.

**Certifications:**
- Distinguished Expert, Basic Pistol, Winchester Marksmanship Program. 2015
- Distinguished Expert, Defensive Pistol I, Winchester Marksmanship Program, 2015
- NRA Certified Basic Pistol Instructor, 2013 to Present.
- NRA Certified Defense in the Home Instructor, 2014 to Present.
- NRA Certified Range Safety Officer, 2013 to Present.
- CCW permit holder (Arizona, Utah).

**Russell Phagan:** Shooting Match Coordinator. Mr. Phagan has worked in the firearms industry since 2001 and competing in 3 Gun and other action shooting sports since 2002, attending many of the major 3 Gun competitions around the country. In 2004 Mr. Phagan created the “Trooper Class” that is now a major event category in the competition shooting industry. Mr. Phagan resides in Phoenix, Arizona where he manages KE Arms, a manufacturer specializing in products for the firearms industry, including complete firearms and components. KE Arms produces firearms and components for competition shooting teams, Law Enforcement agencies, Military Units and the civilian market. All products are all made in USA, specifically in Arizona.

**Woody Cannon:** Consultant/Instructor/NRA Training Counselor – While Mr. Cannon resides in Utah, we have taken him on as our staff NRA Instructor and he will be available to travel to Chino Valley to instruct pre planned NRA Certification classes at the range and/or in the facilities classroom, as soon as we have that building installed. Mr. Cannon is highly sought after as an instructor for NRA Programs and helps to develop new programs for the NR. With his vast knowledge of the NRA he is an incredible asset to our team.
SECTION D. Describe the entity’s ability to provide day to day management of the facility.
Describe how the range will be operated. Detail the planned operating schedule, operating
hours, and fee schedule. (three pages maximum)

The board of directors has proven itself in the daily operations of entrepreneurship. Todd Nielsen
has owned Nielsen Training and Consulting for over 11 Years and was the VP a ballistic armor
and other ballistic products company for over 2 years. Todd did all that while still working a full-
time job as a special operations team police officer in Northern California. John Stankewicz is
the Chief Operations Officer of Nielsen Training and Consulting and he was the Chief
Operations Officer of a major firearms and part manufacturer and distributor. John also did this
while being a full-time rangemaster for his police department in Northern California. John is
also a Navy Veteran. Several board members are also veterans. As the two key board members
we are very dedicated to the shooting sports and building new shooting enthusiasts. With our
past proven history and our experience of being on and using ranges this will be an easy
transition into a non-profit company.

We propose the hours of operation to be 6 days a week during the winter months (November 1 to
March 1) and 7 days a week during the rest of the year. (summer hours). The hours of operation
for the winter months would be 8 am to 5 pm Tuesday to Sunday. The summer months would be
from 8 am to 6 pm. We would have a special one night a week that is open only to select club
members that we would stay open until sunset during the summer months. We would also have
guest instructors come in approximately once a month that would be allowed to shoot until 10
pm. All shooting must be completed by 10 pm but cleanup and maintenance can be completed
after as long as a Range Safety Officer is available. If there is not an RSO available, then the
course will not be able to go past the regular shooting hours.

The range can be closed because of inclement weather (Excessive rain that causes flooding on
the range, or excessive snow to not allow safe movement around the range for example) but will
open as soon as it safe to do so. There is the potential that, for a short time, we initially open the
range from 8-5 Wednesday to Sunday until we can hire adequate amount of staff.

We will be working with local Chino Valley food and beverage distributors to bring food out to
the range for the weekends and special events. For this we will designate a special area that will
be accessible by all patrons of the range. For weekday and other times, we will work with
vendors to supply vending machines for the patrons of the range. In turn we will work with the
City of Chino Valley to locate the ideal spot and set electricity and cover for the machines and
parking areas for the food vendors and the tables, tents and trash receptacles needed for the food
vendors.

We will be hiring at least 1 Range Safety Officer for each active range during the hours of
shooting. In busier times the ratio of 1 RSO to 12 Shooters will be maintained and followed for
each public range pad. We will have a clerk to check in all shooters. We are researching Point
of Sales systems to automate and electronically track as much as the paperwork as much as
possible. We plan to hire at least 5 RSO’s and 2 clerks to run the ranges. We plan to hire a
janitorial service to do deep cleaning of the facility buildings on a monthly basis, but daily cleaning will be done by the staff and RSO’s.

Our plan is to work on an hourly rate of $15 per shooter with a maximum of 3 shooters on a lane. Junior Shooters under the age of 18 will be a rate of $10. The hourly rate will be adhered to when there are busy times but more laxed when the range is running at a slower pace. We want to encourage people to use this as a destination rather than just a turn over facility that just wants your money. We will encourage our staff to become friendly with all clients that shoot at the range and to call those that they come to know by their first names to make it a welcoming place for them to come shoot.

We propose to increase the prior 30 cents per shooter per day that was used by the prior entity, to $1.00 per shooter per day. These funds would be used for the improvement of the land and would be in addition to the improvements that will be obtained through donations and grants that we and the town work to secure. These funds can be paid on a monthly basis or on a schedule that suits the Town of Chino Valley. We plan to pay our Clerks a wage of $10.00/hour, Range Safety Officers $11.00/hour and Chief Range Supervisors $15.00/hour. All employees will meet E-Verify, OSHA and FLSA standards. We will also have selected volunteers that will help on the range. This could include but is not limited to students needing community service hours for school and other projects, those who need to fulfill community service hours, and those that just wish to support the range and the non-profit.

We plan to have a monthly 2-hour clinic after hours one specified weeknight a month to encourage continued training. (7-9pm for example) The cost of those clinics will be $25 to the open public, $15 dollars to Basic Subscription holders and free to the Premium Subscription holders.

We plan to do several types of subscriptions to also increase the family feel of shooting at the range. Please note that our intentions are to set up the non-profit as being run by the Board ONLY. Club membership will not exist as it had in the past, “Subscriptions” will not include voting rights. Each subscription will include the following:

1. Unlimited use of the public ranges
2. 1 target for each time they come to the range.
3. Advanced notice to sign up for training courses being held at by the facility.
4. 5% discount on items purchased at the upcoming pro-shop in the future.
5. Premium subscriptions will also gain priority access to the after-hours shoots being held each month plus two extra targets at time of check in and a free soda or water for each premium subscription.

Subscriptions Per Year

- Junior $50 (under 18 years of age and all juniors must always be accompanied by parent or legal guardian while on the range)
- Collegiate $100 (for those students 18 to 25 years of age and attending college. They must show valid college identification to be eligible for this program).
• Basic $150 (one adult, 18 years or older)
  Premium $200 (one adult, 18 years or older)
• Family Subscriptions are for up to 6 immediate family members living in the same home.
  Basic $400
  Premium $800
• Month to month subscription
  $20 cancel anytime
• Draw from a holster certificate
  $50 initial fee ($10 annual renewal)
  We have seen with great success that several people wish to be able to draw from a
  holster or position of concealment. We have set up a program that in a 4 hours course of
  instruction we can certify people to draw from a holster and that program will only be
  $50 annually with a renewal of $10 for every year after that. All active duty local,
  county, state and federal law enforcement will be exempt from the program with showing
  of a valid identification card. All active duty law enforcement will be able to rent a
  public shooting lane for $5 each day. This is designed to encourage all law enforcement
  to continue their training. Law enforcement that are active duty will also receive a
  discount on all in house courses.
• Those wishing to use a public range lane for an entire day can rent one for the cost of $50
  for the entire day.

We intend to build and rent action range pads to outside trainers. Each outside trainer will be
required to show certificates of insurances, teaching credentials, and allow one spot for range
staff to attend the training at the discretion of the non-profit board of directors. Full range pad
rentals are as follows

  Skeet range daily rental $150/day
  Archery Range daily rental $100/day
  25-yard Pistol range $100
  Cowboy action Pistol range $125
  50 Yard Multi-purpose $175
  200 Yard range $175

  Each range pad will include one target stand and backer for each student attending. Steel targets
will be available for rental at an additional fee or provided on certain types of range bays.

  Per standard NRA guidelines, Standard Operating Procedures (SOP’s) will be developed. SOP’s
will include all range safety rules, hold harmless agreements and all range procedures. Range
staff and Range Safety Officers will use the SOP’s to guide them in the performance of their
duties.
E. Describe the entities vision for future expansion and improvements to the facility.
Describe each improvement in detail, the planned timing, financial investment required and the benefit to the facility. (Three pages maximum)

Classroom/Meeting room: A portable building will be acquired and used/rented as a classroom for visiting instructors, NRA classes, draw from the holster classes and other classes put on by the facility. The room will also serve as a meeting room for customers to gather for future events. We want all of our customers to be in a comfortable welcoming environment and have a place to meet/rest, out of the weather.

Retail Sales: Using our sources and current sponsors, we plan to offer sales of several items from the retail store. This would be another use of the meeting room or another structure may be needed/required. Our reputation within our industry has provided us with outstanding, high quality sponsorships. Our philosophy as a training company and especially being prior Law Enforcement, is that we will never use, endorse or sell a product we would not trust our own lives with. While there are many reputable sources for retail sales items, sales of the following items would be planned for:

- Ammunition – Peak Performance
- Targets – Action Targets
- Eye and ear protection - Walker’s
- Coffee - Black Rifle
- Rifle compensators - Shadow Valley Weapons
- clothing and associated gear - First Tactical,
- Weapons cleaning products from Fire Clean and Pig Lube,
- Kryptek holsters – Loaded and Safe Concealment,
- Leather holsters and associated gear – Mean Gene Leather goods
- KE Arms – Small parts and firearm accessories
- And of course, our own rifle parts line of triggers and selectors from Nielsen Training & Consulting

Many of these companies would be contacted not just for products to sell in the retail venue but, also as sponsors for the facility via donations of funds and equipment. Several have already shown interest in financial commitments at this time. Currently there is no proposed plan to establish an FFL for any firearms sales on the facility.

Range Bays:

- The existing 200 yard range bay needs to be completed and/or an analysis conducted to determine if there is room for longer bay going out to 600 or 800 yards. Long range “scoped” shooting is popular as a recreational sport of for rifle scope “sighting in” for hunters. Final decisions/recommendations on the layout of this bay can be presented to the town within the first three months of operation. We are aware that there are
“Grading and Drainage plans that exist from the Town of Chino Valley. We do however, believe that the design and future planning must, in some regards, “start fresh.” Both the entity and the Town of Chino Valley must remain open minded to new ideas and be considerate to the fact that the developmental future of the Town as a whole, benefits us all.

- **Match Bays:** Shooting matches and competitions bring people and money into the community. A professional Match Coordinator, Russell Phagan will be brought in immediately to start the process of scheduling and promoting matches/competitions at the facility. A minimum of four separate bays are required to run a professional competition. The time table to commence new matches will be determined once appropriate bays are developed.

- **Training/Class bays:** When matches are not being held, the match bays will be available to rent for out of town or in town firearms training companies who have the proper credentials. The training bays would also be available to Law Enforcement agencies and other qualifying groups, Arizona Rangers for example. Currently, the existing ProForce Range, next to CVSF is often booked solid and can be difficult to obtain for training purposes. Our additional training bays can help alleviate some of those scheduling issues and potentially bring more people into the town on a consistent basis. There is no intention of taking business away from the town/Police Department in regards to the ProForce Range but, rather give Law Enforcement agencies, groups and trainers more alternatives. Other uses for the bays include: Monthly .22 Rimfire Junior Shooting events, archery practice and competitions, an Axe Throwing bay (Currently one of the most popular “new” sport activities in the country) and RSO development and training. With approval from the Town of Chino Valley, forming new range bays can start within 60 days of acquiring responsibility for the facility and will most likely continue for approximately 6 to 12 months. Use of heavy equipment and materials will be donated.

- **Shotgun specific bays:** We have partnered with a company out of Houston, Texas. “Briley” distributes, installs and helps design skeet, trap and shooting clay sports facilities throughout the United States. They are also a major distributor and help design Mattarella equipment, the leader in the industry. Jason Menke of their pro team may be able to actually travel to the facility here in Chino Valley and help with the design process. The equipment is expensive and each clay throwing unit ranges in price from $3,000 up to $7,000 per unit before installation. This investment will need to be obtained via grants and/or revenue from the facility. The projected time table would be approximately two years in the future.

- **We will be acquiring access to heavy earth moving equipment to form additional match/training bays and the equipment needed (several steel target set ups, wooden barricades etc.) to conduct safe, fun and economically profitable shooting matches. The cost of labor and equipment will be provided via donation to the non-profit we form. Work on the ranges and donation of equipment can begin within 60 days of acquiring**
F. Detail the entity’s financial ability to operate the facility and make the planned improvements. (One page maximum)

Future expansion of the facility will come from four main sources:

1. Grants – Running the facility as a non-profit will open the door to several different grant avenues. Nielsen Training & Consulting has sponsored the “Friends of the NRA” Dinner for Chino Valley since its inaugural event three years ago. At the end of each fiscal year and after all dinners state wide have been held, we participate in the grant review and approval process. 100’s of thousands of dollars in grants are reviewed at the annual meeting. We firmly believe we the Chino Valley facility can be a benefactor of those grants. Additionally, National NRA grants are also available and generally consist of even higher dollar amounts. Both the “Friends of the NRA” and NRA National are aware of our efforts in obtaining the Chino Valley facility. As you are aware, Arizona Game and Fish are also sources for grants.

2. We have received a generous offer from the CEO of KE Arms/M&B Manufacturing. Mike Kenney has committed to approximately, $60,000 to $100,000 in total for labor, structures and equipment at the facility. Mr. Kenney has the heavy equipment needed to reform the range and with the approval of the town, several new shooting bays can be created without any cost to the Town of Chino Valley. Mr. Kenney is heavily involved in the manufacturing and fabrication businesses, nationwide. Located out of Phoenix, Arizona, KE Arms provides the rifles and several other items to Nielsen Training & Consulting’s Instructors. Mr. Kenney will also provide donations of steel targets for the range bays and metal overhangs and buildings in the future. Additionally, Mr. Kenney and KE Arms recently donated $34,000 worth of patrol rifles to the Navajo Country Sheriff’s Department, as well, as several other Law Enforcement organizations throughout the state of Arizona.

3. As a non-profit, we will be able to provide funds for future expansion from revenue generated from, the public range fees, match fees, subscription fees, and other retail sales occurring at the facility from our numerous corporate sponsorships. With a professional Match Coordinator assisting with the facility, “Professional” matches will be coming into Chino Valley, assisting the town’s economy as well.

4. As a corporation, a working bank account in the amount of $25,000 minimum, will be opened and maintained for facility expenses.
SECTION G. Detail how the organization will balance the needs of public shooting, match shooting and training classes (One page maximum).

This dynamic is very important to us. It is no secret that the economics and tax base of Chino Valley and surrounding areas of northern Arizona are changing. We, meaning the entity that assumes responsibility for the range facility and The Town of Chino Valley need to, "Tap into" new revenue and income that is currently moving into our state and local area.

However, we feel it is equally important to serve the local community and understand their economic life style as well. We have noticed the for the majority, major training sites and major well known "High end" trainers, do not often cater to or give back to the local communities they provide services in. Our facility SHALL provide a safe and affordable shooting and training environment for our local community. Our goal is to always have the pre-existing public shooting range open and available at a reasonable cost at all times, uninterrupted by outside trainers or matches.

Currently, prices for nationwide trainers and established training sites can cost significant money to the consumer in base tuition alone, not including equipment and travel expenses. We know of traveling trainers charging $700 to $1,000 for courses two to three days long. We know of fixed location sites that charge over $2,000 for week long classes. We certainly desire to bring these types of trainers to the facility to rent our range bays. We know many of them personally from our own time in the industry: Chris Costa, Travis Haley, Dave Spaulding, Ken Hackathorn, Larry Vickers and several other well-known trainers are constantly looking for range locations to market their own classes. We look forward to reaching out to these instructors and letting them know they have a new range to teach from. Nielsen Training & Consulting, also hopes to benefit from convenient ranges to use for our own classes.

Matches/competitions will also bring "new money" into Chino Valley when they are held and when enough range bays are constructed. It is our hope that local shooters will see these matches and get involved themselves, equaling more business for all.

We plan on putting our full marketing force behind all activities at the facility. Our current radio advertisement on KPPV in Prescott will be updated to showcase the new facility upon approval of this proposal.

In conclusion, our goals are to re-open the public range and keep it open at an affordable price. Provide one, two and three day classes at affordable prices and with discounts to those who have membership/subscriptions to the public range. Rent the range bays to high end nationwide trainers to come and teach as well. We will strive to serve the needs of multiple economic levels and income brackets: Bring locals back – Bring new residents in – Bring in new customers from outside the area.
They are setting up a non-profit to operate the range. Once it is set up we’ll contract with that organization.

Term - Initial Term 10 years, with 5-year annual renewal after the initial 10-year period.

Council will approve the rates and operating hours annually.

Town will collect a 5% fee of their gross receipts for all activities paid quarterly. Funds will be used exclusively to make range improvements at the Town's discretion.

Concessionaire will provide a quarterly report detailing agreed upon usage statistics.

Town will have the right to audit their books.

Town will conduct a pre move in inspection and checklist. Concessionaire will return property in same condition.

All improvements made during the term of the agreement will revert to the Town.

At least one permanent sign shall be installed which credits the Arizona Game and Fish Department and provides the time and days the facility is open to the public.
Exhibit 1 – Initial Rates
Exhibit 2 – Operating hours
EXHIBIT D
LICENSE AGREEMENT
AND
SHOOTING FACILITY CONCESSION AGREEMENT

[Environmental Stewardship Plan]

See following pages.
ENVIRONMENTAL STEWARDSHIP PLAN

For The
Chino Valley Shooting Facility
Operated By
Compass Training Center AZ
3926 Shooting Range Road
Chino Valley, AZ 86323

July 1, 2019
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  Department of Soil, Water and Climate 2010
1.0 Introduction

The Chino Valley Shooting Facility is located at 3926 Shooting Range Road in Chino Valley, Arizona (the “Facility”). This Town-owned facility is to be operated by a Concessionaire chosen by the Town.

1.1 Mission Statement

The range is designed to provide a location for public shooting, firearm training and competition shooting for residents as well as visitors to the area.

1.2 Purpose

The Purpose of this Environmental Stewardship Plan (the “Plan”) is to:

- Identify issues of potential environmental concern that may exist;
- Identify, evaluate, and prioritize appropriate actions to manage these issues;
- List short- and long-term action items and the steps needed for implementation;
- Develop and implement a schedule;
- Identify ways to measure the Plan’s success;
- Annually evaluate the progress made towards achieving our environmental stewardship goals;

1.3 Goals

- Prevent off-site migration of lead through groundwater and surface water runoff.
- Conduct lead recovery.
- Discourage ingestion of lead by wildlife.

2.0 Site Assessment

2.1 Description of Ranges and Support Facilities

A. The Facility currently has four firing bays. The Facility is located in a rural setting, situated on 40 contiguous acres, which include safety and shot fall zones. The floor area is comprised of dirt, decomposed granite, and gravel with native vegetation on the berms. The range will have a maximum 38,000 shooter days a year which equates to approximately 100 people shooting at the range every day of the year.

B. The Facility has an office and restroom facility that are located outside the berms / shooting area near the parking lot.

2.2 Existing Environmental Conditions

A. Each shooting bay within the Facility has berms on three sides with a drainage point in the southeast corner. The drainage leaves the Facility and collects in a catch pond/basin.
B. The Facility is designed for shooters to shoot into one designated impact berm in each bay. Each berm has a Fall Area associated with the berm. The “Fall Area” is defined as the 12 feet of ground prior to the berm that runs the length of the berm.

C. This range has two main issues of concern. The first is the depositing of lead into berms and into the Fall Area. The second is the ability of lead to leave the range in runoff water to the catch pond/basin.

3.0 Action Plans

3.1 Individual Plans

A. Plan 1: Reclaim lead from primary berm on 50 yard bay and Fall Area every five years, with the first reclamation process to be completed not later than January 1, 2024, and subsequent reclamation processes to be completed every five years thereafter.

B. Plan 2: Reclaim lead from primary berm on 100 yard bay and Fall Area every five years, with the first reclamation process commencing January 1, 2024, and subsequent reclamation processes to be completed every five years thereafter.

C. Plan 3: Reclaim lead from primary berm on 200 yard bay and Fall Area every 10 years with the first reclamation process commencing January 1, 2029, and subsequent reclamation processes to be completed every five years thereafter.

D. Plan 4: Reclaim lead from action/training bays Fall Area every five years with the first reclamation process commencing January 1, 2024, and subsequent reclamation processes to be completed every five years thereafter.

E. Plan 5: Apply lime in catch pond/basin when pH level drops below 6.5, or pH level is more than 1.0 below the base sample taken from natural location on the Facility property.*

F. Plan 6: Reclaim soil of catch pond/basin every 10 years with the first reclamation process commencing January 1, 2024, and subsequent reclamation process to be completed every five years thereafter.

G. Plan 7: Apply lime on berms and fall area when pH levels drop below 6.5, or pH level is more than 1.0 below the base sample taken from natural location on the Facility property.*

*Base pH level should be gathered July 1, 2019, from within the Facility, but not from interior of shooting range bays.
3.2 **Testing**

Not later than six months prior to the reclamation scheduled according to the Plans described in Section 3.1 above, lead testing of the specific shooting bay berm and Fall Area shall occur. If testing reveals lead levels below 400ppm average, reclamation can be postponed as outlined below:

A. One year if lead levels are recorded at 300ppm - 400ppm.

B. Two years if lead levels are recorded at below 300ppm.

C. Four years if lead levels are at below 200ppm.

Upon expiration of the postponement periods set forth in this Section, testing of lead levels shall occur. Once levels reach 390ppm, a reclamation must be scheduled to occur within six months of the test.

3.3 **Plan Implementation Schedule**

A. Scheduling of all closures, work and other matters will be done during non-peak range use. This time will generally be between November and February.

B. Testing of pH and/or lead levels should be conducted in May or June of the year as outlined in Plans 1-7 set forth in Section 3.1 above.

C. Lime application should be scheduled in May or June, soon after testing has been conducted. As a rule of thumb, 50 pounds of lime per 1,000 square feet should raise soil pH by 1.0.

3.4 **Measuring Success**

A monitoring system must be implemented to measure the impact or success of the Plans, and to guide whatever changes may be necessary to reinforce success and make the most of environmental stewardship efforts.

3.5 **Vegetation**

Vegetation is not desired inside the shooting bays, except on the berms. Berm vegetation is necessary to help with erosion control of the berms surrounding the Facility. With the increased pH levels, absorption of lead by the vegetation will decrease. Methods of destruction of vegetation, such as weed pulling and spraying, should occur as needed to keep the ground clear of vegetation.
3.6 **Wildlife**

Any wildlife observed or seen inside the berm shall be reported immediately to the Chino Valley Police Department. The design, including fencing and gates, of the Facility is primarily for security, but it should also serve a secondary purpose of keeping wildlife out of the range area.

3.7 **Soil and Runoff pH**

Track soil and runoff pH through annual monitoring and adjust the amount of lime applied to different areas of the range to maintain a pH level that will prevent lead from dissolving (i.e., a pH of 6.5 - 8.5).

3.8 **Erosion**

Annual berm photographs shall be taken to monitor and provide tracking of berm conditions to help maintain berm construction as needed to maintain the Facility in safe operating condition.

4.0 **Plan Review and Revisions**

Continue to monitor the environment and review the Plan on an annual basis. Update the Plan as needed and set goals for subsequent years. Interact with other industry professionals to maintain industry standards. Monitor environmental regulations to ensure compliance.

**Resources**

**UNIVERSITY OF MINNESOTA**

**Lead in the Home Garden and Urban Soil Environment**

*By Carl J. Rosen, Extension Research Soil Scientist*

*Department of Soil, Water and Climate*

*2010*

[http://healthvermont.gov/enviro/lead/lead_soil.aspx](http://healthvermont.gov/enviro/lead/lead_soil.aspx)

EXHIBIT E
LICENSE AGREEMENT
AND
SHOOTING FACILITY CONCESSION AGREEMENT

[Initial Rate and Fee Schedule]

See following pages.
Compass Training Center Az Fee Schedule
(Amended 06-12-19)

Public range use (50-yard Pistol Range or 100-yard Rifle range)

Adults (18 and older)
- $15 per Person (Max of three people to a lane)
- $10 Active duty Law Enforcement and Military.
- $11 Veterans with proper ID and Retired Law Enforcement.

Juniors (Under 18 years old)
- $10 per person (must always be accompanied by a parent or legal guardian)

Draw from the Holster Certificate Course $50
We have seen with great success that several people wish to be able to draw from a holster or position of concealment. We have set up a program that in a 2-4-hour course of instruction we can certify people to draw from a holster and that program will only be $50 one-time fee with an annual renewal of $10 for every year after that. All active duty local, county, state and federal law enforcement will be exempt from the program with showing of a valid identification card. There will be no cross draw, ankle or shoulder holsters that will be certified for this course.

Subscription Memberships (All subscriptions Include unlimited use of the public range)

Month to Month $20 Unlimited day use of the public ranges. (Cancel anytime)

Junior $50 Unlimited day use of the public ranges. (under 18 years of age and all juniors must always be accompanied by parent or legal guardian while on the range)

Colligate $100 Unlimited day use of the public ranges. (for those students 18 to 25 years of age and attending college. They must show valid college identification to be eligible for this program)

Veteran and Law Enforcement Subscription $150
Unlimited day use of the public ranges, 2 free targets each time you check in, a soda or cup of coffee or water with each range check in, a draw from the holster certificate course, Advanced notice to sign up for courses provided on Compass Training Center AZ Property, $10 off monthly 2 hour training classes provided after hours and select discounts to classes hosted at Compass Training Center AZ by outside trainers. (Valid for 1 Calendar Year)

Basic Subscription $150
Unlimited day use of the public ranges, 1 free target each time you check in, a draw from the holster certificate course, Advanced notice to sign up for courses provided on Compass Training Center AZ Property, $10 off monthly 2 hour training classes provided after hours and select discounts to classes hosted at Compass Training Center AZ by outside trainers. (Valid for 1 Calendar Year)

Basic Family Subscription $450
Valid for up to 6 members of the family living in the same home, unlimited day use of the public ranges by each family member, 1 free target for each family shooter that checks in, 1 draw from the holster certificate course
for adult over 21, Advanced notice to sign up for courses provided on Compass Training Center AZ Property, $10 off monthly 2 hour training classes for each shooter provided after hours and select discounts to classes hosted at Compass Training Center AZ by outside trainers. (Valid for 1 Calendar Year)

**Premium Subscription $200**

Unlimited day use of the public ranges, 2 free targets and bottle of water each time you check in, a draw from the holster certificate course, Advanced notice to sign up for courses provided on Compass Training Center AZ Property, $15 off monthly 2 hour training classes provided after hours and select discounts to classes hosted at Compass Training Center AZ by outside trainers. (Valid for 1 Calendar Year)

**Premium Family Subscription $800**

Valid for up to 6 members of the family living in the same home, unlimited use of the public range by each family member, 2 targets for each shooter that checks in, 1 draw from the holster certificate course for an adult over 21, advanced notice to sign up for courses provided on Compass Training Center AZ property, $15 off monthly 2 hour training classes for each shooter provided after hours and select discounts to classes hosted at Compass Training Center AZ by outside trainers. (Valid for 1 Calendar Year)

All subscription holders will have access to private bays based on future subscription opportunities and availability.

**Compass Training Center AZ reserves the rights to reevaluate and adjust the pricing structure biannually to fit industry standards and based on improvements to the facility.** (IE adding action bays, long range bays, Axe throwing, action bays, archery, cowboy action shooting private shooting bays)
AGENDA ITEM TITLE:
Consideration and possible action to award a Design-Build contract to JEBCO Construction Companies, LLC for the Utility's shop building at Old Home Manor and Memory Park restrooms in the amount of $103,320.00 for Pre-Construction Services.

RECOMMENDED ACTION:
Award a Design-Build contract to JEBCO Construction Companies, LLC for the Utility's shop building at Old Home Manor and Memory Park restrooms in the amount of $103,320.00 for Pre-Construction Services.

SITUATION AND ANALYSIS:
Public Works' Engineering staff developed a Request for Qualifications (RFQ) for Design-Build (DB) services for the design and construction for the Utility's shop building at Old Home Manor and restroom at Memory Park. The proposed Utility's shop building, to be located at the Town's Water Reclamation Facility, will be a 40'x80' steel building on a concrete foundation. The general layout is for an open shop area with two drive-thru bays for large vehicles, offices, restrooms, and a laboratory. The building will be insulated, heated, cooled, and plumbed. The restrooms at Memory Park will be constructed in a new building south of the existing restrooms. The building will have a men's, women's, and unisex restrooms.

The RFQ was advertised on February 22, 2019 and six (6) Statements of Qualifications (SOQ) were received on March 27, 2019. The project selection panel (comprised of one licensed contractor, two licensed engineers and staff) reviewed and ranked the received SOQs as follows:

1. Jebco Construction Companies (Prescott, AZ)
2. GCON Inc. (Phoenix, AZ)
3. Caruso Construction, Inc. (Scottsdale, AZ)
4. B's Contractors, LLC (Prescott, AZ)
5. Rock Gap Engineering (Albuquerque, NM)
6. JWJ Design Builders, Inc. (Gilbert, AZ)

Public Works' Engineering staff negotiated with Jebco for the contract price. At some point during the pre-construction phase, the DB Team will submit a Guaranteed Maximum Price (GMP) Proposal for
construction to be approved by the Town.

Other Pertinent Documents Available Upon Request:
Appendix A - Design-Build Agreement between the Town and Jebco Construction (complete version) is available at [www.chinoaz.net/Agen daCenter](http://www.chinoaz.net/Agen daCenter) with July 9, 2019 meeting documents

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### Fiscal Impact

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<td>Available:</td>
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<td>Funding Source:</td>
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### Attachments

No file(s) attached.
DESIGN – BUILD AGREEMENT
BETWEEN
TOWN OF CHINO VALLEY
AND
JECBO CONSTRUCTION COMPANIES, LLC

THIS DESIGN - BUILD AGREEMENT (this “Agreement”) is made July 1, 2019, by and between the Town of Chino Valley, an Arizona municipal corporation (the “Town”), and Jebco Construction Companies, LLC, an Arizona limited liability company (the “Contractor”), for complete design and construction services related to Utilities Shop Building at Old Home Manor and Restrooms at Memory Park, Chino Valley, Arizona, and other items as deemed necessary by the Town (the “Project”). The Town and the Contractor are referred to herein individually as a “Party” and collectively as the “Parties.”

ARTICLE 1
GENERAL

1.1 Project Summary. The Contractor shall perform all pre-construction services set forth in Article 2 below (the “Pre-Construction Services”) and, subject to Section 1.2 below, management and construction services set forth in Article 4 below (the “Construction Services”) (the Pre-Construction Services and the Construction Services are collectively referred to as the “Services”), including providing all material, equipment, tools and labor necessary to complete the Work (as defined below) described herein and reasonably inferable from the Contract Documents (as defined below), including the upgrades and improvements to be encompassed in the Project. The Contractor will also take the necessary steps to ensure that the Project design is constructible within the established budget.

1.2 Phased Agreement. The Services contemplated by this Agreement shall be carried out in several distinct phases. The initial Services shall be to provide Pre-Construction Services including (A) such environmental investigation services as applicable pursuant to Section 2.1 below, (B) creating all design documents including the Construction Documents pursuant to Section 2.2 below and (C) the Pre-Construction Phase General Services, pursuant to Section 2.3 below (the “Pre-Construction Phase General Services”). The Contractor shall be compensated on a lump-sum basis for the Pre-Construction Services as set forth in Section 7.1 below, provided that such services may extend through the construction phase for various components of the Project. At the point in the Pre-Construction Services as determined by the Town, the Town may, in its sole discretion, request that the Contractor submit a proposal for a guaranteed maximum price (“GMP”) for construction of the Project, which may be submitted as a single GMP or as multiple GMPs at the Town’s sole discretion. The Contractor shall prepare and submit the GMP Proposals pursuant to Article 3 below. If the Town and the Contractor agree upon the respective GMP Proposals, the Contractor shall furnish, with respect to each GMP Proposal (A) such environmental investigation services as applicable pursuant to Section 2.1 below and (B) the Construction Services set forth in Article 4 below. If the Town and the Contractor cannot, after good faith efforts, agree on the GMP, the Town may, in its sole discretion, terminate this Agreement (subject to the terms and conditions set forth in Section 12.2 below).
1.3 **Definitions.**

A. “Additional Services” means services not initially included as part of the Work, but which are later identified as necessary or desirable by the Town, as more fully described in Section 4.17 below.

B. “Applicable Law” means any law, rule, code, regulation, requirement, action, determination, guideline, or order of, or any legal entitlement issued by, any governmental body having jurisdiction, applicable or relating to the design, permitting, construction, equipping, financing, ownership, possession, or any other transaction or matter contemplated hereby relating to the design and construction of the Project.

C. “Change Directive” means a written order prepared and signed by the Town and the Contractor, approving a change in the Work that does not require an adjustment in the Contract Price or the Contract Time.

D. “Change Order” means a contract amendment issued after execution of this Agreement or future GMP Amendments signed by the Town, Contractor and other parties, as may be required or appropriate, agreeing to an addition, deletion or revision in the scope of Work, an adjustment to the Contract Price, an adjustment to the Contract Time or other modifications to Contract terms.

E. “Town’s Contingency” means a fund used at the discretion of the Town, usually for costs that result from Town-directed changes.

F. “Construction Documents” means the plans, Specifications and drawings prepared by the Contractor after correcting for permit review requirements, and as approved by the Town Manager or authorized designee. The Construction Documents, once approved by the Town as 100% complete, shall be attached hereto as Exhibit A and incorporated herein by reference.

G. “Construction Fee” means the portion of Contractor’s compensation not related to Direct Construction Costs, as set forth in Subsection 3.4 below.

H. “Contract Documents” means all of the following:

1. Change Orders and written amendments to this Agreement, including the amendments, if any, relating to the respective GMPs (the “GMP Amendments”), signed by both the Town and the Contractor, attached hereto as Exhibit B and incorporated herein by reference.

2. This Agreement.

3. The Construction Documents.
4. The Contractor’s Guaranteed Maximum Price Proposals (the “GMP Proposals”), attached hereto as Exhibit C and incorporated herein by reference, including but not limited to:

   a. The Contractor’s proposed scope of services and fee breakdown for each GMP Proposal (the “Scope”).

   b. The Master Schedule relating to the applicable Scope developed in accordance with Subsection 2.3(C) below and updated as set forth in this Agreement, attached hereto as Exhibit D and incorporated herein by reference.

5. The Town’s Request for Qualifications (the “RFQ”) attached hereto as Exhibit E and incorporated herein by reference.

6. The Contractor’s response to the Town’s RFQ attached hereto as Exhibit F and incorporated herein by reference.

In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the order in which they are listed above.

I. “Contract Price” means the total compensation to be paid to the Contractor, as more fully described in Article 7 below.

J. “Contract Time” means the Days, as set forth in Article 6, indicating the period of time, including authorized adjustments, allotted in the Contract Documents to achieve Substantial Completion of the Work.

K. “Cost Model” means the detailed cost information for the Project as described in Subsection 2.3(D) below.

L. “Cost of the Work” means the portion of Direct Construction Costs necessarily incurred by the Contractor in the proper performance of the Work as more specifically set forth in Section 3.3(B) below.

M. “Critical Path” means the sequence of activities from the start of the Work to Substantial Completion of the Project for which any delay in the completion of these activities will delay achieving Substantial Completion.

N. “Day(s)” means calendar day(s) unless otherwise specifically noted in the Contract Documents.

O. “Differing Site Conditions” means concealed or latent physical conditions or subsurface conditions at the Site that are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized in the area of the Site as inherent in the Work.
P. “Direct Construction Costs” means General Conditions Costs and Cost of the Work as set forth in Section 3.3 below.


R. “Environmental Damages” means all claims, judgments, damages, losses, penalties, fines, liabilities, encumbrances, liens, costs and expenses of investigation and defense of any claim, including, without limitation, attorney’s fees, that are incurred at any time as a result of the existence of Environmental Conditions upon, about or beneath the Project Site or migrating or threatening to migrate to or from the Site, and including, without limitation:

1. Damages for personal injury, or injury to property or to natural resources occurring upon or off the Site.

2. Fees incurred for the services of attorneys, consultants, the Contractor, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Environmental Conditions or violation of Environmental Requirements.

3. Liability to any third party or governmental agency or political subdivision to indemnify such party, agency or political subdivision for costs expended in connection with the items listed in Subsections 1.3(R)(1) and (2) above.

S. “Environmental Requirements” means all applicable laws, statutes, regulations, rules, ordinances, common law codes, licenses, permits, orders and similar items of all governmental agencies or other instrumentalities of the United States, the State of Arizona, Yavapai County and all applicable judicial, administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation:

1. (a) Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”) (42 U.S.C. § 9601, et seq.), as amended by the Superfund Amendments and Reauthorization Act of 1986, and as further amended from time to time, and regulations promulgated thereunder; (b) defined as a “regulated substance” within the meaning of Subtitle I of the Resource Conservation and Recovery Act (“RCRA”) (42 U.S.C. § 6991 et seq.), as amended from time to time, and regulations promulgated thereunder; (c) designated as a “hazardous substance” pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1321), as amended from time to time, and the regulations promulgated thereunder, or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317), as amended from time to time, and the regulations promulgated thereunder; (d) the Clean Air Act (42 U.S.C. § 7401 et seq.), as amended from time to time, and regulations promulgated thereunder; (e) regulated under the Toxic Substances Control Act (15 U.S.C. § 2601, et seq.); (f) Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.); (g) the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.), as amended from time to time, and regulations promulgated thereunder; or (h) defined as “hazardous”, “toxic”, or otherwise regulated, under any Environmental
Requirements adopted by the state in which the Site is located, or its agencies or political subdivisions.

2. Asbestos or asbestos-containing materials.

3. All requirements, including but not limited to, those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Materials into the air, surface water, ground water or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials.

4. All requirements pertaining to the protection of the health and safety of employees or the public.

T. “Final Completion” means completion of the Project, including Punch List items, by the Contractor in accordance with the Contract Documents, certified to the Town by the Contractor.

U. “Float” means the number of Days by which an activity can be delayed without lengthening the Critical Path and extending the Substantial Completion date.

V. “General Conditions Costs” means a portion of the costs incurred by Contractor during the construction phase, as set forth in Section 3.3(A) below.

W. “Hazardous Materials” means any substance as defined under Environmental Requirements including:

1. The presence of which requires notification, investigation or remediation under federal, state or local law, statute, regulation, ordinance, order, action, policy or common law.

2. Which is or becomes defined as a “hazardous waste”, “hazardous substance”, pollutant or contaminant under any federal, state or local law, statute, regulation, rule or ordinance or amendments thereto.

3. Which is petroleum, petroleum products, including crude oil or any fraction thereof not otherwise designated as a “hazardous substance” under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons; and, ethanol, methyl tertiary butyl ether or derivatives or constituents of or vapors from any of the foregoing.

4. Which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority or instrumentality of the United States or the State of Arizona.
5. The presence of which on the Site causes or threatens to cause a
nuisance upon the Project Site or to the adjacent properties or poses or threatens to pose a
hazard to the health or safety of persons on or about the Site.

6. The presence of which on adjacent properties could constitute a
trespass by the Contractor or the Town.

X. “Master Schedule” is defined as set forth in subsection 2.3(c) below.

Y. “Project Record Document(s)” means the document(s) created pursuant to
Section 4.12.

Z. “Punch List” means that list of items provided by Town to the Contractor
at the time of Substantial Completion indicating items to be completed or corrected, including
the time for completion or correction by the Contractor after Substantial Completion.

AA. “Shop Drawings” means drawings, diagrams, schedules and other data
specially prepared for the Work by the Contractor or a Subcontractor, manufacturer, supplier or
distributor to illustrate some portion of the Work.

AB. “Site” means the land or premises on which the Project is located.

AC. “Specifications” means the part(s) of the Contract Documents for the
construction phase consisting of written technical descriptions of materials, equipment,
construction systems, standards and workmanship as applied to the Work and certain
administrative details applicable thereto.

AD. “Subcontractor” means a person or entity employed or engaged by the
Contractor or any person or entity directly or indirectly in privity with the Contractor to perform
any portion of the Work. The term Subcontractor does not include any separate contractor
employed by the Town.

AE. “Substantial Completion” means construction has been completed in
accordance with the Contract Documents to the extent that the Town can use or occupy the entire
Project, or the designated portion of the Project, for the use intended without any outstanding,
concurrent construction at the Site, except as may be required to complete or correct Punch List
items.

AF. “Underground Storage Tank” shall have the definition assigned to that
term by § 9001 of RCRA, 42 U.S.C. § 6991, as amended, and also shall include: (1) any tank of
1,100 gallons or less capacity used for storing motor fuel; (2) any tank used for storing heating
oil for consumption on the premises where stored; (3) any tank used for storing waste oil; (4) any
septic tank; and (5) any pipes with oil dispensers connected to items
listed in clauses 1.3(AA)(1)
and 1.3(AA)(2) above.

AG. The “Work” means, collectively, the (1) environmental investigation set
forth in Section 2.1 below, (2) Creating all design documents, including the Construction
Documents and design remedies set forth in Section 2.2 below, (3) Pre-construction Phase General Services set forth in Section 2.3 below, (4) Construction Services provided in accordance with Article 4 below, if applicable, (5) Additional Services that may be provided pursuant to an approved Change Directive or Change Order in accordance with Article 8 below and (6) other services that are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

1.4 Cooperative Relationship. The Town and the Contractor agree to proceed with the Project on the basis of trust, good faith and fair dealing, and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner, but without sacrificing quality. The Town and the Contractor agree to consider design modifications and alternative materials or equipment if necessary to permit the Project to be constructed by the dates of Substantial Completion and Final Completion, as established by the mutually-agreed-upon Master Schedule attached hereto.

1.5 Town Representations.

A. Town’s Project Manager. Town has either designated a Town staff member to act as Town’s Project Manager and/or has contracted separately with a person, firm or corporation to act as Town’s Project Manager. The Town’s Project Manager has no design responsibilities of any nature. None of the activities of Town’s Project Manager supplant or conflict with the design, budget, or any other services and responsibilities furnished by the Contractor. All instructions by the Town relating to this Agreement will be issued or made through the Town’s Project Manager. All communications and submittals of Contractor to the Town shall be issued or made through the Town’s Project Manager unless the Town or the Town’s Project Manager shall otherwise direct. The Town’s Project Manager shall not unreasonably withhold approval for the Contractor to communicate directly with other Town officials. Throughout the term of this Agreement the Town’s Project Manager shall have the authority to establish procedures, consistent with this Agreement, to be followed by the Contractor and to call periodic conferences to be attended by the Contractor and the Contractor’s Subcontractors.

B. Limited Project Management. None of the Town’s project management activities are intended to supplant or conflict with the design, budget, or any other services and responsibilities customarily furnished by the Contractor or its Subcontractors, except as otherwise specifically modified by this Agreement.

C. No Third Party Relationships. The Contractor assumes responsibility to Town for the proper performance of the work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Town and any level of Subcontractor, including but not limited to any third-party beneficiary rights. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against the Town or the Contractor.

D. Requests for Information. The Town shall examine requests for information/direction submitted by the Contractor and shall render decisions thereto promptly.
The Town shall furnish required information and approvals and perform its responsibilities and activities in a timely manner to facilitate orderly progress of the Work (1) in cooperation with the Contractor, (2) consistent with this Agreement and (3) in accordance with the planning and scheduling requirements and budgetary restraints of the Project as determined by the Town.

E. **Notice to Contractor of Defect.** If the Town observes or otherwise becomes aware of any fault or defect in the Project or nonconformity with the Contract Documents, the Town shall give written notice thereof to the Contractor.

F. **Approvals.** The Town shall secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the Project.

G. **Communication.** The Town, its representatives and consultants shall communicate with the Subcontractors only through the Contractor unless otherwise directed or permitted by the Contractor.

H. **Notices.** The Town shall send to the Contractor copies of all notices and communications sent to or received by the Town relating to the Contractor’s Services with respect to the Project.

1.6 **Contractor Representations.**

A. **Standards.** The Contractor shall provide the design, professional management and construction services for the Project in accordance with the terms and conditions of this Agreement. The Contractor covenants with the Town to furnish its skill and judgment with due care and in accordance with the highest standards of its profession and with Applicable Law in effect on the date of this Agreement or as subsequently amended.

B. **Subcontractor Selection Program.** In conjunction with its response to the Town’s RFQ, the Contractor submitted to the Town a written procedure in conformance with Ariz. Rev. Stat. § 34-601 et seq., as amended, for qualifications-based selection of Subcontractors to be utilized in completion of the Project (the “Subcontractor Selection Program”), which is attached hereto as part of Exhibit F. The Contractor shall conduct a telephone and correspondence campaign to attempt to create interest among Subcontractors. The Contractor shall develop and coordinate procedures to provide answers to Subcontractors’ questions. The Contractor shall use best efforts to utilize minority business enterprises, woman business enterprises and local contractors or suppliers. The Contractor shall ensure that each Subcontractor has secured the required business licenses, permits, insurance and bonds. The Contractor shall be solely responsible for ensuring (1) the Subcontractor Selection Program is in conformance with Applicable Law and (2) all Subcontractors are selected in accordance with the Subcontractor Selection Program. The Contractor shall defend, indemnify and hold harmless the Town, its agents, representatives, officers, directors, officials and employees for, 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 Contractor’s failure to appropriately select its Subcontractors. Additionally, as part of the Contractor’s submittal of any GMP Proposal under this Agreement, the Contractor
shall utilize the Subcontractor Selection Program to meet its requirements under Section 3.7 below.

C. Key Personnel. The Contractor shall provide to the Town a list of the proposed key project personnel of the Contractor and its Subcontractors to be assigned to the Project. This list shall include such information on the professional background of each of the assigned individuals as may be requested by the Town. Such key personnel and consultants shall be satisfactory to the Town and shall not be changed except with the consent of the Town. The Contractor will maintain an adequate number of competent and qualified persons, as determined by the Town, to ensure acceptable and timely completion of the Services described in this Agreement. If the Town objects, with reasonable cause, to any of the Contractor’s staff, the Contractor will take prompt corrective action acceptable to the Town and, if required, remove such personnel from the Project and replace with new personnel with qualifications acceptable to the Town. Additionally, the Town shall have the right to request that the Contractor personnel be removed from the Project if, in the Town’s sole discretion, such personnel are detrimental to the Project delivery process. Upon receipt of such request, the Contractor shall remove such personnel unless the Contractor can provide the Town with sufficient documentation to prove it is commercially impractical to replace the personnel with similarly qualified personnel. The Town’s approval of substituted personnel shall not be unreasonably withheld.

D. Project Designers. The Contractor shall provide or procure architectural and engineering services as necessary to complete the services. Architectural and engineering services shall be (i) procured from licensed, independent design professionals retained by the Contractor or (ii) furnished by licensed employees of the Contractor and such services shall be provided as required or as permitted by the laws of the state of Arizona. The persons or entities providing architectural and engineering services shall be referred to as the “Project Designers.” If the Project Designers are independent design professionals, the architectural and engineering services shall be procured pursuant to a separate agreement between the Contractor and the Project Designers.

E. Site Conditions. The Contractor represents that it has taken steps reasonably necessary to ascertain the nature and location of the Work related to the Project, and that it has investigated and satisfied itself as to the general and local conditions and constraints that are applicable to the Work such as (1) conditions bearing on transportation, disposal, handling and storage of materials, (2) the availability of labor, water, power and roads, (3) normal weather conditions, (4) observable physical conditions at the Site, (5) the surface conditions of the ground and (6) the character of equipment and facilities needed prior to and during the performance of the Work. To the extent the Contractor encounters subsurface or concealed conditions that differ materially from those which could reasonably have been determined from a Site surface investigation by the Contractor on the date of this Agreement or from those ordinarily found to exist and generally recognized as inherent in the activities of the character provided in the Contract Documents, then the Contractor shall give notice to the Town promptly before conditions are disturbed and in no event later than seven Days after the first observance of the conditions if a Change Order is contemplated by the Contractor due to such conditions. Such materially different conditions, if discovered after a GMP is approved, may entitle the Contractor to an equitable adjustment in the applicable GMP or schedule pursuant to the Change Order provisions set forth in Article 8 below.
1.7 Town and Subcontractors. The Town will require the Contractor to contract directly with such Subcontractors as may be necessary for construction or supply of the Project. All such contracts shall be issued consistent with (A) the applicable provisions of this Agreement and (B) Applicable Law, including, but not limited to, the requirements of Ariz. Rev. Stat. § 34-603 relating to inclusion of the Project’s physical location in all subcontracts.

1.8 Data Confidentiality.

A. Data Defined. As used in this Agreement, “data” means all information, whether written or verbal, including plans, photographs, studies, investigations, audits, analyses, samples, reports, calculations, internal memos, meeting minutes, data field notes, work product, proposals, correspondence and any other similar documents or information prepared by or obtained by the Contractor in the performance of this Agreement.

B. Confidentiality. The Parties agree, subject to Arizona public records law, that all data, including originals, images, and reproductions, prepared by, obtained by, or transmitted to the Contractor in connection with the Contractor’s performance of this Agreement is confidential and proprietary information belonging to the Town.

C. Use of Data. The Contractor will not divulge data to any third party without prior, written consent of the Town. The Contractor will not use the data for any purposes except to perform the Services required under this Agreement. These prohibitions will not apply to any of the following data, provided the Contractor has first given the required notice to the Town:

1. Data that was known to the Contractor prior to its performance under this Agreement, unless such data was acquired in connection with work performed for the Town.

2. Data that was acquired by the Contractor in its performance under this Agreement, and which was disclosed to the Contractor by a third party, who to the best of the Contractor’s knowledge and belief, had the legal right to make such disclosure and the Contractor is not otherwise required to hold such data in confidence.

3. Data that is required to be disclosed by the Contractor by virtue of law, regulation, or court order.

D. Disclosure Notice. In the event the Contractor is required or requested to disclose data to a third party, or any other information to which the Contractor became privy as a result of any other contract with the Town, the Contractor will first notify the Town as set forth in this section of the request or demand for the data. The Contractor will timely give the Town sufficient facts, such that the Town can have a meaningful opportunity to either first give its consent or take such action that the Town may deem appropriate to protect such data or other information from disclosure.
E. Return After Completion. The Contractor, unless prohibited by law, within 10 Days after completion of services for a third party on real or personal property owned or leased by the Town, will promptly deliver, as set forth in this Section, a copy of all data to the Town. All data will continue to be subject to the confidentiality requirements of this Agreement.

F. Contractor Responsible. The Contractor assumes all liability for maintaining the confidentiality of the data in its possession and agrees to compensate the Town if any of the provisions of this Section are violated by the Contractor, its employees, agents or Subcontractors. For the purposes of seeking injunctive relief, it is agreed that a breach of this Section will be deemed to cause irreparable harm that justifies injunctive relief in court.

ARTICLE 2
PRE-CONSTRUCTION SERVICES

2.1 Environmental Investigation.

A. Discovery. Upon the Contractor’s discovery of Environmental Conditions on the Site, the Contractor shall, if requested by the Town, recommend, for execution by the Town, one or more contracts (“Environmental Contracts”) with suitably qualified consultants and/or engineers (“Environmental Engineers”), each of which Environmental Engineer and which form of Environmental Contract shall be subject to the approval of the Town, for purposes of performing an investigation and analysis of the Site prior to demolition and excavation activities, to determine the presence of any Environmental Conditions on, in or under the Site. If the Town requests Contractor undertake the obligations set forth in this Section 2.1, the lump sum fee for Pre-Construction Services shall be adjusted as agreed upon by the Town and the Contractor. After notification by the Contractor as set forth in this Section 2.1, the Town may choose to undertake the obligations related to the Environmental Contracts and the Remediation Contracts (defined below), which will release the Contractor from any obligations herein related to the Environmental Contracts or the Remediation Contracts, but all other provisions of this Section 2.1 shall remain in full force and effect. The Environmental Contracts shall provide for a commercially reasonable scope of investigation and costs approved by the Town, and may provide for conducting the investigation and testing in phases acceptable to the Town. The Environmental Contracts shall also provide that the Environmental Engineers shall begin their tests and inspections at the Site as soon as the Town is able to arrange access to the Site, or any portions thereof, for such purposes. The Environmental Contracts shall provide that the Contractor, acting as agent of the Town, shall coordinate the activities of the Environmental Engineers with the Work.

B. Assessment; Remediation Analysis. The Environmental Contracts shall provide that the Environmental Engineers shall prepare such reports, feasibility studies and remedial plans in accordance with applicable local, state, and federal rules, regulations, and laws, including the federal “all appropriate inquiry” Standard and American Society for Testing and Materials, ASTM E1527-13 (“Environmental Assessments”) as may be reasonably necessary in order to identify and explain the quantity, scope and nature of the Environmental Conditions found to exist at the Site. The Environmental Assessments shall contain a detailed analysis of the Environmental Conditions discovered, and the actions (“Remedial Actions”) required for the response, removal, cleanup or remediation of such Environmental Conditions (1) that are
required by Environmental Requirements, or (2) that are reasonably necessary to mitigate Environmental Damages.

C. Impact on Master Schedule. The Environmental Contracts shall provide that the Environmental Engineers shall promptly provide the Town and the Contractor with a copy of each Environmental Assessment, together with any other reports and test results generated pursuant to the Environmental Contracts. The Contractor shall, promptly after receipt of the foregoing matters from the Environmental Engineers, prepare and submit to the Town a written report setting forth the Contractor’s understanding of whether and to what extent any recommended Remedial Actions may result in an amendment to the Master Schedule and the progress of the Work.

D. Notice; Permitting. The Environmental Contracts shall require the Environmental Engineers to (1) give notice to the Town of the presence of Environmental Conditions, (2) only upon the written consent of the Town, give any necessary notice to the Federal government and the State of Arizona or other agencies of the presence of any Environmental Conditions, (3) assist the Town in negotiations with Federal and Arizona agencies concerning preparation and approval of a plan for clean-up to the extent required and (4) obtain all necessary permits to perform any Remedial Actions.

E. Remediation Contractors. If so instructed by the Town, based upon the results of the Environmental Assessments, the Contractor shall assist the Town with obtaining bids from remediation contractors (“Remediation Contractors”) suitably qualified and approved by the Town to perform the Remedial Actions selected by the Town. If the Town elects to go forward with all or any portion of the Remedial Actions covered by the bids submitted, the Town will so advise the Contractor in a written notice on or before the date that is 60 Days after receipt of the foregoing matters from the Contractor. Thereafter, the Town shall execute contracts with the selected Remediation Contractors (“Remediation Contracts”).

F. Coordination. Unless otherwise instructed, the Contractor, as agent for the Town, shall be responsible for coordinating the work and services performed by the Remediation Contractors with the Work.

G. Payment for Remediation. The Town will make all payments due under the Environmental Contracts and the Remediation Contracts directly to the Environmental Engineers and the Remediation Contractors. Such payments will be based on requisitions, which requisitions shall be approved by the Contractor prior to submission to the Town. All payments due under the Environmental Contracts, the Remediation Contracts and for Environmental Damages, shall not be a part of the applicable GMP, and shall be the sole responsibility of the Town, except as expressly provided otherwise.

H. Additional Discovery. If, in the course of performance of the Work, the Contractor encounters on the Site any Environmental Conditions not previously disclosed and remediated by the Environmental Engineers or the Remediation Contractors, the Contractor shall immediately suspend the Work in the area affected and promptly thereafter report the condition to the Town.
I. **Contractor Responsibility.** Except as set forth in Subsection 2.1(L) below, it is understood and agreed that with respect to any Environmental Conditions existing on the Site, the Contractor is not, and shall not be deemed to be, a generator, arranger, owner, operator, treator, storier, transporter or disposer of, or otherwise responsible for, any such Environmental Conditions. It is understood and agreed that the Contractor shall have no right to direct the means or methods of performance of any Environmental Engineer or Remediation Contractor.

J. **Town Indemnity.** To the extent that the Contractor or the Subcontractors are not in violation of Subsection 2.1(L) below and to the extent sufficient appropriations are made pursuant to Section 14.18 below, the Town shall indemnify, defend and hold harmless the Contractor, the Subcontractors, and the directors, officers, agents and employees of each (the “Contractor Indemnities”), for, from and against any Environmental Damages asserted against or sustained by such parties as a result of any of the Contractor Indemnities being deemed or determined to be a generator, arranger, owner, operator, treater, storier, transporter or disposer of, or otherwise responsible for, any such Environmental Conditions.

K. **Delay for Remedial Actions.** The Town acknowledges and agrees that the Contractor shall not commence or continue any demolition or construction activities on any portion of the Site on or in which Remedial Actions are to be performed until such Remedial Actions are to the point where construction activities will not interfere with such Remedial Actions, as evidenced by appropriate certification by the applicable Environmental Engineer and/or Remediation Contractor and any required approvals of any applicable government agencies. The Contractor agrees to use good faith efforts to adjust and reschedule its activities at the Site so as to minimize, to the extent reasonably practical, the adverse effect on the progress of the Work resulting from any Remedial Actions.

L. **Hazardous Materials Prohibited.** The Contractor shall not bring Hazardous Materials to the Site, and shall not include Hazardous Materials in any construction materials, unless permitted by Environmental Requirements. The Contractor shall comply, and shall cause the Subcontractors to comply, with all Environmental Requirements regarding the generation, handling, storage, treatment and disposal of Hazardous Materials.

M. **Contractor Indemnity.** The Contractor shall indemnify, defend and hold harmless the Town, its agents, representatives, officers and employees for, from and against any Environmental Damages asserted against or sustained by such parties as a result of any violation by the Contractor or the Subcontractors of any Environmental Requirements arising out of Subsection 2.1(L) above.

2.2 **Construction Documents; Design Remedies.**

A. **Program Evaluation.** The Contractor will provide to the Town a written evaluation of the Town’s proposed Project and Project budget, with recommendations as to the appropriateness of each, and an analysis as to how each contribute to successfully achieving the Town’s goal for the Project.
B. Project Design Standards.

1. The Contractor will provide, through the Project Designers, engineering and other design professional services for the preparation of the required drawings, specifications and other design submittals to permit the Contractor to complete the Work. The Contractor’s design professionals shall seal with an Arizona registered professional seal all Contract Documents prepared by them for this Agreement.

2. The Contractor shall provide a schedule of the design activities within seven days after the Notice to Proceed. The schedule shall provide 14 days to be used by the Town or its designee for reviews and approvals for any interim design submissions.

3. Design activities shall commence immediately after the Contractor has provided the schedule of design activities. The Contractor shall monitor design efforts to ensure they are in accordance with the Master Schedule and shall provide adequate time for the Town’s review and permitting processes along with construction activities.

4. The Contractor shall be responsible for the completeness and accuracy of the plans, specifications, supporting data, and other work prepared or compiled under its obligation for this Project and shall correct, at its expense, all willful or negligent errors and omissions and that are discovered. Correction of willful or negligent errors and omissions relating to engineering plans and specifications shall be the responsibility of the Contractor. The cost of the design necessary to correct those errors attributable to the Contractor or anyone for whom the Contractor is responsible shall not be reimbursable costs to the Contractor. Any damage incurred by the Town as a result of additional construction cost caused by negligent, reckless, or intentional wrongful conduct shall not be reimbursed to the Contractor to the extent that the negligent, reckless, or intentional wrongful conduct falls below the standard of care and skill that a registered professional in Arizona would exercise under similar conditions. The fact that the Town has accepted or approved the Contractor’s product shall in no way relieve the Contractor of any of its responsibilities.

5. Within seven days after a scheduled submission, the Contractor and the Town will meet and confer about the submission, with the Contractor identifying during these meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents or previously submitted design submissions.

6. The Contractor shall submit one set of plans in a format compatible with the Town’s Computer Aided Drafting and Design (CADD) technology.

C. Design Submittals. The Town shall review and approve the interim design submissions in a time that is consistent with the turnaround times stated in the Master Schedule. The Contractor shall not cause the design to proceed beyond interim design until the Town approves the interim design submissions as provided in this Section. If the Contractor allows the
design to proceed without Town approval, the cost of any resultant redesign is not a reimbursable cost. The Town’s review and approval of interim design submissions and the Construction Documents is for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Project. Neither the Town’s review nor approval of any interim design submissions and Construction Documents shall be considered to transfer any design liability to the Town.

1. The Project design must meet all applicable (i) Maricopa Association of Government (MAG) Uniform Standard Technical Specifications and Uniform Standard Details and Drawings, latest revision; (ii) any modifications by the Town to the MAG Uniform Standard Technical Specifications, Details and Drawings; (iii) all Town building standards, and shall include all special provisions provided by the Town. Variances from the standards and guidelines must be identified in writing by the Contractor and approved by the Town. Approval of variances or resolution of conflicts shall not be considered to transfer any design liability to the Town.

2. The Contractor shall not specify any construction materials known to be hazardous or potentially hazardous, including asbestos, lead or any derivative of them unless specifically approved in writing by the Town.

3. The Contractor shall coordinate with private, public and Town utilities regarding standard utility issues and incorporate pertinent information in the plans.

4. The Town shall be responsible for scheduling, submitting, obtaining approval and retrieving all required Construction Documents from the various required reviewing agencies.

5. Following approval by the Town of the interim design documents, Contractor shall refine the Construction Documents and submit same to the Town for review at such intervals as the Parties determine. The Contractor shall submit to the Town Construction Documents stating in detail drawings and specifications describing the requirements for construction.
   a. The Construction Documents shall be consistent with the latest set of interim design submissions; as these submissions may have been modified in a design review meeting.
   b. The Contractor shall provide the drawings in a format compatible with the Town’s CADD technology using Town layering standards.
   c. The drawing format shall be a 24” x 36” sheet size unless otherwise authorized in writing by the Town.
   d. The Parties shall have a design review meeting to discuss, and the Town shall review and approve, the Construction Documents in accordance with the procedures stated in this Article.
e. Before commencement of construction, the Contractor shall submit to the Town Construction Drawings in the proper electronic format on electronic media (CD-ROM or other storage device).

D. Design Document Review. The Contractor shall assist the Town in reviewing the Construction Documents for clarity, consistency, constructability and coordination among the various contractors. The Contractor’s first review of the Construction Documents shall occur not later than the 30% stage of the design by Project Designer for each component of the Project as designated by the Town and shall be ongoing until 100% plans are final and complete for all phases of the Project. If the Contractor recognizes that portions of the Construction Documents are (1) in violation of Applicable Law or (2) in any way inadequate to achieve the intended result of the Project, the Contractor shall immediately notify the Town in writing, describing the apparent violation or inadequacy.

1. The Contractor will periodically evaluate the availability of labor, materials/equipment, building systems, cost-sensitive aspects of the design, and other factors that may impact the Cost Model, GMP Proposals and/or the Master Schedule.

2. The Contractor will identify those additional surface and subsurface investigations that are required to provide the necessary information for the Contractor to construct the Project. After completion of pre-construction services, the Contractor may provide additional investigations to improve the adequacy and completeness of the Site condition information and data made available with the Construction Documents. The Contractor will be responsible for the time and cost required to obtain such additional investigations, except as otherwise provided by specific Additional Services.

3. The Contractor will meet with the Project team as required to review designs during their development. The Contractor will thoroughly familiarize itself with the evolving documents through conceptual design, preliminary design, and development of the Construction Documents (detailed design). The Contractor will proactively advise the Project team and make recommendations on factors related to construction costs, and concerns pertaining to the feasibility and practicality of any proposed means and methods, selected materials, equipment and building systems, and, labor and material availability. The Contractor will also advise the Project team on proposed Site improvements, excavation and foundation considerations, as well as, concerns that exist with respect to coordination of the Construction Documents. The Contractor will recommend cost effective alternatives.

C. Constructability and Bidability Reviews. The Contractor will conduct constructability and bidability reviews of the Construction Documents. The reviews will attempt to identify all discrepancies and inconsistencies in the Construction Documents, especially those related to clarity, consistency, and coordination of Work of Subcontractors and suppliers. The Contractor shall provide the Town with a written report containing, at a minimum, (i) a summary of the research and analysis conducted, (ii) a detailed description of any constructability issues or challenges and (iii) recommendations for correcting any constructability issues or challenges.
1. **Constructability Review.** The Contractor will evaluate whether (a) the Construction Documents are configured to enable efficient construction, (b) design elements are standardized, (c) construction efficiency is properly considered in the Construction Documents, (d) module/preassembly design are prepared to facilitate fabrication, transport and installation, (e) the design promotes accessibility of personnel, material and equipment and facilitates construction under adverse weather conditions, (f) sequences of Work required by or inferable from the Construction Documents are practicable, and (g) the design has taken into consideration, efficiency issues concerning access and entrance to the Site, laydown and storage of materials, staging of Site facilities, construction parking, and other similar pertinent issues.

2. **Bidability Review.** The Contractor will check cross-references and complementary Project drawings and sections within the Construction Documents and evaluate whether (a) the plans and Specifications are sufficiently clear and detailed to minimize ambiguity and to reduce scope interpretation discrepancies, (b) named materials and equipment are commercially available and are performing well or otherwise, in similar installations, (c) the design provides as-built data, (d) Specifications include alternatives in the event a requirement cannot be met in the field, (e) and the Project is likely to be subject to Differing Site Conditions considering the data on subsurface conditions, physical conditions of existing surface and subsurface facilities and physical conditions of underground utilities made available by the design or resulting from conditions inherent to work similar to the Work.

3. **Reports.** The results of the reviews will be provided to the Town in written reports clearly identifying all discovered discrepancies and inconsistencies in the Project, plans and Specifications with notations and recommendations made on the plans, Specifications and other Construction Documents. If requested by the Town, the Contractor will meet with the Town’s Project Manager and Project Designers to discuss any findings and to review reports.

D. **Notification of Variance or Deficiency.** Contractor is responsible for assisting the Project Designers in ascertaining that the Construction Documents are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. If the Contractor recognizes that portions of the Construction Documents are at variance with applicable laws, statutes, ordinances, building codes, rules and regulations it will promptly notify the Project Designers and Town in writing, describing the apparent variance or deficiency.

E. **Value Analysis.** The Contractor shall make recommendations to the Town and the Project Designers with respect to constructability, construction cost, sequence of construction, construction duration, possible means and methods of construction, time for construction and separation of the Project into contracts for various categories of the Work. Contractor shall evaluate all design options to provide value analysis services and cost savings recommendations to the Town. The Contractor shall consider options most effective in first costs as well as long term operational costs and life cycle costs when evaluating each design option. The Contractor shall submit to the Town and Project Designers (1) written cost studies, (2) cost-benefit evaluations of each cost studies, (3) a formal report to the design team, (4) a final
written analysis study document and (5) a tracking report for the increases or decreases in Project cost due to value engineering or scope changes. The Town will decide which alternatives will be incorporated into the Project. The Contractor will have full responsibility for the incorporation of the alternatives into the Contract Documents. The Contractor will include the cost of the alternatives into the Cost Model and any GMP Proposals.

F. Certification. At the completion of its review of the Construction Documents for each phase of the Project, the Contractor shall certify that the Construction Documents are sufficient and complete to build the respective portion of the Project within (1) the time available before the respective Substantial Completion date and (2) the Project budget. Nothing in this Subsection shall relieve the Project Designers of their respective responsibility for the Construction Documents.

2.3 Pre-Construction Phase General Services.

A. Personnel; Project Meetings; Project Analysis. The Contractor will meet with the Town, the Project Designers and all the other Project stakeholders to fully understand the program, the Construction Documents and all other aspects of the Project. The Contractor shall attend the regularly scheduled meetings with the Town and the Project Designers to advise the Town on matters of Site use, improvements, selection of materials, building methods, construction details, building systems, equipment, phasing and sequencing.

1. The Contractor will provide pre-construction services, described herein, in a proactive manner and consistent with the intent of the most current Construction Documents. The Contractor will promptly notify the Town in writing whenever the Contractor determines that any Construction Documents are inappropriate for the Project and or cause changes in the scope of Work requiring an adjustment in the Cost Model, Master Schedule, GMP Proposals and/or in the Contract Time for the Work, to the extent such are established.

2. The Contractor, when requested by the Town or at its own initiative, if sanctioned by the Town, will attend, make presentations and participate as may be appropriate at one Town Council meeting to present/discuss the Project. The Contractor will assist the Project Designers in the preparation of drawings, schedule diagrams, budget charts and other materials describing the Project, when their use is required or appropriate in any such Town Council meeting.

B. Construction Management Plan.

1. Preparing Plan. The Contractor will prepare a construction management plan (the “Management Plan”), that will detail, but not necessarily be limited to, the Contractor’s determinations concerning: (a) Project milestone dates and the Master Schedule, including the broad sequencing of the design and construction of the Project; (b) investigations, if any, to be undertaken to ascertain subsurface conditions and physical conditions of existing surface and subsurface facilities and underground utilities; (c) alternate strategies for fast-tracking and/or phasing the construction; (d) separate bidding documents/packages and strategies for the early procurement of long-
lead equipment and/or materials; (e) the number of separate subcontracts to be awarded to Subcontractors and suppliers for the Project construction; (f) permitting strategy; (g) safety and training programs; (h) construction quality control; (i) the Project Cost Model and basis of the model; (j) a matrix summarizing each Project team member’s responsibilities and roles related to the Services; and (k) construction security.

2. **Maintaining Plan.** The Contract Manager shall keep the Management Plan current throughout the pre-construction services phase so that the Management Plan is ready for implementation at the start of the construction phase. The update/revisions will take into account: (a) revisions in Construction Documents; (b) the Contractor’s examination of the results of any additional investigatory reports of subsurface conditions, drawings of physical conditions of existing surface and subsurface facilities and documents depicting underground utilities placement and physical condition, whether obtained by the Town, Project Designers or the Contractor; (c) unresolved permitting issues, and significant issues, if any, pertaining to the acquisition of land and rights-of-way; (d) the fast-tracking (if any) of the construction, or other chosen construction delivery methods; (e) the requisite number of separate bidding documents to be advertised; (f) the status of the procurement of long-lead time equipment and/or materials; and (g) funding issues identified by the Town.

C. **Schedule Development.** In accordance with the Management Plan, the Contractor shall prepare a master schedule for the Project (the “Master Schedule”). In preparing the Master Schedule, the Contractor shall establish: (i) detailed Critical Path Method (“CPM”) schedules for the pre-construction/design phase and the construction phase of the Project with concurrence of the Town and the Project Designers, (ii) monitor the Project schedules during the pre-construction phase and ensure that the Master Schedule is updated as necessary and advise the Town of any schedule deficiencies. The Contractor shall utilize Microsoft Project scheduling software to prepare, provide and maintain the detailed CPM schedules unless the Town requests use of a different scheduling product.

1. Each Project team member is responsible for its compliance with the Master Schedule requirements. The Contractor will update and maintain the Master Schedule on behalf of and to be used by the Project team based on input from other team members. The Master Schedule will be consistent with the most recent revised/updated Management Plan. The Master Schedule will be presented in graphical and tabular reports as agreed upon by the Project team. The Master Schedule will include all tasks and deliverables required by each member of the Project team to identify long lead items, real property transactions, utility relocation activity, permitting requirements, etc. If Project phasing as described below is required, the Master Schedule will indicate milestone dates for the phases. The Master Schedule’s activities will directly correlate with the Schedule of Values (as defined in Subsection 2.3(D)(4) below). The Master Schedule shall include resource loading for manpower and cash flow. The manpower loading shall include the daily manpower required to complete the task as shown on the Master Schedule.

2. The Contractor will include and integrate in the Master Schedule the services and activities required of the Town’s Project Manager, Project Designers and
Contractor, including all construction phase activities. The Master Schedule will detail activities to the extent required to show: (a) the coordination between conceptual design, schematic design, and development of the Construction Documents (detailed design), (b) separate long-lead procurements, (c) permitting issues, (d) land and right-of-way acquisition, if any, (e) bid packaging strategy and awards to Subcontractors and suppliers, (f) major stages of construction, (g) start-up, and (h) occupancy of the completed Work by the Town. The Master Schedule will include, by example and not limitation, proposed activity sequences and durations for design, procurement, construction and testing activities, milestone dates for actions and decisions by the Project team, preparation and processing of Shop Drawings and samples, delivery of materials or equipment requiring long-lead time procurement, milestone dates for various construction phases, total Float for all activities, relationships between the activities, Town’s occupancy requirements showing portions of the Project having occupancy priority, and proposed dates for Substantial Completion and when the Work would be ready for final acceptance.

3. The Master Schedule will be updated and maintained by the Contractor with assistance from the Project team throughout the pre-construction services phase such that it will not require major changes at the start of the construction phase to incorporate Contractor’s plan for the performance of the construction phase Work. The Contractor will provide updates and/or revisions to the Master Schedule for use by the Project team, whenever required, but no less often than monthly; provided, however, that no such changes shall alter the date of Substantial Completion without the Town’s prior, written approval. The Contractor will include with such submittals a narrative describing its analysis of the progress achieved versus that planned, any concerns regarding delays or potential delays, and any recommendations regarding mitigating actions.

4. Prior to transmitting Contract Documents to Subcontractors, the Contractor shall prepare a pre-proposal construction schedule for each part of the Project and make the schedule available to the Subcontractors. The Contractor shall provide a copy of the Master Schedule to the Subcontractors. As part of the notice of award by the Contractor to each Subcontractor, the Contractor shall inform each Subcontractor of the requirements for the preparation of the Master Schedule. Each Subcontractor shall prepare its own Subcontractor construction schedule in accordance with the requirements of the Contract Documents.

D. Cost Models; Cost Estimates and Schedule of Values. The Contractor shall provide the Town with detailed cost information for all aspects of the Project. Each cost model will contain a detailed estimate of the direct cost (including materials, labor and equipment) pertaining to each aspect of the Project along with the cost of the contract bonds, the cost of the Project’s required insurance, the cost of taxes, Contractor’s general conditions, Contractor’s fee and the amount of Contractor’s Contingency and shall be consistent with such requirements as determined by the Town or the Project Designers. The individual aspect cost models shall be collectively referred to as the “Cost Model.”

1. As soon as practical during the conceptual design phase, the Contractor will review all available information regarding the design and scope of the Project, and based on the Contractor’s experience in performing similar work, develop a
Cost Model for review and approval by the Town. Once approved by the Town, the Cost Model will be continually updated and kept current as the design progresses throughout the pre-construction phase until a final GMP for the entire Project is established. The Cost Model will be the Contractor’s best representation of the complete functional Project’s construction costs. The Contractor will communicate to the Project team any assumptions made in preparing the Cost Model. The Cost Model will support the Contractor’s construction cost estimates and may be broken down initially as dictated by the available information. The Cost Model will also include allowances as agreed to by the Project team, including but not limited: (a) allowances for potential additional quantities and/or additional Work that the Town may require, and (b) any costs related to investigations described in Subsection 2.1.

2. After receipt of the Project Designers’ most current documents from certain specified design milestones, the Contractor will provide a detailed written report to the Project team regarding the impact of and changes to the Cost Model based on the Contractor’s review of Construction Documents made available at the specified design milestone. The Town’s Project Manager, Project Designers and the Contractor will reconcile any disagreements on the estimate to arrive at an agreed upon estimate for the construction costs based on the scope of the Project through that specified design milestone. The design milestones applicable to this paragraph are: conceptual design completion, schematic design completion, and detailed design completion at 30%, 90% and 100%. If no consensus is reached, the Town will make the final determination. If the Project team requires additional updates of the Cost Model beyond that specified in this Subsection, the Contractor will provide the requested information in a timely manner.

3. If, at any point, the estimate submitted to the Town exceeds previously-accepted estimates or other key aspects of the Cost Model or the Town’s Project budget, the Contractor will make appropriate recommendations to the Town’s Project Manager and Project Designers on means/methods, materials, and/or other design elements that it believes will reduce the estimated construction costs, (without altering the Town’s basic program) such that it is equal to or less than the established Project budget.

4. Near completion of the 90% detailed design review and included with the associated report, the Contractor will also submit to the Town for review and approval a “Schedule of Values” which complies with the following requirements. The Schedule of Values will highlight significant variances from any previously submitted preliminary Schedule of Values. The Schedule of Values will be directly related to the breakdowns reflected in the Management Plan and the Contractor’s Cost Model. In addition, the Schedule of Values will: (a) detail unit prices and quantity take-offs, (b) segregate Work covered by any changes to construction phase Work already in progress, (c) reconcile used and remaining Contractor’s Contingency (as defined in Subsection 3.3(D)(1) below) allowance, (d) detail all other allowances and unit price Work shown and specified in the detailed Construction Documents and (e) material and equipment costs, labor costs, General Conditions costs, hourly labor rates, payment for pre-construction services and total cost. Labor costs in the Schedule of Values will include employee benefits, payroll taxes and other payroll burdens. The total cost for any portion
of the Work to be performed by Subcontractors will include Subcontractor overhead and profit.

5. The Contractor will submit to the Town a final Schedule of Values based on the 100% detailed design set of Construction Documents for the entire Project or any portion thereof, which final Schedule of Values will also be included in any proposed GMP(s).

6. Upon request by the Town, the Contractor will submit to the Town a cash flow projection for the Project based on the current updated/revised Master Schedule and the anticipated level of payments for the Contractor during the pre-construction and construction phases. In addition, if requested by the Town and based on information provided by the Town, the Contractor will prepare a cash flow projection for the entire Project based on historical records for similar types of projects to assist the Town in the financing process.

E. Traffic Control/Sequencing Plans. Intentionally left blank.

F. Phasing; Long Lead Procurement. Intentionally left blank

G. Other Deliverables; Pre-Construction Progress Payments. The Contractor shall provide the Town with written plans for the pre-qualification of Subcontractors (according to the Subcontractor Selection Program), subcontract bid packages, project safety, quality control, owner training and commissioning. The Contractor will prepare and submit monthly pay applications to the Town for work performed during the specific payment period for the pre-construction phase of the Project.

ARTICLE 3
GUARANTEED MAXIMUM PRICE PROPOSAL

3.1 GMP Submittal Process. At the stage of the pre-construction phase services as determined by the Town, the Contractor shall, if requested by the Town, submit a GMP Proposal, which shall be the sum of the estimated Cost of the Work relating to completion of the Scope for the Project and the Construction Fee relating to the Project based upon the most-current version of the Cost Model. Each GMP Proposal shall include, in the Cost of the Work, those taxes that are applicable at the time the GMP is established. Each GMP is the total cost of the applicable portion of the Project including the cost of labor, equipment, supplies, materials, services and allowances to complete the applicable portion of the Project. The cost data is directly correlated to the specific Construction Documents in existence at the time each GMP Proposal is prepared. The assumptions used in the preparation of the GMP Proposal shall be identified by the Contractor as part of the GMP Proposal. In submitting this proposal, Contractor represents that:

A. Document Review. Contractor has examined and carefully studied the Contract Documents for the construction phase, including all addenda.
B. Site Visit. Contractor has visited the Site and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress, performance and furnishing of the Work.

C. Laws and Regulations. Contractor is familiar with and is satisfied as to all Applicable Laws that may affect cost, progress, performance and furnishing of the Work.

D. Reports; Subsurface Conditions. Contractor has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site which have been identified in the Contract Documents for the construction phase. Contractor acknowledges that such new reports may not be complete for Contractor’s purposes. Contractor acknowledges that Town does not assume responsibility for the accuracy or completeness of information and data shown or indicated in the Contract Documents for the construction phase with respect to underground facilities at or contiguous to the Site. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all such additional or supplementary examinations, investigations, explorations, tests, studies and data concerning conditions (surface, subsurface and underground facilities) at or contiguous to the Site or otherwise which may affect cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies or data are necessary for the determination of this GMP Proposal for performance and furnishing of the Work in accordance with the times, price and other terms and conditions of the Contract Documents for the construction phase.

E. Work by Others. Contractor is aware of the general nature of Work to be performed by Town and others at the Site that relates to Work for which the GMP Proposal is submitted as indicated in the Contract Documents for the construction phase.

F. Conditions and Plans Correlated. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports and drawings identified in the Contract Documents for the construction phase and all additional examinations, investigations, explorations, tests, studies and data with the Contract Documents for the construction phase.

G. Inconsistencies Resolved. Contractor has given Project Designers written notice of all conflicts, errors, ambiguities or discrepancies that Contractor has discovered in the Contract Documents for the construction phase and the written resolution thereof by Project Designers is acceptable to Contractor, and the Contract Documents for the construction phase are generally sufficient to indicate and convey understanding of all terms and conditions for performing and furnishing the Work for which the GMP Proposal is submitted.

H. No Improper Actions. The proposal is genuine and not made in the interest of or on behalf of any undisclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Contractor has not directly or indirectly induced or solicited any person, firm or corporation to
refrain from proposing; and Contractor has not sought collusion to obtain for itself any advantage over any other contractor or over the Town.

3.2 Acknowledged Construction Documents. The Contractor, in preparing any GMP Proposal, will obtain from the Project Designers three sets of signed, sealed, and dated Construction Documents (including all addenda). The Contractor will prepare its GMP Proposal in accordance with the Town’s requirements and the most-current completed Construction Documents at that time. The Contractor will mark the face of each document of each set upon which its GMP Proposal is based. The Contractor will send one set of those documents to the Town’s Project Manager, keep one set and return the third set to the Project Designers.

3.3 Direct Construction Costs. Direct Construction Costs means the sum of the amounts that the Contractor actually and necessarily incurs constructing the Work in strict compliance with the Contract Documents. Direct Construction Costs include only the cost categories set forth in this Article and does not include the Pre-Construction Phase Fees or the Construction Phase Fees unless specifically noted.

A. General Conditions Costs. Contractor is entitled to receive reimbursement for the actual cost of the allowable General Conditions items incurred between issuance of the applicable Notice to Proceed and 30 days after the date scheduled for Substantial Completion. Contractor is entitled to reimbursement for General Conditions Costs incurred before receipt of the Notice to Proceed, or after Substantial Completion, only with prior written approval of the Town. “Allowable General Conditions Cost Line Items” are identified below and in Exhibit I, attached hereto and incorporated herein by reference. These items shall be included in the General Conditions Cost amount shown as a line item in the applicable GMP Proposal and as detailed on the Schedule of Values. Items not specifically included below or in Exhibit I will not be allowed as a General Condition Costs.

1. Personnel costs, which include wages paid for Contractor’s hourly employees and salaries of Contractor’s salaried personnel when (a) stationed at the field office located at the Site and working on matters directly related to the Project, in whatever capacity employed; (b) engaged on the road expediting the production or transportation of material and equipment; and (c) performing functions directly related to the Work from the principal or branch office. The project manager’s salary may be included in the General Conditions Costs only when the project manager is directly managing the Project. Personnel costs also include the cost of all employee benefits and taxes including but not limited to, unemployment compensation, Social Security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Contractor’s standard personnel policy. All personnel costs are subject to audit to determine the actual cost of the wages, salaries and allowable employer contributions incurred by the Contractor for services performed for the Project.

2. Reasonable transportation, travel and hotel expenses of the Contractor’s personnel incurred in connection with the Work.

3. Costs of long-distance telephone calls, telegrams, postage, package delivery and courier service, hardwired telephone service, and reasonable expenses of
Contractor’s jobsite office if incurred at the Site and directly and solely in support of the Work.

4. Costs of materials, supplies, temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Site by Contractor, if such items are fully consumed in the construction of the Work and are included in the list of Allowable General Conditions Cost Line Items set forth in Exhibit I. Cost for used items shall be based on fair market value and may include transportation, installation, and minor maintenance costs, and removal costs. If an item is not fully consumed in the construction of the Work, its recoverable cost under this Contract shall be based on the original cost of the item less its fair market salvage value.

5. Rental charges for temporary facilities, equipment, and hand tools (except those customarily owned by construction workers), supplied to the Site by Contractor, provided they are included in the list of Allowable General Conditions Cost Line Items set forth in Exhibit I and the Town has approved the rentals and the rental rates in advance and in writing. Rental rates may include transportation, installation, and minor maintenance costs, and removal costs. For tools, machinery or construction equipment rented directly from the Contractor, the rental rate, including freight and delivery costs and all operating expenses except labor, shall be approved in advance by the Town and shall be in accordance with either the “Rental Rate Blue Book for Construction Mobilization Costs” published by Primedia, latest edition, or the most-recent rates provided by Equipmentwatch.com, but no higher than the prevailing competitive rates for rental of similar equipment in the Project vicinity.

6. The aggregate rental cost of any item charged to the Town shall not exceed 75% of the purchase price and maintenance cost of the item. If the anticipated aggregate rental cost for an item of equipment exceeds 75% of the purchase and maintenance price, Contractor shall purchase the equipment and turn it over to the Town upon final completion of the Work or, at the Town’s option, credit the Town with the fair market resale value of the item.

7. Permit and inspection fees paid by Contractor where the Town is exempt will not be reimbursed by the Town.

8. Cost of premiums for normal and customary Contractor’s Subcontractor default insurance at the rate of 1.25% of the cost of subcontracts and Subcontractor’s liability, workman’s compensation and builders risk insurance as required pursuant to Article 10 below, which shall be identified as separate line items within the applicable GMP. If the Contractor intends to utilize Subcontractor Liability Wrap-up Coverage (Z-25), it will be reimbursed at the rate of 1.5% of the Subcontract amount, and credited from the Subcontractor bids. Commercial General Liability Insurance shall be reimbursed at the rate of 1.1% of the applicable GMP amount; Builders Risk Insurance shall be reimbursed at the rate of 0.47% of the applicable GMP amount; Performance and Payment Bonds shall be reimbursed at 0.85% of the applicable GMP amount. All amounts shall be identified as separate line items within the applicable GMP.
9. Cost of bond premiums to the extent directly attributable to the Project.

10. Governmental sales and use taxes directly attributable to the General Conditions Items that are not subject to exemption, in the form and at the rates legally enacted on the date of the first GMP, whether such taxes are effective or scheduled to go into effect. Taxes paid on materials or services that were entitled to tax exemption will not be reimbursed by the Town as Direct Construction Costs.

B. Cost of the Work. Contractor is entitled to receive payment for the actual cost of the allowable Cost of the Work items incurred after receipt of the Town’s written Notice to Proceed with the Construction Phase Work through Final Completion of the Project. Contractor is not entitled to reimbursement for Cost of the Work costs incurred before receipt of the Town’s written Notice to Proceed. Cost of the Work includes the following:

1. Costs of materials, supplies and equipment purchased directly by the Contractor and incorporated into or consumed in the performance of the Work, including transportation charges, to the extent such costs of materials, supplies and equipment are not included in the General Conditions Costs.

2. Costs of removal and disposal in accordance with all applicable laws and regulations of Site debris, non-hazardous substances and waste materials, if not otherwise included in General Conditions.

3. Payments made by Contractor to Subcontractors and their vendors or suppliers for the subcontract work in accordance with the Construction Documents and the requirements of the subcontracts with the Subcontractors, vendors or suppliers.

4. Payments earned by Contractor for self-performed subcontract work, other than General Conditions work, in accordance with the Construction Documents and the terms of this Contract and approved by the Town.

5. Fees and expenses for design services procured by the Contractor related to necessary modifications to the Construction Documents.

6. Intellectual property royalties and licenses for items specifically required by the Construction Documents which are, or will be, incorporated into the Work.

7. All costs associated with establishing, equipping, operating, maintaining and demobilizing the field office at the Site.

8. All water, power and fuel costs necessary for the Work.
9. Costs incurred due to an emergency affecting the safety of persons and/or property, excluding such costs related to the negligence or willful acts of the Contractor or any person or entity for whom the Contractor is responsible.

10. All costs directly incurred in the performance of the Work or in connection with the Project, and not included in the Contract Price as set forth in Article 7 below, which are reasonably inferable from the Contract Documents as necessary to produce the intended results, subject to the maximum price limitation established by the respective GMP.

11. Costs related to the Contractor’s safety program related to the Project.

C. Exclusions from General Conditions Costs and Cost of the Work. The General Conditions Costs and Cost of the Work shall not include the following:

1. Any professional fees paid by the Town to consultants retained directly by the Town.

2. Any costs paid directly by the Town to Subcontractors or suppliers retained directly by the Town and outside the scope of all GMPs.

3. Any additional service costs as defined herein.

4. Any other costs not within the control of the Contractor or identified as being not within any GMP.

5. Any fees paid to the Contractor except those fees that may be paid to Contractor for Pre-construction Phase Services above.

D. Contractor’s Contingency.

1. The GMP Proposal may include an amount (the “Contractor’s Contingency”) to be used to fund increases in the Direct Construction Costs of the Project identified through the refinement, development and completion of the Construction Documents or procurement of the Work. The Contractor’s Contingency shall be negotiated between the Parties and it shall reflect the risk inherent in the state of completion of the Construction Documents at the time the GMP Proposal is submitted.

2. Any re-allocation of funds from the Contractor’s Contingency to cover increases in the Direct Construction Costs must be approved by the Town in advance and in writing, which approval shall not to be unreasonably withheld. In written requests to use the Contractor’s Contingency, the Contractor shall provide detailed documentation of the scope of work affected and the basis for any increases in costs resulting in the need to use Contractor’s Contingency funds.
3. As the Construction Documents are finalized and the buyout of the Work progresses the Contractor’s Contingency amount shall be reduced by mutual agreement of the Town and Contractor. The buyout shall occur within the first 20% of the construction duration for each Notice to Proceed issued for construction. Should savings occur after the buyout stage, such savings, and related reductions to the Contractor’s Contingency amount, will be retained by the Town.

E. Calculation Methods; Audits.

1. The Town and the Contractor understand and agree that any GMP agreed to under this Project will be administered as a measured quantity/unit price guaranteed not-to-exceed contract. This not-to-exceed amount is defined by the individual work items and their associated competitively bid and/or negotiated unit prices plus negotiated on-site general conditions, fee structures, markups and Contractor’s Contingency. Final contract price/payout will be based on field measured final completed quantities, approved unit prices and approved Change Directives and Change Orders. Furthermore, the term “actual cost” is defined as the final negotiated unit prices (costs) mutually agreed to by the Town and Contractor. The Town and the Contractor understand and agree that individually priced, “self-performed” items may include the cost associated with the risk of delivering the work.

2. The Town and the Contractor understand and agree that the Town, its authorized representatives, and/or the appropriate federal or state agencies may audit the Contractor’s records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate any GMP, and including, but not limited to, self-performed items, qualifications-only selected Subcontractor items, Change Orders, use of allowance funds and use of Contractor’s Contingency funds. The Town and its authorized representatives shall have access, during normal working hours, to all necessary Contractor and Subcontractor facilities, and shall be provided adequate and appropriate workspace, in order to conduct audits in compliance with the provisions of this Subsection. The Town shall give Contractor or Subcontractor reasonable advance notice of intended audits.

F. Discounts. All discounts for prompt payment shall accrue to the Town to the extent such payments are made directly by the Town. To the extent payments are made with funds of the Contractor, all cash discounts shall accrue to the Contractor. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work.

3.4 Construction Fee. The “Construction Fee” is the maximum amount payable to the Contractor for any cost or profit expectation incurred in the performance of the Work that is not specifically identified as being eligible for reimbursement by the Town elsewhere in this Agreement. The Construction Fee includes, but is not limited to, the following items.

A. Profit. All profit, profit expectations and costs associated with profit sharing plans such as personnel bonuses, incentives, and rewards; company stock options; or any
other like expenses of the Contractor, which shall not exceed 8.0% of the total applicable GMP amount, excluding Contractor’s Contingency.

B. **Salaries.** Salaries of Contractor’s officers, project manager(s), estimators, schedulers and all other employees not stationed at the Project site and performing services directly related to the Project.

C. **Overhead.** Any and all overhead, labor or general expenses of any kind unless specifically allowed under General Conditions. These costs include, but are not limited to: costs for the purchase, lease, rental, allowance or maintenance of vehicles, radios/communication equipment, jobsite computers, copiers and other business equipment, specialized telephone systems and cellular/digital phones; home office operations and support staff (i.e. accounting, purchasing); trade or professional association dues; costs for hiring and/or relocation of any of the Contractor’s personnel; and travel, per diem and subsistence expense of Contractor, its officers or employees except as specifically allowed under General Conditions, which shall not exceed 5.0% of the total applicable GMP amount, excluding Contractor’s Contingency.

D. **Financial Costs.** Any financial costs incurred by the Contractor including the cost of capital or interest on capital, regardless of whether it is related to the Project, and costs associated with construction warranty reserves.

E. **Professional Fees.** Any legal, accounting, professional or other similar costs incurred by the Contractor, including costs incurred in connection with the prosecution or defense any dispute, mediation, arbitration, litigation or other such proceeding related to or arising from the Project.

F. **Taxes.** Any Federal and/or State income and franchise taxes paid by Contractor. Any fines, penalties, sanctions or other levies assessed by any governmental body against Contractor.

G. **Damages and Related Costs.** Any cost arising out of a breach of this Agreement or the fault, failure or negligence of Contractor, its Subcontractors, or any person or entity for whom they may be liable. These costs include, without limitation: costs to remedy defective, rejected, or nonconforming work, materials or equipment; costs due to failure to coordinate the Work or meet CPM schedule milestones; costs arising from Contractor’s contractual indemnification obligations; liquidated or actual damages imposed by the Town for failure to complete the Work within the Contract Time; costs due to the bankruptcy or insolvency of any Subcontractor; and damage or losses to persons or property.

H. **Insurance Deductibles.** The cost of any and all insurance deductibles payable by the Contractor and costs due to the failure of Contractor or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.

I. **Costs in Excess of GMP.** Any and all costs that would cause the Guaranteed Maximum Price to be exceeded.
J. **Other Unidentified Costs.** Any and all costs not specifically identified as an element of the Direct Construction Costs.

3.5 **Competitive Bidding and Sub-Bids.**

A. **Subcontractor Selection.** The Contractor will develop Subcontractor interest, submit the names of a minimum of three qualified Subcontractors for each trade in the Project for approval by the Town and solicit bids for the various Work categories. If there are not three qualified Subcontractors available for a specific trade, the Contractor will request approval by the Town’s Project Manager to submit less than three names. No change in the Town approved Subcontractors will be allowed without prior written approval by the Town.

B. **Town Objections.** If, prior to receipt of sub-bids or prior to award of Subcontractors or suppliers, the Town objects to any nominated Subcontractor or supplier or to any self-performed Work for good reason, the Contractor will nominate a substitute Subcontractor or supplier, preferably if such option is still available, from those who submitted sub-bids for the Work affected. Once such substitute Subcontractors and suppliers are consented to by the Town, the Contractor’s proposed GMP for the Work or portion thereof will be correspondingly adjusted to reflect any higher or lower costs from any such substitution.

C. **Documents; Pre-bid Conference.** The Contractor will distribute Construction Documents, and when appropriate, conduct a pre-bid conference with prospective Subcontractors.

D. **Subcontractor Bid Submittal.** The Contractor, at the required time, will close the bidding and collect all sub-bids received within the prescribed deadline for receipt of sub-bids. Promptly, after the closing of sub-bids, the Contractor will (in the presence of the Town’s Project Manager and Project Designers) open and read all properly and timely submitted sub-bids. The Contractor will submit a completed Sub-Bid tabulation form to the Town’s Project Manager within a reasonable time after the closing of the sub-bid opening proceedings.

E. **Subcontractor Bid Evaluation.** The Contractor, upon opening of sub-bids will evaluate them including, but not limited to, the evaluation of lower tier Subcontractors, Subcontractor qualification submittals and prospective suppliers selected by each apparent low sub-bidder. The Contractor will resolve any sub-bid withdrawal, protest or disqualification in connection with the award at no increase in the Cost of the Work.

F. **Notice of Intent for Subcontracts.** Within 15 Days after sub-bid opening, the Contractor will deliver to the Town’s Project Manager a written notice of intent to award subcontracts, itemizing the Subcontractors and suppliers selected by the Contractor. The notice of intent to award subcontracts will detail (1) for each Subcontract the amount of the sub-bid and the corresponding Subcontractor or supplier, (2) the sum of sub-bids received for all intended Subcontract, (3) trade work that the Contractor intends to self-perform, if any.

G. **Pre-award Conference.** Promptly after receipt of the notice of intent to award subcontracts, the Town will conduct a pre-award conference with the Contractor and other Project team members. At the pre-award conference, the Contractor will (1) review the
nominated slate of Subcontractors and suppliers and discuss any concerns with or objections that the Town has to any nominated Subcontractor or supplier; (2) discuss Town concerns relating to any proposed self-performed Work; (3) review the Contractor’s proposed Contract Price for the Work during the construction phase; (4) resolve possible time frames for the commencement date of the Contract Time for the construction phase Work; (5) schedule the pre-construction conference; and (6) discuss other matters as necessary.

3.6 Submittal Requirements. The Contractor shall include with each GMP Proposal a written statement of its basis, which shall include:

A. **Detailed Scope.** A detailed scope of services related to the respective GMP Proposal, including a breakdown of the GMP as it relates to the applicable part of the overall Scope.

B. **Documents.** A list of the Construction Documents, including all addenda, that were used in preparation of the respective GMP Proposal.

C. **Allowances.** A list of allowances and a statement of their basis.

D. **Assumptions.** A list of the assumptions and clarifications made by the Contractor in the preparation of the respective GMP Proposal to supplement the information contained in the Construction Documents.

E. **Substantial Completion.** The Substantial Completion date, if applicable, upon which the respective GMP Proposal is based and the Master Schedule for the Work upon which the respective Substantial Completion date is based, including a clear statement of the number of rain delay days included within the Master Schedule.

F. **Alternate Prices** A schedule of applicable alternate prices.

G. **Unit Prices.** A schedule of applicable unit prices.

H. **Additional Services.** A statement of Additional Services included, if any.

I. **Acceptance Period.** The time limit for acceptance of the GMP Proposal.

3.7 GMP Proposal Review. The Contractor shall meet with the Town and the Project Designers to review each GMP Proposal. In the event that the Town discovers any inconsistencies or inaccuracies in the information presented, the Town shall give written notice to the Contractor, who shall make appropriate adjustments to the GMP, its basis or both.

A. **Independent Estimate.** Upon receipt of any GMP Proposal from the Contractor, the Town may submit the same documents that were used by Contractor in developing its GMP to an independent third party for review and verification. The third party will develop an independent estimate of the Cost of the Work and review the Master Schedule for the associated scope of the GMP Proposals.
B. GMP Exceeding Independent Estimate. If the Contractor’s GMP Proposal is greater than the independent third party’s estimate, the Town may require the Contractor to reconfirm its GMP Proposal. The Contractor will accept the independent third party’s estimate for the Cost of the Work as part of its GMP or present a written request, within seven Days of receiving the estimates, to the Town identifying, explaining and substantiating the differences. The Contractor may be requested to, or at its own discretion may, submit a revised GMP Proposal for consideration by the Town. At that time the Town may do one of the following.

1. Accept the Contractor’s original or revised GMP Proposal, if within the Town’s budget, without comment.

2. Accept the Contractor’s original or revised GMP Proposal that exceeds the Town’s budget, and indicate in writing to the Contractor that the Project budget has been increased to fund the differences.

3. Reject the Contractor’s original or revised GMP Proposal because it exceeds either or both the Town’s budget and the independent third party’s estimate, in which event, the Town may terminate this Agreement.

C. Design Changes During Negotiation. If, during the review and negotiation of GMP Proposals, design changes are required, the Contractor will authorize and cause the Project Designers to revise the Construction Documents to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in the final approved GMP Proposal. Such revised Construction Documents will be furnished to the Contractor. The Contractor will promptly notify the Project Designers and Town’s Project Manager if any such revised Construction Documents are inconsistent with the agreed-upon assumptions and clarifications.

3.8 No Prior Costs. Prior to the Town’s acceptance of a GMP Proposal, the Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work related to such GMP Proposal, except as provided in this Agreement or as the Town may specifically authorize in writing.

3.9 Acceptance; Effect. Upon acceptance by the Town of each GMP Proposal, the GMP contained therein and its basis shall be set forth in the applicable GMP Amendment. Once established, the GMP and the corresponding Substantial Completion date shall be subject to modification only as provided in Articles 6 and 8 below. The Town’s approval of the GMP Amendment will include the amount of the Town’s Contingency. The amount of the Town’s Contingency will be set solely by the Town and will be in addition to the Project costs included in the Contractor’s GMP Proposals. Use and management of the Town’s Contingency is at the Town’s sole direction.

3.10 GMP Effective Date. Each GMP Proposal shall not become a part of this Agreement until the Town accepts such GMP Proposal in writing by executing the applicable GMP Amendment, on or before the date specified in each such GMP Proposal for such acceptance.
3.11 Failure to Agree Upon GMP. If the Town and the Contractor do not agree to any provisions of the GMP Proposal, including the designated Default Neutral Arbitrator, all references in this Agreement to the GMP shall not be applicable, and the Parties shall proceed on the basis of reimbursement as provided in Article 7 below.

ARTICLE 4
CONSTRUCTION SERVICES

4.1 Control of Construction. After the date any Amendment to this Agreement is executed by the Town and the Contractor approving a GMP Proposal, the Contractor shall become responsible for the means, methods, sequences and procedures used in the construction of the portion of the Project related to such GMP Proposal and shall proceed with the Contractor’s Construction Services related to the GMP Proposal under this Agreement.

4.2 Completeness and Accuracy of Contractor Work. The Contractor will be responsible for the completeness and accuracy of its reviews, reports, supporting data, and other pre-construction deliverables prepared or compiled pursuant to its obligations under this Agreement and will at its sole own expense correct its work or deliverables. The fact that the Town has accepted or approved the Contractor’s work or deliverables will in no way relieve the Contractor of any of its responsibilities under the Agreement, nor does this requirement to correct the work or deliverable constitute a waiver of any claims or damages otherwise available by law or contract to the Town.

4.3 Alteration in Character of Work. In the event an alteration or modification in the character of work or deliverable materially increases or decreases the scope of service, cost of performance, or Master Schedule as determined by the Town, the Work or deliverable will nonetheless be performed as directed by the Town. However, before any altered or modified work begins, a Change Directive or Change Order must be approved and executed by the Town and the Contractor to address such change. Such Change Directive or Change Order will not be effective until approved by the Town. Additions to, modifications to, or deletions from the Project provided herein may be made, and the compensation to be paid to the Contractor may be adjusted accordingly, only by mutual agreement of the Parties. No claim for extra work done or materials furnished by the Contractor will be allowed by the Town except as provided herein, nor will the Contractor do any work or furnish any material(s) not covered by this Agreement unless such work or material is first authorized in writing by the Town. Work or material(s) furnished by the Contractor without such prior, written authorization will be the Contractor’s sole jeopardy, cost, and expense, and the Contractor hereby agrees that, without prior, written authorization, no claim for compensation for such work or materials furnished will be made.

4.4 Construction Phase General Services. The Contractor shall furnish any and all labor, materials, equipment, transportation, utilities, services and facilities required to perform all Work for the construction of the Project, and to completely and totally construct the same and install the material therein for the Town. All Work will be performed in a good and workmanlike and substantial manner according to the standards set forth in Subsection 1.6(A) above. The Work shall be to the satisfaction of the Town and strictly pursuant to and in conformity with the Project’s Contract Documents, as modified and agreed to by the Town. Contractor’s Representative shall be reasonably available to Town and shall have the necessary
expertise and experience required to supervise the Work. Contractor’s Representative shall communicate regularly with Town but not less than once each week and shall be vested with the authority to act on behalf of Contractor. Contractor’s Representative may be replaced only with the written consent of Town.

A. Government Approvals and Permits.

1. The Contractor shall be primarily responsible to obtain all necessary permits, approvals and licenses required for the prosecution of the Work from any government or quasi-government entity having jurisdiction over the Project. The Contractor is specifically reminded of the need to obtain the necessary environmental permits or file the necessary environmental notices.

2. Copies of the required permits and notices must be provided to the Town’s Representative prior to starting the permitted activity. In the case of Fire Department permits, a copy of the application for permit shall also be provided to the Town’s Representative. This provision does not constitute an assumption by the Town of an obligation of any kind for violation of said permit or notice requirements.

3. Town shall be responsible for permit(s) and fees for building and demolition permits. Town will also pay review fees for grading and drainage, water, sewer, and landscaping. Town shall also pay for utility design fees for permanent services.

4. Contractor shall be responsible for all other permits and review fees not specifically listed in Subsection 4.4(A)(1) above.

5. Contractor is responsible for all water bills on the Project meters until Substantial Completion of the Project. Arrangements for construction water are the Contractor’s responsibility.

B. Pre-construction Activities.

1. Prior to the commencement of any Work, the Town’s Representative will schedule a pre-construction conference. The purpose of this conference is to establish a working relationship between the Contractor, utility firms, various Town agencies and other entities as may be appropriate or beneficial. The agenda will include critical elements of the Work and Master Schedule, submittal schedule, cost breakdown of major lump sum items, payment requests and processing, coordination with the involved utility firms, the level of Project Record Documents required and emergency telephone numbers for all representatives involved in the course of construction. Minimum attendance at the preconstruction conference shall be the Contractor’s Representative, the job superintendent, the Contractor’s safety officer and the individuals deemed necessary by the Town.

2. The Notice to Proceed date will be set by the Town. At or after the pre-construction conference and upon delivery of the required bonds and insurance in a
Town-approved format or at such other time as the Town may elect, a Notice to Proceed letter will be issued confirming the construction start date, the Contract Time and the Substantial Completion date. Failure by the Contractor to provide the properly executed bond and insurance forms in a timely manner may delay the construction start date; however, it will not alter the proposed Substantial Completion date nor be a basis for any time extension request or other claims.

3. The Contractor shall update the Schedule of Values based on the categories used in the buyout of the Work but not greater than the approved GMP; the update shall identify the Contractor’s Contingency. The Schedule of Values will subdivide the Work into all items comprising the Work.

C. Project Management.

1. The Contractor shall refine the Management Plan for the Project. In refining the Management Plan, the Contractor shall consider the Town’s schedule, cost and design requirements for the Project. The Contractor shall then develop various alternatives for the sequencing and management of the Project and shall make recommendations to the Town. The Management Plan shall also include a description of the various proposal packages recommended for the Project. The Management Plan shall be presented to the Town for acceptance.

2. The Contractor shall conduct periodic Project meetings attended by the Town’s Representative, the Project Designers and other necessary parties. Such meetings shall serve as a forum for the exchange of information concerning the Project and the view of construction progress. The Contractor shall prepare and distribute minutes of these meetings to the Town’s Representative, the Project Designers and others in attendance.

3. The Contractor shall coordinate transmittal of documents to regulatory agencies for review and shall advise the Town of potential problems in completing such reviews.

4. The Contractor shall assist the Town in public relations activities and shall prepare information for and attend public meetings regarding the Project.

D. Reports.

1. The Contractor shall prepare and distribute design phase change reports monthly to the Town that shall list all Town-approved Change Directives and Change Orders as of the date of the report and shall state the effect of the Change Directives and Change Orders on the Project budget and the Master Schedule.

2. The Contractor shall prepare and distribute schedule maintenance reports monthly to the Town comparing the actual and scheduled dates for Subcontractors’ contract awards and completion of each such Subcontractor’s portion of the Project.
3. The Contractor shall prepare and distribute the Project cost reports monthly to the Town specifying actual award prices and construction costs for each of the individually awarded components of the Project as compared to the Project budget.

4. The Contractor shall prepare and distribute cash flow reports monthly to the Town specifying actual cash flow for each of the individually awarded components of the Project as compared to the projected cash flow.

5. The requirements for filing reports set forth in this Subsection 4.4(D) shall not be deemed to meet the requirements for requests for extensions of time or requests for Change Directives and Change Orders as set forth in Section 6 and Section 8 below.

4.5 Work Management.

A. Contractor Resources. Unless otherwise provided in the Contract Documents to be the responsibility of Town or a separate contractor, Contractor shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Contractor to complete the Work according to the Contract Documents. The Contractor shall provide and maintain a management team on the Site to provide contract administration. The Contractor shall establish and implement coordination and communication procedures among the Contractor, the Town, the Project Designers and Subcontractors.

B. Means, Methods and Techniques. Contractor shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Contractor shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

C. Supervisor Presence. Contractor’s Representative or the Contractor’s Superintendent shall be present at the Site at all times that construction activities are taking place.

1. All elements of the Work shall be under the direct supervision of a foreman or his designated representative on the Site who shall have the authority to take actions required to properly carry out that particular element of the Work.

2. In the event of noncompliance with this Subsection, the Town may require the Contractor to stop or suspend the Work in whole or in part.

D. Manufacturer Requirements. Where the Contract Documents require that a particular product be installed and/or applied by an applicator approved by the manufacturer, it is the Contractor’s responsibility to ensure the Subcontractor employed for such work is approved by the manufacturer.
E. **Measurements.** Before ordering materials or doing work, the Contractor and each Subcontractor shall verify measurements at the Site and shall be responsible for the accuracy of such measurements. No extra charge or compensation will be allowed because of differences between actual dimensions and the dimensions indicated on the plans; differences shall be submitted to the Town for resolution before proceeding with the Work.

F. **Field Measurements and Conditions.** The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Construction Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Town immediately.

G. **Grades, Lines, Levels and Bench Marks.** The Town shall establish and maintain all building and construction grades, lines, levels, and bench marks, and shall be responsible for accuracy of same. The Contractor shall inspect the construction grades, lines, levels, and bench marks provided by the Town and shall notify the Town within three Days after such inspection of any concerns affecting buildability of the Project relating to the construction grades, lines, levels or bench marks. After inspection, the Contractor shall be responsible for protecting the construction grades, lines, levels, and bench marks.

H. **Proper Employee Conduct.** Any person employed by the Contractor or any Subcontractor who, in the opinion of the Town, does not perform his work in a proper, skillful and safe manner or is intemperate or disorderly or is otherwise found to be inappropriate due to the setting of the Site, shall, at the written request of the Town, be removed from the Site by Contractor or Subcontractor employing such person, and the person shall not be employed again in any portion of Work without the written approval of the Town. The Contractor or Subcontractor shall hold the Town harmless from damages or claims which may occur in the enforcement of this Subsection.

I. **Coordination of Activities.** Contractor shall coordinate the activities of all Subcontractors. If Town performs other work on the Project or at the Site with separate contractors under Town’s control, Contractor agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

J. **Change Processing.** The Contractor shall establish and implement procedures for expediting and processing requests for information, Shop Drawings, material and equipment sample submittals, contract schedule adjustments, Change Directives, Change Orders, substitutes, payment requests and the maintenance of logs. The Contractor shall maintain daily job reports. The Contractor shall be the party to whom requests for information, submittals, Subcontractor schedule adjustments, substitutions, Change Directive requests, Change Order requests and payment requests shall be submitted.

K. **Subcontractor Meetings.** Periodically, the Contractor shall conduct meetings at the Site with each Subcontractor. The Contractor shall conduct coordination meetings with all Subcontractors. The Contractor shall record, transcribe and distribute minutes to all attendees, the Town and the Project Designers.
L. **Coordination of Inspections and Testing.** Technical inspection and testing provided by the Project Designers or others who are not Subcontractors shall be coordinated with the Contractor. The Contractor shall be provided a copy of all inspection and testing reports on or before the next business day after the inspection or test. The Contractor is not responsible for providing, nor does the Contractor control, the actual performance of such technical inspection and testing. The Contractor is performing a coordination function and is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of such inspection and testing.

M. **Self-Performed Work.** Intentionally left blank.

N. **No Subcontractor Reliance.** Contractor shall ensure that each Subcontractor (1) has inspected the Site and has thoroughly reviewed this Agreement as the same may be revised by the Town, and is not relying on any opinions or representations of the Town, (2) agrees to perform and complete the Work in strict accordance with this Agreement and under the Contractor’s direction, (3) agrees that any exclusions of any Work must be approved in writing by the Contractor prior to acceptance of any agreement between Contractor and a Subcontractor or same shall not be excluded hereunder, (4) is responsible for all safety precautions and programs and shall provide all protection and necessary supervision to implement said precautions and programs as set forth in Section 4.13 below, (5) shall provide all competent supervision necessary to execute all Work and any work incidental thereto in a thorough, first-class, workmanlike manner and (6) has acknowledged that it is Subcontractor’s responsibility that all of the Work and any work incidental thereto conforms to, and is performed in accordance with, Applicable Law.

O. **Subcontractor Change Request.** The Contractor shall review the contents of a request for changes to the subcontract time or price submitted by a Subcontractor, assemble information concerning the request and endeavor to determine the cause of the requests. In instances where the Contractor’s analysis reveals that the request is valid, the Contractor shall prepare a detailed report to the Town for approval in accordance with Articles 6 and 8 below, as applicable. The Contractor shall also prepare and timely deliver a detailed report to the Town of other such requests and requests found to be invalid and timely inform the Subcontractor of any such determination. The Contractor shall prepare the necessary change documents for signature by the Subcontractor.

P. **Quality Control.** The Contractor shall establish and implement a program to monitor the quality of construction by itself and by Subcontractors. The purpose of the program shall be to protect the Town against defects and deficiency in the Work of the Contractor or the Subcontractors. The Contractor shall reject the Work and transmit to the Subcontractor a notice of nonconforming work when the Contractor believes the Work does not conform to the requirements of the Contract Documents. Except for minor variations as stated herein, the Contractor is not authorized as part of this service to change, enlarge, relax, alter, or release any requirement of the Contract Documents or to approve or accept any portion of the Work not performed in accordance with the Contract Documents.
Q. **Subcontractor Document Request.** The Contractor shall coordinate and expedite submittals of information from the Subcontractors for record drawings and specification preparations and shall coordinate and expedite the transmittal of Project Record Documents to the Town.

R. **Traffic Control.** All traffic affected by the Work under this Agreement shall be regulated in accordance with the most recent revision of the United States Department of Transportation *Manual on Uniform Traffic Control Devices* (the “MUTCD”) and the City of Phoenix Traffic Barricade Manual (the “Barricade Manual”) (the MUTCD and the Barricade Manual are collectively referred to herein as the “Traffic Control Requirements”), which are incorporated herein by reference; provided, however, that this Agreement shall govern in a conflict with the terms of the MUTCD or the Barricade Manual. At the time of the pre-construction conference, each Subcontractor shall designate an employee who is well qualified and experienced in construction traffic control and safety to be responsible for implementing, monitoring and altering traffic control measures, as necessary. At the same time the Contractor will designate a representative who will be responsible to see that all traffic control and any alterations are implemented and monitored to the extent that traffic is carried through the Work area in an effective manner and that motorists, pedestrians, bicyclists and workers are protected from hazard and accidents. The Contractor shall ensure that Subcontractors adhere to the following:

1. All traffic control devices and advance warning signs (such as REDUCE SPEED, LOOSE GRAVEL, 25 MPH SPEED LIMIT and DO NOT PASS) required for the Work under this Agreement shall be placed in accordance with the Traffic Control Requirements.

2. The Subcontractor provide, erect and maintain all necessary flashing arrow boards, barricades, suitable and sufficient warning lights, signals and signs and shall take all necessary precautions for the protection of the Work and safety of the public. The Subcontractor shall provide, erect and maintain acceptable and adequate detour signs at all closures and along detour routes.

3. All barricades and obstructions shall be illuminated at night, and all safety lights shall be kept burning from sunset until sunrise. All barricades and signs used by the Subcontractor shall conform to the standard design generally accepted for such purposes and payment for all such services and materials shall be considered as included in the other pay items of the Agreement.

4. The Subcontractor shall ensure that all existing traffic signs are erect, clean and in full view of the intended traffic at all times. Street name signs at major street intersections shall be maintained erect at all times. If these signs should interfere with construction, the Subcontractor shall notify the Town at least 48 hours in advance for Town personnel to temporarily relocate said signs. The Town will direct the Subcontractor as to the correct positions to re-set all traffic and street name signs to permanent locations when notified by the Subcontractor that construction is complete.
5. When construction activities or traffic hazards at the Site require the use of flagmen, it shall be the Subcontractor’s responsibility to provide trained flagmen to direct traffic safely.

6. Manual traffic control shall be in conformity with the MUTCD, except that the designated liaison officer shall be contacted at the Avondale Police Department.

7. When traffic hazards at the Site warrant the use of certified police personnel to direct traffic, arrangements must be made with the liaison officer at the Avondale Police Department.

8. The assembly and turnarounds of the Subcontractor’s equipment shall be accomplished using adjacent local streets when possible.

9. Equipment used and/or directed by the Subcontractor shall travel with traffic at all times. Supply trucks shall travel with traffic except when being spotted. Subcontractor shall provide a flagman or off-duty, uniformed law enforcement officer to assist with spotting.

10. During construction, it may be necessary to alter traffic control. Any such alterations shall be in accordance with the Traffic Control Requirements.

11. No street within the Project area may be closed to through traffic or to local emergency traffic without prior, written approval of the Town. The Town may give written approval at its sole discretion and only if sufficient time exists to allow for notification of the public at least two Days in advance of such closing. Partial closure of streets within the Project shall be done in strict conformity with the Town’s written directions.

12. Intentionally left blank.

13. The Subcontractor shall accommodate local access to adjacent properties in accordance with the specification set forth below.

14. Where crossings of existing pavement occurs, no open trenches shall be permitted overnight, but plating may be permitted if conditions allow, as determined by the Town or its authorized representative in his sole discretion. If plates cannot be used, crossings shall either be back-filled or the Subcontractor shall provide a detour.

4.6 Control of the Work Site.

A. Debris Removal. Throughout all phases of construction, including suspension of Work, Contractor shall keep the Site reasonably free from debris, trash and construction wastes to permit Contractor to perform its Construction Services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the
Work, or an agreed upon portion of the Work, Contractor shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Town to occupy the Project or an agreed upon portion of the Project for its intended use.

B. Dust Control. Contractor shall take whatever steps, procedures or means necessary to prevent any dust nuisance due to construction operations. The dust control measures shall be maintained at all times to the satisfaction of the Town and in accordance with the requirements of Applicable law and such other Specifications as the Parties may agree to in writing.

C. Accessibility. Contractor shall maintain “ADA” and “ANSI” accessibility requirements during construction activities in an occupied building or facility. ADA and ANSI accessibility requirements shall include, but not be limited to, parking, building access, entrances, exits, restrooms, areas of refuge, and emergency exit paths of travel. Contractor shall be responsible for the coordination of all work to minimize disruption to building occupants and facilities.

D. Material and Equipment Storage. Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Site by the Contractor. When equipment or materials are no longer required for the Work, each shall be removed promptly from the Site.

E. Protection of Site. Protection of the Work, the Site, and construction materials and equipment stored at the Site from weather, theft, damage and all other adverse conditions is solely the responsibility of the Contractor.

4.7 Time Management.

A. Master Schedule Updates. The Contractor shall, not less than monthly, adjust and update the Master Schedule and distribute copies to the Town and the Project Designers. All adjustments to the Master Schedule must be (1) made for the benefit of the Project and (2) acceptable to the Town; provided, however, that such adjustments or updates shall not extend the time for performance of the Work beyond the Substantial Completion date unless such extension is requested by the Contractor and approved by the Town in accordance with Section 6 below.

B. Subcontractor Schedule Verification. The Contractor shall review each Subcontractor’s construction schedule and shall verify that the schedule is prepared in accordance with the requirements of the Contract Documents and that it establishes completion dates that comply with the requirements of the Master Schedule.

C. Subcontractor Progress Monitoring. The Contractor shall (1) review the progress of construction of each Subcontractor on a monthly basis, (2) evaluate the percentage completion of each construction activity as indicated in the Subcontractor’s construction schedule and (3) review such percentages with the Subcontractor. This evaluation shall serve as data for input to the periodic construction schedule report that the Contractor shall prepare and
distribute to the appropriate Subcontractor, the Town’s Representatives and the Project Designers. The report shall serve as the basis for (i) determining the actual progress compared to scheduled progress and (ii) determining the progress payment due to the Subcontractor. The Contractor shall determine and implement alternative courses of action that may be necessary to achieve contract compliance by the Subcontractor.

D. **Change Evaluation.** The Contractor shall, prior to the issuance of a Change Directive or Change Order, determine the effect on the Master Schedule of time extensions requested by a Subcontractor. The Contractor may require a Subcontractor to prepare and submit a recovery schedule in the event the Subcontractor fails to meet the Master Schedule.

E. **Minor Schedule Revisions.** The Master Schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve the Contractor of its obligations to complete the Work within the Contract Time, as such dates may be adjusted in accordance with the Contract Documents.

F. **Payment Requests.** An updated Master Schedule shall be submitted monthly to the Town as part of the Payment Request.

1. The Contractor shall provide Town with a monthly status report for the Master Schedule detailing the progress of the Work, including (a) if the Work is proceeding according to schedule, (b) any discrepancies, conflicts, or ambiguities found to exist in the Contract Documents that require resolution, and (c) other items that require resolution so as not to jeopardize ability to complete the Work as presented in the applicable GMP and within the Contract Time.

2. With each schedule submittal the Contractor shall include a transmittal letter including the following:

   a. Description of problem tasks (referenced to field instructions and requests for information), as appropriate.

   b. Current and anticipated delays including:

      i. Cause of the delay.

      ii. Corrective action and schedule adjustments to correct the delay.

      iii. Known or potential impact of the delay on other activities, milestones, and the Substantial Completion date.

   c. Changes in construction sequence.

   d. Pending items and status thereof including but not limited to:
i. Time Extension requests.

ii. Other items.

e. Substantial Completion date status:

i. If ahead of schedule, the number of Days ahead.

ii. If behind schedule, the number of Days behind.

f. Other project or scheduling concerns.

G. Town Review. Town’s review of and response to the Master Schedule is only for general conformance with the scheduling requirements of the Contract Documents. The review shall not: (1) relieve the Contractor from (a) compliance with the requirements of the Contract Documents or (b) the time extension request process set forth in Section 6 below; or (2) be construed as relieving the Contractor of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

H. CPM Diagram. The updated Master Schedule shall include a CPM diagram schedule that shows the sequence of activities, the interdependence of each activity and indicate the Critical Path.

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

2. The CPM diagram schedule shall indicate all relationships between activities.

3. The activities making up the Master Schedule shall be in sufficient detail to ensure that adequate planning has been done for proper execution of the Work and such that it provides an appropriate basis for monitoring and evaluating the progress of the Work.

4. The CPM diagram schedule shall be based upon activities that coincide with the Schedule of Values.

5. The CPM diagram schedule shall show all submittals associated with each Work activity and the review time for each submittal.

6. The schedule shall show milestones, including milestones for Town-furnished information, and shall include activities for Town-furnished equipment and furniture when those activities are interrelated with the Contractor activities.
7. The schedule shall include a Critical Path activity that reflects anticipated rain and weather delay during the performance of the Agreement. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the Site. Weather data shall be based on information provided by the National Weather Services or other source approved in writing by the Town.

I. Occupancy Consideration. The Master Schedule shall consider the Town’s occupancy requirements showing portions of the Project having occupancy priority.

J. Float Time. Float time shall be as prescribed below:

1. The total Float within the overall Master Schedule is not for the exclusive use of either the Town or the Contractor, but is jointly owned by both and is a resource available to and shared by both Parties as needed to meet contract milestones and the Project completion dates.

2. The Contractor shall not sequester shared Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing. Float time within the schedule is jointly owned; no time extensions will be considered or granted nor delay damages considered or paid until a delay occurs that extends the Work beyond the Substantial Completion date.

3. Town-caused delays on the Project may be offset by Town-caused time savings (i.e., Critical Path submittals returned in less time than anticipated by the Master Schedule; approval of substitution requests and credit changes which result in savings of time to the Contractor). In such an event, the Contractor shall not be entitled to have considered or receive a time extension or delay damages until all Town-caused time savings are exceeded, and the Substantial Completion date is also exceeded.

K. Occupancy/Use Plan. Intentionally left blank.

4.8 Cost Management.

A. Subcontract Schedule of Values. The Contractor shall, in participation with the Subcontractors, determine a Schedule of Values for each of the construction subcontracts. The Schedule of Values shall be the basis for the allocation of the Contract Price to the activities shown on the Subcontractors’ construction schedule. The Town shall approve the subcontract Schedule of Values before acceptance for progress billings.

B. Contract Price Allocation Each Subcontractor’s construction schedule shall have the applicable portions of the Contract Price allocated among the Subcontractor’s scheduled activities so that each of the Subcontractor’s activities shall be allocated a price and the sum of the prices of the activities shall equal to or less than the total Contract Price. The Contractor shall review the Contract Price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents. Progress payments to a Subcontractor and Contractor shall be based on the Subcontractor’s percentage of completion of
the scheduled activities as set out in each Subcontractor’s construction schedule report and the Subcontractor’s compliance in accordance with the Contract Documents.

C. Additional Information. In instances where a lump sum or unit price is not determined prior to performing Work described in a request for changes to the Contract Price, the Contractor shall request from the Subcontractor records for the cost of payroll, materials and equipment and the amount of payments to its Subcontractors, if any, incurred by the Subcontractor in performing the Work.

D. Trade-off Studies. Intentionally left blank.

E. Payment Applications. In consultation with the Project Designers, the Contractor shall review the payment applications submitted by each Subcontractor and determine whether the amount requested reflects the progress of the Subcontractor’s work. The Contractor shall make appropriate adjustments to each payment application and shall prepare and forward a progress payment report to the Town. The progress payment report shall state the total Contract Price, payments to date, current payment requested, retainage and actual amounts owed for the current period. Included in this report shall be a certificate for payment that shall be signed by the Contractor and delivered to the Town. The Contractor shall keep the Project and the Site free and clear of all liens and claims from its Subcontractors, suppliers or materialmen.

4.9 Shop Drawings, Product Data and Samples.

A. Purpose. Shop Drawings, product data, samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

B. Review. The Contractor shall review, approve, verify, and submit to the Project Designers five copies of each Shop Drawing, product data, sample, and similar submittal required by the Contract Documents as to cause no delay in the Work or in the activities of the Town or of separate contractors. Submittals made by the Contractor that are not required by the Contract Documents may be returned without action.

C. Project Designer Approval. The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, product data, samples, or similar submittals until the respective submittal has been approved by the Project Designers. Such Work shall be in accordance with approved submittals.

D. Contractor Verification. By approving, verifying and submitting Shop Drawings, product data, samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

E. No Deviation Approval; Errors. The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Project
Designer’s approval of Shop Drawings, product data, samples or similar submittals unless the Contractor has specifically informed the Project Designer in writing of such deviation at the time of submittal and the Project Designer has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, product data, samples, or similar submittals by the Project Designer’s approval thereof.

F. **Highlight Changes.** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, product data, samples, or similar submittals, to revisions other than those requested by the Project Designers on previous submittals.

G. **Informational Submittals.** Informational submittals upon which the Project Designer is not expected to take responsive action may be so identified in the Contract Documents.

H. **Other Certifications.** When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Project Designer shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

4.10 **Quality Control, Testing and Inspection.**

A. **New Materials.** All materials used in the Work shall be new and unused, unless otherwise noted, and shall meet all quality requirements of the Contract Documents.

B. **Inspection and Approval.** All construction materials to be used in the Work or incorporated into the Work, equipment, plant, tools, appliances or methods to be used in the Work may be subject to the inspection and approval or rejection by the Town. Any material rejected by the Town shall be removed immediately and replaced in an acceptable manner.

C. **Test Methods.** The procedures and methods used to sample and test material will be determined by the Project Designers. Unless otherwise specified, samples and tests shall be made in accordance with MAG 700 Series and the standard methods of AASHTO or ASTM as referenced in the MAG 700 Series.

D. **Testing Facility.** The Contractor will select a pre-qualified independent testing laboratory and will pay for initial Town acceptance testing.

1. When the first and subsequent tests indicate noncompliance with the Contract Documents, the cost associated with that noncompliance and retesting will be paid for by the Contractor. Contractor’s Contingency cannot be utilized for the cost of re-testing.

2. When the first and subsequent tests indicate noncompliance with the Contract Documents, all retesting shall be performed by the same testing agency.
E. **Cooperation.** The Contractor will cooperate with the selected testing laboratory and all others responsible for testing and inspecting the Work and shall provide the laboratory’s employees or agents access to the Work at all times.

F. **At-source Approval.** At the option of the Town, materials may be approved at the source of supply before delivery.

G. **Code Compliance.** Code compliance testing and inspections required by codes or ordinances, or by a plan approval authority shall be the responsibility of and shall be paid by the Contractor, unless otherwise provided in the Contract Documents.

H. **Responsibility.** Contractor’s quality control testing and inspections shall be the sole responsibility of the Contractor and shall be paid solely by the Contractor.

4.11 **Trade Names and Substitutions.**

A. **Substitutions.** Substitute or alternate items to Contract Document references to equipment, materials or patented processes by manufacturer, trade name, make or catalog number may be permitted, unless indicated that no substitutions are permitted, and if permitted are subject to the following:

1. The substitution shall be submitted by Contractor in writing to the Town, including sufficient detail to properly analyze the request.

2. The Contractor and the Project Designer shall certify that the substitution will perform the functions and achieve the results called for by the general design, be similar and of equal substance, and be suited to the same use as that specified.

3. The submittal shall outline any required changes in the Contract Documents to adapt the design to the proposed substitution.

4. The submittal shall contain an itemized estimate of all costs and credits that will result directly and indirectly from the acceptance of such substitution, including cost of design, license fees, royalties, and testing. Also, the submittal shall include any request for adjustment in the Contract Time created by the substitution.

B. **Samples; Additional Information.** The Contractor, if requested by the Town, shall submit samples or any additional information that may be necessary to evaluate the acceptability of the substitution.

C. **Town Determination.** The Town will make the final decision and will notify the Contractor in writing as to whether the substitution has been accepted or rejected.

D. **Presumed Rejection.** If the Town does not respond in a timely manner, the Contractor shall continue to perform the Work in accordance with the Contract Documents and the substitution will be considered rejected.
4.12 Project Record Documents.

A. Redline Prints. During the construction period, the Contractor shall maintain at the Site a set of redline, blueline or blackline prints of the Construction Documents and Shop Drawings for Project Record Document purposes. The Contractor will certify that these documents are up to date when it submits its monthly pay application. The Contractor shall also:

1. Mark these drawings to indicate the actual installation where the installation varies appreciably from the original Construction Documents and give particular attention to information regarding concealed elements that would be difficult to identify or measure and record later. Items required to be marked include, but are not limited to:

   • Dimensional changes to the drawings.
   • Revisions to details shown on drawings.
   • Depths of foundations below first floor.
   • Locations and depths of underground utilities.
   • Revisions to routing of piping and conduits.
   • Revisions to electrical circuitry.
   • Actual equipment locations.
   • Duct size and routing.
   • Locations of concealed internal utilities.
   • Changes made by Change Order or Change Directive.
   • Details not on original Contract Documents.
   • Similar deviations, variations and modifications.

2. Mark completely and accurately Project Record Documents or Shop Drawings, whichever is the most capable of indicating the actual physical condition. Where Shop Drawings are marked, show cross-reference on the Construction Documents.

3. Mark Project Record Document sets with red erasable colored pencil.
4. Note Change Order or Change Directive numbers, as required to identify the source of the change to the Construction Documents.

5. As a condition of Substantial Completion, submit Project Record Documents and Shop Drawings to the Town Representative for review and comment.

B. Corrections. Upon receipt of the reviewed Project Record Documents from the Town, the Contractor shall correct any deficiencies and/or omissions to the drawings and prepare the following for submission to the Town within 14 Days:

1. A complete set of electronic Project Record Documents prepared in AutoCAD format compatible with Town CADD technology. The Contractor shall cause the Project Designers to revise and update the electronic drawing files. Each drawing shall be clearly marked with “As-Built Document.”

2. The original copy of the Project Record Documents (including all redline mark-ups).

4.13 Project Safety. Contractor recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting, (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site, and (iii) all other property at the Site or adjacent thereto.

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

B. Safety Representative. Contractor shall, prior to commencing construction, designate a safety representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Contractor’s safety representative shall be an individual stationed at the Site who may have other responsibilities on the Project in addition to safety.

C. Daily Inspections. The safety representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Contractor’s personnel, Subcontractors and others as applicable. Contractor shall provide the Town copies of daily inspection reports and weekly safety meeting minutes, with the monthly payment applications.

D. Legal Requirements. Contractor and Subcontractors shall comply with Applicable Law relating to safety, as well as any Town-specific safety requirements set forth in the Contract Documents, provided that such Town-specific requirements do not violate Applicable Law. If Contractor believes a Town–specific requirement violates Applicable Law, the Contractor shall notify the Town of such violation within 24 hours of discovery.

E. Reporting. Contractor will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Town’s Representative and, to
the extent mandated by Applicable Law, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

F. Subcontractor Responsibility. Contractor’s responsibility for safety under this Section is not intended in any way to relieve Subcontractors of their own contractual and legal obligations and responsibility for (1) complying with Applicable Law, including those related to health and safety matters, and (2) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injury, losses, damages or accidents resulting from their performance of the Work.

4.14 Substantial Completion. When the Contractor considers that the Work has reached Substantial Completion, it shall submit a request to the Town’s Project Manager for a certificate of Substantial Completion. Substantial Completion must occur not later than the date set forth in the applicable GMP Amendment, subject to modification by changes in the Contract Time according to Article 6 below. A prerequisite for Substantial Completion, over and above the extent of construction completion required, is receipt by the Town of acceptable documentation that Contractor has successfully tested and demonstrated all systems for their intended uses. The Town shall determine when the Project and the Contractor’s Work is substantially complete. The Substantial Completion date shall be confirmed by a Certificate of Substantial Completion signed by the Town and Contractor. The Certificate of Substantial Completion shall state the respective responsibilities of the Town and the Contractor for security, maintenance and damage to the work and insurance. The Certificate of Substantial Completion shall also include the Punch List as created by the Contractor and modified by the Project Designers in consultation with the Town and establish the time for completion and correction of all Punch List items. The Contractor shall proceed promptly to complete and correct Punch List items. Failure to include an item on the Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. If the Town and the Contractor cannot agree as to the appropriate Substantial Completion date, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in Article 13 below. Notwithstanding such disagreement, the Contractor shall diligently proceed with completion of the Punch List items. Warranties required by the Contract Documents shall commence on the Substantial Completion date or designated portion thereof unless otherwise provided in the Contract Documents.

4.15 Final Completion. The Town shall determine when the Project and the Contractor’s Work has reached Final Completion. Final Completion must occur not later than 60 Days after the Substantial Completion date, subject to modification by changes in the Contract Time in Article 6 below. Final Completion shall be achieved only upon the Town’s written acceptance of (A) the construction, (B) all testing, (C) demonstration by the Contractor that the Work functions as required by the Contract Documents and meets all Contract Document requirements, (D) resolution of all outstanding system deficiencies and Punch List items, if any, (E) delivery of all as-built documentation, drawings, completed Project Record Documents (with revisions made after Substantial Completion), annotated submittals and design document deliverables, (F) submittal, acceptance, and delivery of the 100% complete O&M manuals, (G) delivery of warranties, inspection certificates, bonds and all other required documents, (H) all pre-requisites for final payment and (I) submittal of Contractor’s request for final payment and acceptance enclosing all required documentation. Upon Final Completion the Town shall issue a
Certificate of Final Completion to the Contractor on behalf of the Town. Following receipt of payment from the Town, the Contractor shall make all payments due to the Subcontractors.

4.16 Correction of Defective Work.

A. **During the Work.** During the Work, Contractor shall take meaningful steps to commence correction of such nonconforming Work as notified by the Town. This includes the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work.

B. **During Warranty Period.** Contractor agrees to correct any Work that is found to not be in conformance with the Contract Documents within the warranty period described in Subsection 5.6(A) below, or within such longer period to the extent required by the Contract Documents or as may be allowed by law. A progress payment, or partial or entire use or occupancy of the Project by the Town, shall not constitute acceptance of Work not in accordance with the Contract Documents.

C. **Commencement by Contractor.** Contractor shall take meaningful steps to commence correction of nonconforming Work subject to Subsections 4.16(A) and (B) above within seven Days of receipt of written notice from the Town. This includes correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Contractor fails to commence the necessary steps within such seven-Day period, the Town, in addition to any other remedies provided under the Contract Documents or allowed by law, may provide Contractor with written notice that the Town will commence correction of such nonconforming Work with its own forces. If the Town corrects such nonconforming Work with its own forces, the GMP will be adjusted to deduct the cost to the Town. If the Town performs corrective Work after final payment, Contractor shall be responsible for all reasonable costs incurred by the Town in performing such correction.

D. **Emergencies.** In the event nonconforming Work creates an emergency requiring an immediate response, the Contractor will respond and initiate corrections within 24 hours.

E. **No Effect on Limitations Period.** The two-year period referenced in Subsection 5.6(A) below applies only to Contractor’s obligation to correct nonconforming Work as provided in this Section and is not intended to constitute a period of limitations for any other rights or remedies the Town may have regarding Contractor’s obligations under the Contract Documents or as may be allowed by law.

4.17 Additional Services. Any Additional Services must be authorized in advance by the Town in writing; the Contractor shall furnish or obtain from others such authorized services. The Contractor shall be paid for these Additional Services by the Town as herein provided to the extent they exceed reasonably inferable obligations of the Contractor under this Agreement. Potential Additional Services include:

A. **Planning.** Providing additional planning surveys or alternative site evaluations other than as required or reasonably inferred in this Article 4.
B. Future/Outside of Project Design. Providing design services relative to future facilities, systems and equipment that are not intended to be constructed as part of the Project, other than general planning and master planning for future work as indicated by the Town’s Project program. Providing design and engineering of any work outside the Site if said work is not expressly identified and included in the Scope.

C. Major Document Revisions/Additional Documents. Making major revisions in the construction documents, or other documents when such revisions are inconsistent with written approvals or instructions previously given by the Town or are due to causes beyond the control and without the fault and negligence or partial fault or negligence of the Contractor or its consultants or agents. Preparing additional documents for alternate, separate, or sequential bids or providing services in connection with bidding, negotiation, or construction prior to the completion of the construction phase, other than as required or reasonably inferred in this Article 4. Making revisions to Construction Documents after the Town has approved them when revisions are due to causes beyond the control and not the fault or partial fault of the Contractor.

D. Advanced Soils Analysis. Providing additional soils sampling, classification, and analysis other than as required or reasonably inferred in the foregoing sections of Article 4. Contractor is entitled to rely upon the soils analysis and recommendations as provided by a geotechnical consultant; however, Contractor is responsible for interpretation of such data for the purpose of establishing the means and methods of construction and such interpretation shall not be considered Additional Services during the design phase or the construction phase.

E. Expert Testimony. Preparing to serve or serving as an expert witness for the Town in connection with any public hearing, arbitration proceeding, or legal proceeding wherein the Contractor or Subcontractor of the Contractor is not a party or allegedly at fault; provided, however, preparing to serve or serving as a fact witness for the Town or rendering testimony necessary to secure governmental approval for the Project shall not constitute an additional service.

F. Survey. Providing surveying services such as platting, mapping, subdivision agreements, or recording subdivision plats other than as required or reasonably inferred in this Article 4.

G. Additional Travel. Providing Additional Services and costs necessitated by out-of-town travel required of and approved in writing by the Town other than visits to the Project and other than for travel required to accomplish the Work.

H. Unrelated Services. Providing any other services not otherwise included in this Agreement, not reasonably inferred by this Agreement or not customarily furnished in accordance with generally accepted contractual practices consistent with the term of this Agreement.

I. Replacement Work. Providing consultation concerning replacement of Work damaged by fire or other causes and not due in whole or in part to Contractor’s action or
inaction during construction, or furnishing services required in connection with the replacement of such work.

J. **Special Studies.** Providing additional special surveys, environmental studies, and submissions required for approvals of governmental authorities or others having jurisdiction over the Project, other than as required or reasonably inferred in this Article 4.

K. **O&M Analysis.** Providing analyses of operating and maintenance costs other than as required for value analysis in Subsection 2.2(E) above, unless provided for in the Scope.

L. **Assisting with Town-Performed Work.** Designing, and providing other services supporting the procurement of materials to be obtained, or work, if any, to be performed by the Town, that are not a part of the Work.

# ARTICLE 5

**POST-CONSTRUCTION PHASE**

5.1 **Final Accounting and Close-out.** At the conclusion of the Project, the Contractor shall prepare final Project accounting and close-out reports.

5.2 **Occupancy Plans.** Intentionally left blank.

5.3 **Certificates.** The Contractor shall secure required certificates of inspection, testing or approval and deliver them to the Town.

5.4 **Manufacturer Manuals and Warranties.** The Contractor shall require the Subcontractors to provide manufacturers’ operations and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project. Prior to Final Completion of the Project, the Contractor shall compile such manuals, warranties and guarantees, bind same in an organized manner and deliver the bound materials to the Town; the Town shall not be required to issue the final payment to the Contractor pursuant to Section 9.6 below until after the compiled manuals, warranties and guarantees have been delivered to the Town. At the discretion of the Town, electronic records may be substituted for the bound materials required in this section.

5.5 **Inspection and Testing.** With the assistance of the Town’s maintenance personnel, the Contractor shall direct the inspection of utilities and operations of systems and equipment for readiness, and assist in their initial start-up and testing.

5.6 **Warranties.**

A. **Warranty for the Work.** Contractor or its assignee shall give to the Town a two-year warranty against deficiencies in material and workmanship for all Work on the Project or other such warranty as required by the Town Engineer, which warranty shall begin on the Substantial Completion date. Any material deficiencies in material or workmanship identified by Town staff during the two-year warranty period shall be brought to the attention of
the Contractor and its assignee that provided the warranty, which both shall promptly remedy or cause to be remedied such deficiencies to the reasonable satisfaction of the Town Engineer. Continuing material deficiencies in a particular portion of the Work shall be sufficient grounds for the Town to require (1) an extension of the warranty for an additional two-year period and (2) the proper repair of or the removal and reinstallation of, that portion of the Work that is subject to such continuing deficiencies. Regardless of whether the applicable warranty period has expired, the Contractor agrees to repair any damage to the Work caused by construction activities on the Site. Nothing contained herein shall prevent the Town or the Contractor from seeking recourse against any other third party for damage to the Work caused by such third party.

B. New Materials. The Contractor warrants that all materials and equipment furnished under construction phase(s) of this Agreement are (1) new unless otherwise specified and approved by the Town, (2) of good quality, (3) in conformance with the Contract Documents and (4) free from defective workmanship, defective materials and Hazardous Materials. Warranties shall commence on the date of Substantial Completion of the Work or of a designated portion if the warranted items are fully installed, operational and available for use and if not, at such time after the date of Substantial Completion as they are fully installed, operational and available for use.

C. Actions by Others. Contractor’s warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work by persons other than Contractor or anyone for whose acts Contractor may be responsible and/or liable.

D. No Limitation on Other Warranties. Nothing in this warranty is intended to limit any manufacturer’s warranty that provides Town with greater warranty rights than set forth in this Section or the Contract Documents.

E. No Limitation on Legal Remedies. Nothing in this warranty is intended to limit any other remedy at law that may be available to the Town.

**ARTICLE 6**
**CONTRACT TIME**

6.1 Progress and Completion. The Town and the Contractor agree the time limits stated in the Contract Documents, as the same may be amended and updated by the Parties, are of the essence of this Agreement.

6.2 Commencement of the Work. The Work, except for the (A) environmental investigation services set forth in Section 2.1 above, (B) review of Construction Documents and design remedies services set forth in Section 2.2 above, and (C) Pre-Construction Phase General Services set forth in Section 2.3 above, shall commence on the Notice to Proceed date of the applicable GMP Amendment, and shall proceed in general accordance with the Schedule for the Work set forth therein. Each GMP Amendment shall establish a separate Notice to Proceed date, Substantial Completion date and portion of the Contract Time applicable to that GMP. The Substantial Completion dates may be sequential or may run consecutively.
6.3 **Prosecution of the Work.** The Contractor shall prosecute the Work so that the portion of the Work completed at any point in time shall be not less than as required by the Master Schedule. If the delay is an Inexcusable Delay, as defined below, the Contractor shall prepare a recovery schedule for the Town’s review and approval, showing how the Contractor will compensate for the delays and achieve Substantial Completion by the date shown on the Master Schedule. If the Contractor is unable to demonstrate how it will overcome Inexcusable Delays, the Town may order the Contractor to employ such extraordinary measures as are necessary to bring the Work into conformity with the date of Substantial Completion set forth therein, the costs of which shall be included as part of the Cost of the Work. If the delay is an Excusable Delay, as defined below, the Town shall either (A) authorize an equitable extension in the Master Schedule to account for such delay, and equitably adjust the GMP on account of such delay or (B) request that the Contractor prepare a recovery schedule showing how (if possible) the Contractor can achieve Substantial Completion by the date shown on the Master Schedule, and equitably adjust the applicable GMP in accordance with the Change Order provisions of this Agreement related to any extraordinary activities required of the Contractor on account of such recovery schedule.

6.4 **Critical Path Activities.** To the extent the Contractor completes activities on the Critical Path earlier than scheduled, the savings in time on account thereof shall belong solely to the Contractor.

6.5 **Construction Activities.** At such time as the Construction Documents, or any portion thereof, are complete, the Contractor shall submit a revised Master Schedule to the Town for incorporation into the Contract Documents, which will expand the Master Schedule approved to date, but which will not, in and of itself, change the Substantial Completion date for the Project. This revised Master Schedule shall be based upon a CPM and shall show in complete detail starting and completion time of detail activities, the sequence of the Work and all significant activities.

6.6 **Extensions of Time.**

A. **Limited to Excusable Delay.** An extension in the scheduled Substantial Completion date will only be granted in the event of Excusable Delays affecting Work activities on the Critical Path. The Contractor shall be entitled to general condition costs and extra costs related to the Excusable Delay for idle labor, equipment inefficiency and lost productivity of the performance of the Work; however, the Contractor must submit evidence reasonably satisfactory to the Town substantiating such costs. Such adjustment to the contract sum and Substantial Completion date shall be issued in an amendment to this Agreement.

B. **Excusable Delays.** To the extent any of the following events results in an actual delay in the Work affecting activities on the Critical Path, such shall constitute an “Excusable Delay” (to the extent not set forth below, a delay will be considered an “Inexcusable Delay”):

1. Delays resulting from Force Majeure events. 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 refusals 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 accordance with Subsection 14.6, 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. Force Majeure shall not include: (a) late delivery of equipment or materials caused by congestion at a manufacturer’s plant or elsewhere, an oversold condition of the market, inefficiencies or similar occurrences, or (b) late performance by a Subcontractor unless the delay arises out of a Force Majeure occurrence in accordance with this Subsection 6.6(B). 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. The delayed Party shall cause such delay to cease as soon as practicable and shall notify the other Party in writing. The time of Substantial Completion or Final Completion shall be extended by written amendment 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.

2. Differing, unusual or concealed Site conditions that could not reasonably have been anticipated by the Contractor in preparing the Master Schedule, including, without limitation, archaeological finds and unusual soil conditions (including rock or other geological conditions), underground foundations, abandoned or not properly identified utility lines and water conditions.

3. Delays resulting from the existence or discovery of Hazardous Materials on the Site not brought to the Site by or on behalf of the Contractor.

4. Delays resulting from changes in Applicable Law occurring after the date of execution of this Agreement.

5. Delays occurring due to the acts or omissions of the Town and those within the control of the Town.

6. Delays occurring due to the acts or omissions of a utility, so long as Contractor has coordinated with the utility causing the delay and the delay occurs despite reasonable steps taken by Contractor to avoid the delay.

7. Delays resulting from weather conditions that make it unreasonable to perform the Work in accordance with the Master Schedule.

C. Process for Requesting Extension of Time. In order to obtain an extension of time due to an Excusable Delay, the Contractor must comply with the following requirements: The Contractor shall notify the Town of the Excusable Delay as soon as practicable, but in no event more than seven Days after the Contractor becomes aware of the occurrence of the
Excusable Delay. Such notice shall describe the Excusable Delay and shall state the approximate number of Days the Contractor expects to be delayed. After the cessation of the Excusable Delay, the Contractor shall notify the Town of the number of Days the Contractor believes that its activities were in fact delayed by the Excusable Delay. In the event that the delay arises as a result of a Change Order request by the Town, the request for an extension of time contained in the resulting Change Order proposal or amendment to this Agreement, as applicable, shall be deemed sufficient for purposes of this Subsection.

D. Town Determination. Within 10 Days after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the Parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the Parties as to the then-current status of Excusable Delays and Inexcusable Delays, the Town will provide the Contractor with written notice of Town’s determination of the number of Days of Excusable Delay and/or Inexcusable Delay within 10 Days after receipt by the Town of the Contractor’s written request for such determination. The Contractor shall not, however, deem an issuance by the Town of such a determination to be a concurrence with any matters set forth in the Contractor’s request. The Contractor may invoke the dispute resolution procedures set forth in Article 13 below with respect to such determination.

6.7 Concurrent Delays. To the extent the Contractor may be entitled to an extension of time due to an Excusable Delay, but the performance of the Work would have been suspended, delayed or interrupted by the fault or neglect of the Contractor or by an Inexcusable Delay, the Contractor shall not be entitled to any additional costs for the period of such concurrency.

6.8 Weather Delays. The Contractor shall include and clearly identify an appropriate number of Days of weather-related delays within (A) the aggregate Master Schedule for the Work and within the portions of the Master Schedule submitted with each GMP Proposal relating to any phase of the Project and (B) each GMP Amendment. If the Contractor experiences additional weather-related delays beyond the number of Days set forth in the Master Schedule and the GMP Amendment, the Contractor shall be entitled to commensurate extension of time and reimbursement of costs associated with such delay; provided such requests for extensions of time are submitted and approved according to the process set forth in Section 6.6 above. If the Contractor fails to include an appropriate number of Days of weather-related delays within the applicable GMP Proposal for any portion of the Project, the Contractor shall not be eligible for any extension of time or reimbursement of costs related to otherwise Excusable Delays relating to weather for the applicable GMP Proposal.

6.9 Liquidated Damages.

A. Established. The Contractor and the Town acknowledge that in the event that the Contractor fails to achieve Substantial Completion or Final Completion of the Project by the dates established therefore in the applicable GMP Amendment, as adjusted, the Town will incur substantial damages and the extent of such damages shall be incapable of accurate measurement. Nonetheless, the Parties acknowledge that on the date of this Agreement, the amount of liquidated damages set forth below represents a good faith estimate as to the actual
potential damages that the Town would incur as a result of late Substantial Completion or Final Completion of the Project. Such liquidated damages shall be the sole and exclusive remedy of the Town for late completion of the Project, and the Town hereby waives all other remedies available at law or in equity with respect to losses resulting from late completion. The amount of the liquidated damages calculated hereunder does not include any penalty.

B. Amount of Liquidated Damages.

1. If the Contractor fails to achieve Substantial Completion of for that portion of the Work applicable to a particular GMP Proposal on or before the Substantial Completion date set forth in the applicable GMP Proposal, as adjusted, for any reason other than Excusable Delays, the Contractor shall pay to the Town liquidated damages in the amount per Day as determined by the Maricopa Association of Governments specifications existing on the date this Agreement is approved by the Town Council (the “MAG Specifications”) for each Day Substantial Completion is delayed beyond the Substantial Completion date set forth in the applicable GMP Amendment.

2. If the Contractor fails to achieve Final Completion of for that portion of the Work applicable to a particular GMP Proposal on or before the Final Completion date, as adjusted, for any reason other than Excusable Delays, the Contractor shall pay to the Town liquidated damages in the amount per Day as determined by MAG Specifications for each Day Final Completion is delayed beyond the Final Completion date established according to the applicable GMP Amendment.

3. In no case may the amount of liquidated damages due under this Subsection 6.9(B) for any single Day of delay exceed the highest amount, as determined according to MAG Specifications, that would be charged for any single Inexcusable Delay existing on such Day.

4. Payment of liquidated damages is to be made contemporaneously with any required payment to the Contractor, and such payments may be offset against each other.

ARTICLE 7
CONTRACT PRICE

7.1 Pre-construction Phase Compensation.

A. Project Designers’ Services Included. The cost of services performed directly by the Project Designers are included in the Contractor’s compensation.

B. Amount. The Town shall pay the Contractor an amount not to exceed $103,320.00 for services performed during the Pre-construction Phase, as set forth in Article 2 above and as more particularly set forth in the Pre-Construction Cost Summary, attached hereto as Exhibit J and incorporated herein by reference, including all cost items, allowances and reimbursable expenses.
C. **Equitable Adjustment.** Compensation of Pre-construction Services shall be equitably adjusted if such services extend beyond November 1, 2019, for reasons beyond the reasonable control and not the fault or partial fault of the Contractor or as provided in Section 8.2 below. For changes in Pre-construction Services, compensation shall be adjusted as mutually agreed upon by the Town and the Contractor at the time of such extended services.

D. **Payments.** Payments for Pre-construction Services shall be due and payable within 30 Days following approval of the Contractor’s monthly invoice by the Town. Payments due the Contractor that are unpaid for more than 30 Days from the due date of the invoice shall bear interest at the statutory rate.

7.2 **Construction Phase Compensation.** The portion of Contract Price applicable to the Construction Services shall be the aggregate of all approved GMP Amendments.

A. **GMP.** The Guaranteed Maximum Price is composed of the Direct Construction Costs and the Construction Fee. The Contractor is at risk to cover any additional Project costs. To the extent the combined total of the Direct Construction Costs and the Construction Fee at the conclusion of the Project is less than the GMP, the difference shall be retained by the Town.

B. **GMP Adjustment.** If a GMP requires an adjustment due to changes in the Work, the cost of such changes is determined subject to Article 8. The markups permitted on such changes shall be no greater than the markups delineated in the approved GMP.

C. **Town’s Contingency.** Town’s Contingency funds are to be used at the discretion of the Town to cover any increases in Project costs that result from Town-directed changes or unforeseen Site conditions. Town’s Contingency will be approved in conjunction with the applicable GMP Amendment but will not be included in the full Contract Price. Markups for Construction Fee and taxes will be applied by the Contractor at the time that Town’s Contingency is used. The amount of contingency for each GMP amendment will be negotiated separately.

D. **Payment Data.** The Contractor shall submit to the Town, upon request, all payrolls, reports, estimates, records and any other data concerning the Work performed or to be performed or concerning materials supplied or to be supplied, as well as Subcontractor or Consultant payment applications or invoices and such Subcontractor’s or Consultant progress payment checks. The requirements of this Section shall be included in all contracts between the Contractor and its Subcontractors and Consultants. The Town may exercise its rights under this Section as often as reasonably necessary in the Town’s sole judgment to ensure the Town has a complete and accurate understanding of all Project costs.

7.3 **Adjustment in the Contract Price.** Adjustment to the respective components of the Contract Price shall be made as follows:

A. **Changes in the Work.** For changes in the Work as provided in Article 8 below, the applicable Contract Price shall be adjusted as mutually agreed by the Parties, in writing, prior to commencement of any work pursuant to such changes.
B. Delays in the Work. For delays in the Work not caused, in whole or in part, by the Contractor, Subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, there will be an equitable adjustment in the Contract Price to compensate the Contractor for increased expenses due to unforeseeable circumstances, according to the requirements of Article 6 above.

C. Replacement Work. If the Contractor is placed in charge of managing the replacement of an insured or uninsured loss not caused by or the fault of the Contractor or other parties identified in Subsection 7.3(B) above, the Contractor shall be paid an additional fee in the same proportion that the applicable portion of the Contract Price bears to the estimated applicable Cost of the Work, or as otherwise agreed to by the Parties.

ARTICLE 8
CHANGES IN THE WORK

8.1 Prescribed Methods for Changes. Changes in Contractor’s Services shall only be made by a written Change Directive or Change Order to this Agreement signed by the Town and the Contractor. Changes involving (A) a change in the lump sum for the Pre-Construction Services set forth in Section 7.1 above or (B) a change in any GMP, shall be considered a Change Order and must be approved as an amendment to this Agreement and executed by the Town and the Contractor. The Contractor shall not (A) perform any additional Services or (B) eliminate any duties included in the Services until a written amendment addressing the Change Order has been properly approved and executed by both Parties. The Contractor shall proceed to perform the Services required by the Change Order only after receiving written notice from the Town directing the Contractor to proceed.

8.2 Change Control System. The Contractor shall establish and implement a change control system. All proposed changes shall first be described in detail in writing by the requesting party. The requesting party shall submit detailed information to the Contractor for evaluation concerning the costs and time adjustments, if any, necessary to perform the proposed changed work. The Contractor shall discuss the proposed change with the appropriate Subcontractor and endeavor to determine the Subcontractor’s basis for the cost to perform the work and the effect, if any, on the applicable GMP. The Contractor shall make a recommendation to the Town pursuant to this Article 8 prior to the Town’s acceptance of all change requests.

8.3 Change Directives; Change Orders; GMP Adjustments. Changes in the Work that are within the general scope of this Agreement may be accomplished by Change Directive without invalidating this Agreement; provided, however, that any change in the Work that will result in an increase to a GMP or extension of the Substantial Completion date shall be pursuant to a Change Order approved by a written amendment to this Agreement clearly delineating the amounts attributable to compensation for the General Conditions Costs, the Construction Fee and other Cost of the Work.

8.4 Determination of Cost. An increase or decrease in a GMP resulting from a change in the Work shall be determined by one or more of the following methods:

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A. Unit prices set forth in this Agreement or as subsequently agreed.

B. Mutually accepted, itemized lump sum.

C. Costs determined as defined in Article 3 above.

D. If an increase or decrease cannot be agreed to as set forth in Subsections 8.4(A) and (B) and the Town issues a written order for the Contractor to proceed with the change, the cost of the change in the Work shall be determined by the reasonable expense or savings of the performance of the Work resulting from the change.

8.5 No Obligation to Perform. The Contractor shall not be obligated to perform changed Work until a Change Directive or a Change Order/amendment to this Agreement, as applicable, has been executed by the Town and the Contractor, except as provided in Subsection 8.4(D) above.

8.6 Adjustment of Unit Prices. If a proposed change alters original quantities to a degree that application of previously agreed to unit prices would be inequitable to either the Town or the Contractor, the unit prices shall be equitably adjusted and, if the result is an increase to a GMP, an amendment to this Agreement shall be executed.

8.7 Unknown Conditions. If, in the performance of the Work, the Contractor or its Subcontractor finds latent, concealed or subsurface physical conditions that (A) differ from the conditions the Contractor or its Subcontractor should have reasonably anticipated, (B) differ substantially from available soils reports or (C) differ substantially and materially from those normally encountered and generally recognized as inherent in the kind of work provided for in this Agreement at this location (occurrence of shifting and expansive soils, including clay soils and sandstone expressly noted as commonly occurring in the Project area), then the applicable GMP compensation and/or the Substantial Completion date may be equitably adjusted only if the Contractor notifies the Town within seven Days after the conditions are first observed in accordance with Article 6 above.

8.8 Emergencies. In any emergency affecting the safety of persons and/or property, the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in a GMP, compensation for Pre-construction Services, the Contract Price and/or extension of the Substantial Completion date on account of emergency work shall be determined as provided in this Agreement.

ARTICLE 9
PAYMENT

9.1 Progress Payments.

A. Submittal Process. On or before the 15th day of each month after the construction phase has commenced, the Contractor shall submit to the Town an “Application for Payment” consisting of the Cost of the Work performed up to the end of the prior month,
including the cost of material stored on the Site or at other locations approved by the Town, along with a proportionate share of the Construction Fee. For the purpose of audit, prior to submission of the next Application for Payment, the Contractor shall make available at the request of the Town a statement accounting for the disbursement of funds received under the previous Application. The form and extent of such statement shall be as agreed upon between the Town and Contractor.

B. Town’s Payment. Within seven Days after approval of each monthly Application for Payment, the Town shall pay directly to the Contractor the appropriate amount for which Application for Payment is made, less amounts (1) previously paid by the Town, (2) sufficient to pay expenses the Town reasonably expects to incur in correcting deficiencies that are set forth in writing and provided to the Contractor and (3) any retainage as set forth in Section 9.2 below.

C. No Liens. The Contractor warrants and guarantees that the title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the Town upon receipt of such payment by the Contractor free and clear of all liens, claims, security interests or encumbrances.

D. Non-Conforming Work. The Town’s progress payment, occupancy or use of the Project, whether in whole or in part, shall not be deemed as acceptance of any Work not conforming to the requirements of this Agreement or the Contract Documents.

E. Unfinished Items. Upon Substantial Completion of the Work, the Town shall pay the Contractor the unpaid balance of the Cost of the Work, General Conditions Costs and the Construction Fee, less a sum equal to the Contractor’s estimated cost of completing any unfinished items as agreed to between the Town and the Contractor as to extent and time for completion. The Town thereafter shall pay the Contractor monthly the amount retained for unfinished items as each item is completed.

9.2 Retainage.

A. Exemptions to Retainage Requirement. No retainage shall be withheld with respect to gross receipts tax and premiums for bonds and insurance.

B. Amount Retained. With respect to the Work, the Town shall retain 10% of the amount of each estimate until Final Completion and acceptance of all material, equipment and work covered by the Contract Documents.

1. Any securities submitted by Contractor in lieu of retainage as may be allowed by law, shall be deposited in an escrow account by the Town. The Town shall be listed as payee or multiple payee with Contractor on all such securities.

2. When the Work is 50% completed, one-half of the amount retained including any securities substituted pursuant to Subsection 9.2(B)(1) shall be paid to the Contractor upon the Contractor’s request, provided the Contractor is making satisfactory progress on the Work and there is no specific cause or claim requiring a greater amount
to be retained. After the construction Work is 50% completed, no more than 5% of the amount of any subsequent progress payments made under the Contract Documents may be retained, provided the Contractor is making satisfactory progress on the Project. If, at any time, the Town determines satisfactory progress is not being made, 10% retention shall be reinstated for all progress payments made under the Contract Documents after the determination.

9.3 **Payment for On-site and Off-site Stored Materials.** Payment shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work. Payment may similarly be made for materials and equipment suitably stored off the Site, conditioned upon the Contractor furnishing evidence to the Owner that (A) title to the materials and equipment will pass to the Town upon payment therefore, (B) the materials and equipment are adequately insured and (C) such other matters as the Town may reasonably request in order to protect its interests.

9.4 **Title to Construction Work.** The Contractor warrants that title to all Work covered by an Application for Payment shall pass to the Town no later than the time of payment. The Contractor further warrants that, upon submittal of an Application for Payment, all Work for which Applications for Payment have been previously issued and payments received from the Town shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

9.5 **Offset.**

A. **Offset for Damages.** In addition to all other remedies at law or equity, the Town may offset against any money due to the Contractor any amounts Contractor owes to the Town for damages resulting from breach or deficiencies in performance or breach of any obligation under this Agreement.

B. **Offset for Delinquent Fees or Taxes.** The Town may offset against any money due to the Contractor any amounts Contractor owes to the Town for delinquent fees, transaction privilege taxes and property taxes, including any interest or penalties.

9.6 **Final Payment.**

A. **Fully Completed Work.** Final payment, consisting of the unpaid balance of (1) the Cost of the Work, (2) compensation for Pre-Construction Services and (3) the Construction Fee, shall be due and payable when the Work is fully completed and accepted by the Town. Before issuance of final payment, the Town may request satisfactory evidence that all payrolls, materials bills and other indebtedness connected with the Work have been paid or otherwise satisfied.

B. **Waiver of Claims.** In making final payment, the Town waives all claims against the Contractor except for:

1. Outstanding liens.
2. Improper workmanship or defective materials.

3. Work not in conformance with the Contract Documents or work not completed.

4. Terms of any special warranties required by the Contract Documents.

5. Delivery to Town of all warranties, operation and maintenance manuals, record drawings and other documents as required by the Contract Documents.

6. Right to audit Contractor records for a period of three years.

7. Claims previously made in writing that remain unsettled.

C. Acceptance as Waiver. Acceptance of final payment by the Contractor shall constitute a waiver of affirmative claims by the Contractor against the Town, its employees, elected officials and agents, except those previously made in writing and identified as unsettled at the time of final payment.

9.7 Payments to Subcontractors.

A. The Contractor shall pay its Subcontractors or suppliers within seven Days of receipt of each progress payment from the Town and as required by Arizona law. The Contractor shall pay for the amount of Work performed or materials supplied by each Subcontractor or Supplier as accepted and approved by the Town with each progress payment. In addition, any reduction of retention by the Town to the Contractor shall result in a corresponding reduction to Subcontractors or suppliers who have performed satisfactory work. The Contractor shall pay Subcontractors or suppliers the reduced retention within 14 Days of the payment of the reduction of the retention to the Contractor. No Contract between the Contractor and its Subcontractors and suppliers may materially alter the rights of any Subcontractor or supplier to receive prompt payment and retention reduction as provided herein or by Arizona law.

B. Failure to Timely Pay. The Contractor agrees that if it fails to make payments in accordance with these provisions, the Town may take any one or more of the following actions:

1. Hold the Contractor in default under this Agreement.

2. Withhold future payments, including retention, until proper payment has been made to Subcontractors or suppliers in accordance with these provisions.
3. Reject all future offers to perform work for the Town from the Contractor for a period not to exceed one year from Substantial Completion date of this Project.

4. Terminate this Agreement.

5. Make a claim against the bonds required pursuant to Article 11.

C. No Waiver. Should the Town fail or delay in exercising or enforcing any right, power, privilege, or remedy under this Section, such failure or delay shall not be deemed a waiver, release, or modification of the requirements of this Section or of any of the terms or provisions thereof.

D. Inclusion in Subcontracts. The Contractor shall include these prompt payment provisions in every subcontract, including procurement of materials and leases of equipment for this Agreement.

9.8 Record Keeping and Finance Controls.

A. Retention Requirement. Records of the Contractor’s direct personnel payroll, reimbursable expenses pertaining to this Project and records of accounts between the Town and the Contractor shall be kept on a generally recognized accounting basis and shall be available for three years after Final Completion of the Project.

B. Audit Rights. The Town, its authorized representative, and/or the appropriate federal agency, reserve the right to audit the Contractor’s records to verify the accuracy and appropriateness of all pricing data, including data used to negotiate Contract Documents and any Change Orders.

C. Pricing Data Inaccuracies. The Town reserves the right to decrease Contract Price and/or payments made on this Agreement, in an amount determined by the Town in its sole discretion, if, upon audit of the Contractor’s records, the audit discloses the Contractor has provided false, misleading, or inaccurate cost and pricing data.

D. Inclusion in Subcontracts. The Contractor shall include a similar provision in all of its agreements with Subconsultants and Subcontractors providing services under the Contract Documents to ensure the Town, its authorized representative, and/or the appropriate federal agency, has access to the Subconsultants’ and Subcontractors’ records to verify the accuracy of cost and pricing data.

E. Town Remedies. The Town reserves the right to decrease Contract Price and/or payments made under this Agreement, in an amount determined by the Town in its sole discretion, if the above provision is not included in Subconsultant’s and Subcontractor’s contracts, and one or more Subconsultants and/or Subcontractors do not allow the Town to audit their records to verify the accuracy and appropriateness of pricing data.
ARTICLE 10
INSURANCE AND INDEMNITY

10.1 Insurance Representations and Requirements.

A. General.

1. Insurer Qualifications. Without limiting any obligations or liabilities of the Contractor, the Contractor shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies authorized to do business in the State of Arizona pursuant to ARIZ. REV. STAT. § 20-206, as amended, with an AM Best, Inc. rating of A- or above with policies and forms satisfactory to the Town. Failure to maintain insurance as specified herein may result in termination of this Agreement at the Town’s option.

2. No Representation of Coverage Adequacy. By requiring insurance herein, the Town does not represent that coverage and limits will be adequate to protect the Contractor. The Town reserves the right to review any and all of the insurance policies and/or endorsements cited in this Agreement but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

3. Additional Insured. All insurance coverage, except Workers’ Compensation insurance and Professional Liability insurance, if applicable, shall name, to the fullest extent permitted by law for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees as Additional Named Insured as specified under the respective coverage sections of this Agreement.

4. Coverage Term. All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of this Agreement are satisfactorily performed, completed and formally accepted by the Town, unless specified otherwise in this Agreement.

5. Primary Insurance. Contractor’s insurance shall be primary insurance with respect to performance of this Agreement and in the protection of the Town as an Additional Insured.

6. Claims Made. In the event any insurance policies required by this Agreement are written on a “claims made” basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three years past completion and acceptance of the services. Such continuing coverage shall be evidenced by submission of annual Certificates of Insurance and necessary endorsements citing applicable coverage is in force and contains the provisions as required herein for the three-year period.
7. **Waiver.** All policies, excluding Professional Liability but including Workers’ Compensation insurance, shall contain a waiver of rights of recovery (subrogation) against the Town, its agents, representatives, officials, officers and employees for any claims arising out of the work or services of Contractor. Contractor shall arrange to have such subrogation waivers incorporated into each policy via formal written endorsement thereto.

8. **Policy Deductibles and/or Self-Insured Retentions.** The policies set forth in these requirements may provide coverage that contains deductibles or self-insured retention amounts. Such deductibles or self-insured retention shall not be applicable with respect to the policy limits provided to the Town. Contractor shall be solely responsible for any such deductible or self-insured retention amount.

9. **Use of Subcontractors.** If any work under this Agreement is subcontracted in any way, Contractor shall execute written agreements with its subcontractors containing the indemnification provisions set forth in this Article and insurance requirements set forth herein protecting the Town and Contractor. Contractor shall be responsible for executing any agreements with its subcontractors and obtaining certificates of insurance verifying the insurance requirements.

10. **Evidence of Insurance.** Prior to commencing any work or services under this Agreement, Contractor will provide the Town with suitable evidence of insurance in the form of certificates of insurance and a copy of the declaration page(s) of the insurance policies as required by this Agreement, issued by Contractor’s insurance insurer(s) as evidence that policies are placed with acceptable insurers as specified herein and provide the required coverages, conditions and limits of coverage specified in this Agreement and that such coverage and provisions are in full force and effect. Confidential information such as the policy premium may be redacted from the declaration page(s) of each insurance policy, provided that such redactions do not alter any of the information required by this Agreement. The Town shall reasonably rely upon the certificates of insurance and declaration page(s) of the insurance policies as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this Agreement. If any of the policies required by this Agreement expire during the life of this Agreement, it shall be Contractor’s responsibility to forward renewal certificates and declaration page(s) to the Town 30 Days prior to the expiration date. All certificates of insurance and declarations required by this Agreement shall be identified by referencing this Agreement. A $25.00 administrative fee shall be assessed for all certificates or declarations received without a reference to this Agreement. Additionally, certificates of insurance and declaration page(s) of the insurance policies submitted without referencing this Agreement will be subject to rejection and may be returned or discarded. Certificates of insurance and declaration page(s) shall specifically include the following provisions:

   a. The Town, its agents, representatives, officers, directors, officials and employees are Additional Insureds as follows:

ii. Auto Liability – Under ISO Form CA 20 48 or equivalent.

iii. Excess Liability – Follow Form to underlying insurance.

b. Contractor’s insurance shall be primary insurance with respect to performance of this Agreement.

c. All policies, except for Professional Liability, including Workers’ Compensation, waive rights of recovery (subrogation) against Town, its agents, representatives, officers, officials and employees for any claims arising out of work or services performed by Contractor under this Agreement.

d. ACORD certificate of insurance form 25 (2014/01) is preferred. If ACORD certificate of insurance form 25 (2001/08) is used, the phrases in the cancellation provision “endeavor to” and “but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives” shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

11. Endorsements. Contractor shall provide the Town with the necessary endorsements to ensure Town is provided the insurance coverage set forth in this Article 10.

B. Required Insurance Coverage.

1. Commercial General Liability. Contractor shall maintain “occurrence” form Commercial General Liability insurance with an unimpaired limit of not less than $1,000,000 for each occurrence, $2,000,000 Products and Completed Operations Annual Aggregate and a $2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as ISO policy form CG 00 010 93 or equivalent thereof, including but not limited to, separation of insured’s clause. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, officials and employees shall be cited as an Additional Insured under ISO, Commercial General Liability Additional Insured Endorsement form CG 20 10 03 97, or equivalent, which shall read “Who is an Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of “your work” for that insured by or for you.” If any Excess insurance is utilized to fulfill the requirements of this Subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.
2. **Vehicle Liability.** Contractor shall maintain Business Automobile Liability insurance with a limit of $1,000,000 each occurrence on Contractor’s owned, hired and non-owned vehicles assigned to or used in the performance of the Contractor’s work or services under this Agreement. Coverage will be at least as broad as ISO coverage code “1” “any auto” policy form CA 00 01 12 93 or equivalent thereof. To the fullest extent allowed by law, for claims arising out of the performance of this Agreement, the Town, its agents, representatives, officers, directors, officials and employees shall be cited as an Additional Insured under ISO Business Auto policy Designated Insured Endorsement form CA 20 48 or equivalent. If any Excess insurance is utilized to fulfill the requirements of this Subsection, such Excess insurance shall be “follow form” equal or broader in coverage scope than underlying insurance.

3. **Professional Liability.** If this Agreement is the subject of any professional services or work, or if the Contractor engages in any professional services or work in any way related to performing the work under this Agreement, the Contractor shall maintain Professional Liability insurance covering negligent errors and omissions arising out of the Services performed by the Contractor, or anyone employed by the Contractor, or anyone for whose negligent acts, mistakes, errors and omissions the Contractor is legally liable, with an unimpaired liability insurance limit of $2,000,000 each claim and $2,000,000 annual aggregate.

4. **Workers’ Compensation Insurance.** Contractor shall maintain Workers’ Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction over Contractor’s employees engaged in the performance of work or services under this Agreement and shall also maintain Employers Liability Insurance of not less than $500,000 for each accident, $500,000 disease for each employee and $1,000,000 disease policy limit.

5. **Builder’s Risk Insurance.** Unless expressly waived by the Town in a written amendment to this Agreement, the Contractor shall be responsible for purchasing and maintaining insurance to protect the Project from perils of physical loss. The insurance shall provide for the full cost of replacement for the entire Project at the time of any loss. The insurance shall include as named insureds the Town, the Contractor, and the Contractor’s Subcontractors and shall insure against loss from the perils of fire and all-risk coverage for physical loss or damage due to theft, vandalism, collapse, malicious mischief, transit, flood, earthquake, testing, resulting loss arising from defective design, negligent workmanship or defective material. The Contractor shall increase the coverage limits as necessary to reflect changes in the estimated replacement cost.

C. **Cancellation and Expiration Notice.** Insurance required herein shall not expire, be canceled, or be materially changed without 30 Days’ prior written notice to the Town.

10.2 **Indemnity.** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Town and each council member, officer, employee or agent thereof (the Town and any such person being herein called an “Indemnified Party”), for, from and against
any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys’ fees, court costs and the costs of appellate proceedings) to which any such Indemnified Party may become subject, under any theory of liability whatsoever (“Claims”) to the extent that such Claims (or actions in respect thereof) are caused by the negligent acts, recklessness or intentional misconduct of the Contractor, its officers, employees, agents, or any tier of subcontractor in connection with Contractor’s work or services in the performance of this Agreement. The amount and type of insurance coverage requirements set forth below will in no way be construed as limiting the scope of the indemnity in this Section.

ARTICLE 11
BONDS

11.1 Performance Bond. After the Town and the Contractor have agreed to a GMP but prior to commencing the Construction Services attributable to such GMP, the Contractor shall be required to furnish the Town with an irrevocable security binding the Contractor to provide faithful performance of the Agreement in the amount of 100% of the percentage of the GMP attributable to the Construction Services, payable to the Town and shall not include the cost of any design services, preconstruction services, finance services, maintenance services, operations services or any other related services. Performance security shall be in the form of a performance bond, certified check or cashier’s check. If the Contractor fails to execute the security document as required, the Contractor may be found in material default of this Agreement, permitting the Town to terminate this Agreement for cause as set forth in Section 12 below. In case of default the Town reserves all rights. All performance bonds shall be executed on the form attached hereto as Exhibit K, duly executed by the Contractor as Principal and having as Surety thereon a Surety company approved by the Town and holding a Certificate of Authority issued by the Arizona Department of Insurance to transact surety business in the State of Arizona. Individual sureties are unacceptable. All Insurers and Sureties shall have at the time of submission of the proposal an A.M. Best’s Key Rating Guide of “A-” or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

11.2 Payment Bond. After the Town and the Contractor have agreed to a GMP but prior to commencing the Construction Services attributable to such GMP, the Contractor shall be required to furnish the Town with an irrevocable security for the protection of all claimants supplying labor or materials to the Contractor or any Subcontractor in the prosecution of the construction and not for the protection of persons providing any design services, preconstruction services, finance services, maintenance services, operations services or other related services related to the Agreement. Payment security shall be in the amount of 100% of the portion of the GMP attributable to the Construction Services and be payable to the Town. Payment security shall be in the form of a payment bond, certified check or cashier’s check. If the Contractor fails to execute the security document as required, the Contractor may be found in material default of this Agreement, permitting the Town to terminate this Agreement for cause as set forth in Section 12 below. All payment bonds shall be executed on the form attached hereto as Exhibit L, duly executed by the Contractor as Principal and having as Surety thereon a Surety company approved by the Town and holding a Certificate of Authority issued by the Arizona Department of Insurance to transact surety business in the State of Arizona. Individual sureties are unacceptable. All Insurers and Sureties shall have at the time of submission of the proposal an
A.M. Best’s Key Rating Guide of “A-” or better as currently listed in the most recent Best Key Guide, published by the A.M. Best Company.

ARTICLE 12
TERMINATION AND SUSPENSION

12.1 Termination by the Contractor.

A. Procedure. Upon 30 Days’ written notice to the Town of one of the reasons set forth below, and if the Town fails to cure or initiate reasonable action to cure within 30 Days of receipt of said notice, the Contractor may terminate this Agreement for any of the following:

1. If the Work has been stopped for a 60-Day period:
   a. Under court order or order of other governmental authorities having jurisdiction; or
   b. As a result of the declaration of a national emergency or other governmental act during which, through no act or fault of the Contractor, materials are not available.

2. If the Work is suspended by the Town for more than 60 Days.

3. If the Town materially delays the Contractor in the performance of the Work.

4. If the Town otherwise materially breaches this Agreement.

B. Payment to Contractor. Upon termination by the Contractor in accordance with Subsection 12.1(A) above, the Contractor shall be entitled to recover from the Town payment for all Work completed to the date of termination plus reasonable demobilization costs, subcontract and purchase order termination costs, reasonable overhead, extended general conditions and profit on the Work performed. The Town may subtract reasonable estimates of costs for deficient work from the payments noted above.

12.2 Termination by the Town for Cause.

A. Contractor Default. If the Contractor refuses or fails, except in cases for which extension of time is provided, to supply sufficient properly skilled staff or proper materials, or disregards laws, ordinances, rules, regulations, or orders of any public authority jurisdiction, or otherwise substantially violates or materially breaches any term or provision of this Agreement, and such nonperformance or violation continues without cure for 15 Days after the Contractor receives written notice of such nonperformance or violation from the Town, then the Town may, without prejudice to any right or remedy otherwise available to the Town, terminate this Agreement.
B. **Contractor Insolvency.** Upon the appointment of a receiver for the Contractor, or if the Contractor makes a general assignment for the benefit of creditors, the Town may terminate this Agreement, without prejudice to any right or remedy otherwise available to the Town, upon giving three Days’ written notice to the Contractor. If an order for relief is entered under the bankruptcy code with respect to the Contractor, the Town may terminate this Agreement by giving three Days’ written notice to the Contractor unless the Contractor or the trustee does all of the following:

1. Promptly cures all breaches within such three-Day period.
3. Compensates the Town for actual pecuniary loss resulting from such breach(es).
4. Assumes the obligations of the Contractor within the established time limits.

C. **Failure to Agree on a GMP.** If the Town and the Contractor fail, after good faith efforts, to agree upon a GMP, this Agreement may be terminated upon 15 Days’ notice from either Party to the other. In the event of a termination for failure to agree on a GMP, the Contractor’s sole and exclusive right and remedy shall be to be paid for all Work performed and to receive equitable adjustment for all Work performed through the date of termination plus reasonable demobilization costs, subcontract and purchase order termination costs, reasonable overhead and profit on the Work performed. The Contractor shall not be entitled to be paid any amount as profit for unperformed Work or Services or consideration for the termination under this Subsection.

12.3 **Termination by the Town for Convenience.** The Town may, upon 30 Days’ written notice to the Contractor, terminate this Agreement, in whole or in part, for the convenience of the Town, without prejudice to any right or remedy otherwise available to the Town. Upon receipt of such notice, the Contractor shall immediately discontinue all services affected unless such notice directs otherwise. In the event of a termination for convenience of the Town, the Contractor’s sole and exclusive right and remedy shall be to be paid for all Work performed and to receive equitable adjustment for all Work performed through the date of termination plus reasonable demobilization costs, subcontract and purchase order termination costs, reasonable overhead and profit on the Work performed. The Contractor shall not be entitled to be paid any amount as profit for unperformed Work or Services or consideration for the termination of convenience by the Town.

12.4 **Set Off.** Upon termination of this Agreement by the Town, the Town shall be entitled to furnish or have furnished the Services to be performed hereunder by the Contractor by whatever method the Town may deem expedient. Also, in such case, the Contractor shall not be entitled to receive any further payment until completion of the Work and the total compensation to the Contractor under this Agreement shall be the amount that is equitable under the circumstances. If the Town and the Contractor are unable to agree on the amount to be paid under the foregoing sentence, the Town shall fix an amount, if any, that it deems appropriate in
consideration of all of the circumstances surrounding such termination, and shall make payment accordingly. The Contractor may dispute the Town’s assessment of the termination amount by the method of dispute resolution under Article 13 of this Agreement.

12.5 Suspension by the Town for Convenience.

A. Procedure. The Town may order the Contractor in writing to suspend, delay or interrupt all or any part of the Work without cause for such period of time as the Town may determine to be appropriate for its convenience, but not in abrogation of the rights given Contractor in Section 12.1 above.

B. Adjustments to GMP and Schedule. Adjustments caused by suspension, delay or interruption shall be made for increases in the applicable GMP and/or the applicable Substantial Completion date. No adjustment shall be made if the Contractor is or otherwise would have been responsible for the suspension, delay or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.

ARTICLE 13
DISPUTE RESOLUTION

13.1 Scope. Notwithstanding anything to the contrary provided elsewhere in the Contract Documents, except for Subsection 13.4 (G) below, the alternative dispute resolution (“ADR”) process provided for herein shall be the exclusive means for resolution of claims or disputes arising under, relating to or touching upon the Agreement, the interpretation thereof or the performance or breach by any party thereto, including but not limited to original claims or disputes asserted as cross claims, counterclaims, third party claims or claims for indemnity or subrogation, in any threatened or ongoing litigation or arbitration with third parties, if such disputes involve parties to agreements containing this ADR provision.

13.2 Neutral Evaluator, Arbitrators. The Town will select a Neutral Evaluator to serve as set forth in this ADR process. The Town and Contractor shall each select an arbitrator to serve as set forth in this ADR process. Each arbitrator selected shall be a member of the State Bar of the State of Arizona and shall have experience in the field of construction law. None of the arbitrators nor any of the arbitrator’s firms shall have presently, or in the past, represented any party to the arbitration.

13.3 Neutral Evaluation Process. If the Parties have been unable to resolve the disputes after discussions and partnering, the following neutral evaluation process shall be used to resolve any such dispute.

A. Notification of Dispute. The Town shall notify the Neutral Evaluator in writing of the existence of a dispute within 10 Days of the Town or the Contractor declaring need to commence the neutral evaluation process.

B. Non-Binding Informal Hearing. The Neutral Evaluator shall schedule a non-binding informal hearing of the matter to be held within seven Days from receipt of notification of the existence of a dispute. The Neutral Evaluator may conduct the hearing in such
manner as he deems appropriate and shall notify each party of the hearing and of its opportunity to present evidence it believes will resolve the dispute. Each party to the dispute shall be notified by the Neutral Evaluator that it shall submit a written outline of the issues and evidence intended to be introduced at the hearing and the proposed resolution of the dispute to the Neutral Evaluator before the hearing commences. Arbitrators shall not participate in such informal hearing or proceedings process. The Neutral Evaluator is not bound by the rules of evidence when admitting evidence in the hearing and may limit the length of the hearing, the number of witnesses or any evidence introduced to the extent deemed relevant and efficient.

C. Non-Binding Decision. The Neutral Evaluator shall render a non-binding written decision as soon as possible, but not later than five Days after the hearing.

13.4 Binding Arbitration Procedure. The following binding arbitration procedure, except as provided in Subsection 13.4(G) below, shall serve as the exclusive method to resolve a dispute if any party chooses not to accept the decision of the Neutral Evaluator. The party requesting binding arbitration shall notify the Neutral Evaluator in writing within three Days of receipt of the Neutral Evaluator’s decision of a request for arbitration. If the Contractor requests arbitration it shall post a cash bond with the Neutral Evaluator in an amount agreed upon by the Parties or, in the event of no agreement, the Neutral Evaluator shall establish the amount of the cash bond to defray the cost of the arbitration as set forth in Subsection 13.4(M) and the proceeds from the bond shall be allocated in accordance with Subsection 13.4(M) by the Arbitration Panel.

A. Arbitration Panel. The Arbitration Panel shall consist of three arbitrators: the Town’s appointed arbitrator, the Contractor’s appointed arbitrator and a third arbitrator (or “Neutral Arbitrator”) who shall be selected by the Parties’ arbitrators as set forth in Subsection 13.4(B) below. If one or more Subcontractor(s) is (are) involved in a dispute, the Subcontractors shall agree on an appointee to serve as arbitrator on behalf of all such Subcontractors. The Neutral Evaluator shall not participate in the proceedings.

B. Selection of Neutral Arbitrator. The Parties’ arbitrators shall choose the Neutral Arbitrator within five Days of receipt of notification of a dispute from the Neutral Evaluator. The Neutral Arbitrator shall have the same qualifications as those of the arbitrators set forth in Section 13.2 above. In the event that the selected arbitrators cannot agree on the Neutral Arbitrator as set forth above, the Neutral Arbitrator shall be the “Default Neutral Arbitrator.” The Default Neutral Arbitrator shall be selected as follows: the Town and the Contractor shall each submit two names to the presiding judge of the Yavapai County Superior Court, who shall select one person to serve as the Default Neutral Arbitrator.

C. Expedited Hearing. The Parties have structured this procedure with the goal of providing for the prompt, efficient and final resolution of all disputes falling within the purview of this ADR process. To that end, any Party can petition the Neutral Evaluator to set an expedited hearing. If the Neutral Evaluator determines that the circumstances justify it, the Neutral Evaluator shall contact the selected Arbitration Panel and arrange for scheduling of the arbitration at the earliest possible date. In any event, the hearing of any dispute not expedited will commence as soon as practical but in no event later than 20 Days after notification of request for arbitration having been submitted. This deadline can be extended only with the
consent of all the Parties to the dispute, or by decision of the Arbitration Panel upon a showing of emergency circumstances.

D. Procedure. The Arbitration Panel will select a chairman and will conduct the hearing in such a manner that will resolve disputes in a prompt, cost-effective manner giving regard to the rights of all parties. Each Party shall supply to the Arbitration Panel a written pre-hearing statement which shall contain a brief statement of the nature of the claim or defense, a list of witnesses and exhibits, a brief description of the subject matter of the testimony of each witness who will be called to testify, and an estimate as to the length of time that will be required for the arbitration hearing. The Arbitration Panel shall review and consider the Neutral Evaluator decision. The chairman shall determine the nature and scope of discovery, if any, and the manner of presentation of relevant evidence consistent with deadlines provided herein, and the Parties’ objective that disputes be resolved in a prompt and efficient manner. No discovery may be had of any materials or information for which a privilege is recognized by Arizona law. The chairman, upon proper application, shall issue such orders as may be necessary and permissible under law to protect confidential, proprietary or sensitive materials or information from public disclosure or other misuse. Any Party may make application to the Yavapai County Superior Court to have a protective order entered as may be appropriate to confirm such orders of the chairman.

E. Hearing Days. In order to effectuate Parties’ goals, the hearing once commenced, will proceed from Day to Day until concluded, absent a showing of emergency circumstances.

F. Award. The Arbitration Panel shall, within 10 Days from the conclusion of any hearing, by majority vote issue its award. The award shall include an allocation of fees and costs pursuant to Subsection 13.4(M) below. The award is to be rendered in accordance with this Agreement and the laws of the State of Arizona.

G. Scope of Award. The Arbitration Panel shall be without authority to award punitive damages, and any such punitive damage award shall be void. The Arbitration Panel shall be without any authority to issue an award against any individual Party in excess of 20% of the original Agreement amount, but in no event shall any award exceed $2,000,000, exclusive of interest, arbitration fees, costs and attorneys’ fees. If an award is made against any individual Party in excess of $100,000, exclusive of interest, arbitration fees, costs and attorneys’ fees, it must be supported by written findings of fact, conclusions of law and a statement as to how damages were calculated. Any claim in excess of 20% of the original Agreement amount or in excess $2,000,000 shall be subject to the jurisdiction of the Superior Court of Arizona, Yavapai County. Any Party may contest the validity of the amount claimed if an action is filed in the Superior Court.

H. Jurisdiction. The Arbitration Panel shall not be bound for jurisdictional purposes by the amount asserted in any Party’s claim, but shall conduct a preliminary hearing into the question of jurisdiction upon application of any Party at the earliest convenient time, but not later than the commencement of the arbitration hearing.
I. **Entry of Judgment.** Any Party can make application to the Yavapai County Superior Court for confirmation of an award, and for entry of judgment on it.

J. **Severance and Joinder.** To reduce the possibility of inconsistent adjudications, the Neutral Evaluator or the Arbitration Panel, may: (1) at the request of any Party, join and/or sever Parties, and/or claims arising under other contracts containing this ADR provision and (2) the Neutral Evaluator, on his own authority, or the Arbitration Panel may, on its own authority, join or sever Parties and/or claims subject to this ADR process as they deem necessary for a just resolution of the dispute, consistent with the Parties’ goal of the prompt and efficient resolution of disputes; provided, however, that the Contractor, the Project Designers and other Project professionals shall not be joined as a Party to any claim made by a Subcontractor. Nothing herein shall create the right by any Party to assert claims against another Party not germane to the Agreement or not recognized under the substantive law applicable to the dispute. Neither the Neutral Evaluator nor the Arbitration Panel is authorized to join to the proceeding Parties not in privity with the Town. The Contractor cannot be joined to any pending arbitration proceeding, without the Contractor’s express written consent, unless the Contractor is given the opportunity to participate in the selection of the non-Town appointed arbitrator.

K. **Appeal.** Any party may appeal (1) errors of law by the Arbitration Panel if, but only if, the errors arise in an award in excess of $100,000, (2) the exercise by the chairman or Arbitration Panel of any powers contrary to or inconsistent with this Agreement or (3) on the basis of any of the grounds provided in ARIZ. REV. STAT. § 12-1512. Appeals shall be to the Yavapai County Superior Court within 15 Days of entry of the award. The standard of review in such cases shall be that applicable to the consideration of a motion for judgment notwithstanding the verdict, and the Yavapai County Superior Court shall have the authority to confirm, vacate, modify or remand an award appealed under this Section, but not to conduct a trial, entertain the introduction of new evidence or conduct a hearing de novo.

L. **Uniform Arbitration Act.** Except as otherwise provided herein, binding arbitration pursued under this provision shall be governed by the Uniform Arbitration Act as codified in Arizona in ARIZ. REV. STAT. § 12-1501, et seq.

M. **Fees and Costs.** Each Party shall bear its own fees and costs in connection with any informal hearing before the Neutral Evaluator. All fees and costs associated with any arbitration before the Arbitration Panel, including without limitation the Arbitration Panelists’ fees, and the prevailing Party’s reasonable attorneys’ fees, expert witness fees and costs, will be paid by the non-prevailing Party, except as provided for herein. In no event shall any Arbitrator’s hourly fees be awarded in an amount in excess of $200 per hour and (1) costs shall not include any travel expenses in excess of mileage at the rate paid by the Town, not to exceed a one way trip of 150 miles, and (2) all travel expenses, including meals, shall be reimbursed pursuant to the travel policy of the Town in effect at the time of the hearing. The determination of prevailing and non-prevailing Parties, and the appropriate allocation of fees and costs, will be included in the award by the Arbitration Panel. Fees for the Neutral Evaluator shall be paid by the Town.

N. **Confidentiality.** Any proceeding initiated under ADR shall be deemed confidential to the maximum extent allowed by Arizona law and no Party shall, except for
disclosures to a Party’s attorneys or accountants, make any disclosure related to the disputed matter or to the outcome of any proceeding except to the extent required by law, or to seek interim equitable relief, or to enforce an agreement reached by the Parties or an award made hereunder.

O. **Equitable Litigation.** Notwithstanding any other provision of ADR to the contrary, any Party can petition the Yavapai County Superior Court for interim equitable relief as necessary to preserve the status quo and prevent immediate and irreparable harm to a Party or to the Project pending resolution of a dispute pursuant to ADR provided herein. No court may order any permanent injunctive relief except as may be necessary to enforce an order entered by the Arbitration Panel. The fees and costs incurred in connection with any such equitable proceeding shall be determined and assessed in ADR.

P. **Change Order.** Any award in favor of the Contractor against the Town or in favor of the Town against the Contractor shall be reduced to a Change Order amendment to this Agreement and executed by the Parties in accordance with the award and the provisions of this Agreement.

Q. **Merger and Bar.** Any claim asserted pursuant to this ADR process shall be deemed to include all claims, demands, and requests for compensation for costs and losses or other relief, including the extension of the Agreement performance period which reasonably should have or could have been brought against any Party that was or could have been brought into this ADR process, with respect to the subject claim. The Arbitration Panel shall apply legal principles commonly known as merger and bar to deny any claim or claims against any Party regarding which claim or claims recovery has been sought or should have been sought in a previously adjudicated claim for an alleged cost, loss, breach, error, or omission.

R. **Inclusion in Other Contracts.** The Contractor shall cooperate with the Town in efforts to include this ADR provision in all other Project subcontracts. The Contractor agrees that any modification to this ADR provision that is included in the construction or other subcontracts shall also apply to the Contractor. It is the intent of the Parties that any changes to this ADR provision in later contracts will be evolutionary and designed to incorporate the terms of this ADR provision without material changes to the substance or procedure of this ADR provision.

**ARTICLE 14**

**ADDITIONAL PROVISIONS**

14.1 **Confidentiality.** The Contractor shall not disclose or permit the disclosure of any confidential information except to its agents, employees and Subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement.

14.2 **Limitation and Assignment.** The Town and the Contractor each bind themselves, their successors, assigns and legal representatives to the terms of this Agreement. Neither the Town nor the Contractor shall assign or transfer its interest in this Agreement without the written consent of the other, except that the Contractor may assign accounts receivable to a commercial bank for securing loans without approval of the Town. Nothing contained in this Section shall
prevent the Contractor from employing such consultants, associates or Subcontractors as the Contractor may deem appropriate to assist in performance of the Services hereunder.

14.3 **Entire Agreement.** This Agreement represents the entire and integrated agreement between the Town and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Town and the Contractor. Nothing contained in this Agreement is intended to benefit any third party. Subcontractors, if any, and the Project Designers are not intended third-party beneficiaries of this Agreement.

14.4 **Severability.** If any provision of this Agreement is held as a matter of law to be unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be enforceable without such provision.

14.5 **Meaning of Terms.** References made in the singular shall include the plural and the masculine shall include the feminine or neuter.

14.6 **Notices and Requests.** Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if (A) delivered to the Party at the address set forth below, (B) deposited in the U.S. Mail, registered or certified, return receipt requested, to the address set forth below or (C) given to a recognized and reputable overnight delivery service, to the address set forth below:

If to the Town: Town of Chino Valley
202 North State Route 89
Chino Valley, Arizona 86323
Attn: Town Manager

With copy to: Gust Rosenfeld P.L.C.
One East Washington Street, Suite 1600
Phoenix, Arizona 85004-2553
Attn: Andrew J. McGuire

If to Contractor: Jebco Construction Companies, LLC
140 North Montezuma Street, Suite 108
Prescott, Arizona 86301
Attn: Jeb N. Johnson

or at such other address, and to the attention of such other person or officer, as any Party may designate in writing by notice duly given pursuant to this Section. Notices shall be deemed received (A) when delivered to the Party, (B) three business days after being placed in the U.S. Mail, properly addressed, with sufficient postage or (C) the following business day after being given to a recognized overnight delivery service, with the person giving the notice paying all required charges and instructing the delivery service to deliver on the following business day. If a copy of a notice is also given to a Party’s counsel or other recipient, the provisions above governing the date on which a notice is deemed to have been received by a Party shall mean and
refer to the date on which the Party, and not its counsel or other recipient to which a copy of the notice may be sent, is deemed to have received the notice.

14.7 Governing Law. This Agreement shall be governed by the laws of the State of Arizona and venue shall be in Yavapai County.

14.8 No Waiver of Performance. The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition right with respect to further performance.

14.9 Headings. The headings given to any of the provisions of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.10 Asbestos Free Materials. The Project is to be constructed by the Contractor with asbestos free materials. A written, notarized statement on company letterhead shall be submitted to the Town by the Contractor with the final payment request certifying that the Contractor has incorporated no asbestos material into the Project. Final payment shall be withheld until such statement is submitted. The Contractor shall agree that if materials containing asbestos are subsequently discovered at any future time to have been included in the construction done by the Contractor or any of its Subcontractors or agents and were not specified in the design or required by the Contract Documents, the Contractor shall be liable for all costs related to the abatement of such asbestos and damages or claims against the Town notwithstanding any statute of limitations or other legal bar to any claim by the Town.

14.11 Cancellation. This Agreement may be cancelled by the Town pursuant to ARIZ. REV. STAT. § 38-511.

14.12 Survival of Representations and Warranties. Notwithstanding any other provision of this Agreement, the representations, warranties and covenants herein shall survive termination of this Agreement.

14.13 Endangered Hardwoods Prohibited. Contractor shall ensure that products containing endangered wood species shall not be utilized in the construction of the Project unless exempted pursuant to ARIZ. REV. STAT. § 34-201(J), as amended.

14.14 Records and Audit Rights. Contractor’s and its Subcontractor’s books, records, correspondence, accounting procedures and practices, and any other supporting evidence relating to this Agreement, including the papers of any Contractor and its Subcontractors’ employees who perform any work or Services pursuant to this Agreement to ensure that the Contractor and its Subcontractors are complying with the warranty under Subsection 14.15 below (all the foregoing hereinafter referred to as “Records”), shall be open to inspection and subject to audit and/or reproduction during normal working hours by the Town, to the extent necessary to adequately permit (A) evaluation and verification of any invoices, payments or claims based on Contractor’s and its Subcontractors’ actual costs (including direct and indirect costs and overhead allocations) incurred, or units expended directly in the performance of work under this Agreement and (B) evaluation of the Contractor’s and its Subcontractors’ compliance with the
Arizona employer sanctions laws referenced in Subsection 14.15 below. To the extent necessary for the Town to audit Records as set forth in this Subsection, Contractor and its Subcontractors hereby waive any rights to keep such Records confidential. For the purpose of evaluating or verifying such actual or claimed costs or units expended, the Town shall have access to said Records, even if located at its Subcontractors’ facilities, from the effective date of this Agreement for the duration of the work and until three years after the date of final payment by the Town to Contractor pursuant to this Agreement. Contractor and its Subcontractors shall provide the Town with adequate and appropriate workspace so that the Town can conduct audits in compliance with the provisions of this Subsection. The Town shall give Contractor or its Subcontractors reasonable advance notice of intended audits. Contractor shall require its Subcontractors to comply with the provisions of this Subsection by insertion of the requirements hereof in any subcontract pursuant to this Agreement.

14.15 E-verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, the Contractor and its Subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). Contractor’s or its Subcontractor’s failure to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Town.

14.16 Independent Contractor. The Contractor is and will be an independent contractor and whatever measure of control the Town exercises over the work or deliverable pursuant to the Contract will be as to the results of the work only. No provision in this Agreement will give or be construed to give the Town the right to direct the Contractor as to the details of accomplishing the work or deliverable. These results will comply with all applicable laws and ordinances.

14.17 Agreement Subject to Appropriation. The Town is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated and budgeted for that purpose during the Town’s then-current fiscal year. The Town’s obligations under this Agreement are current expenses subject to the “budget law” and the unfettered legislative discretion of the Town concerning budgeted purposes and appropriation of funds. Should the Town Council elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the Town shall be relieved of any subsequent obligation under this Agreement. The Parties agree that the Town has no obligation or duty of good faith to budget or appropriate the payment of the Town’s obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The Town Council shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The Town shall keep Contractor informed as to the availability of funds for this Agreement. The obligation of the Town to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the Town. Contractor hereby waives any and all rights to bring any claim against the Town from or relating in any way to the Town’s termination of this Agreement pursuant to this Section.

14.18 Fair Interpretation. All Parties have been represented by counsel, or have had the opportunity to be represented by counsel, in the negotiation and drafting of this Agreement. This
Agreement will be construed according to the fair meaning of its language. The rule of construction that ambiguities will be resolved against the Party who drafted a provision will not be employed in interpreting this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above.

“Town”

TOWN OF CHINO VALLEY,
an Arizona municipal corporation

______________________________
Cecilia Grittman, Town Manager

ATTEST:

______________________________
Jami Lewis, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA )
) ss.
COUNTY OF YAVAPAI )

On __________________, 2019, before me personally appeared Cecilia Grittman, the Town Manager of the TOWN OF CHINO VALLEY, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who she claims to be, and acknowledged that she signed the above document, on behalf of the Town of Chino Valley.

______________________________
Notary Public

(Affix notary seal here)

[SIGNATURES CONTINUE ON FOLLOWING PAGE]
“Contractor”

JEBCO CONSTRUCTION COMPANIES, LLC,
an Arizona limited liability company

By: ______________________________________
    Jeb N. Johnson, CEO/President

(ACKNOWLEDGMENT)

STATE OF ARIZONA )
                   ) ss.
COUNTY OF YAVAPAI )

On ______________________, 2019, before me personally appeared Jeb N. Johnson, a member of Jebco Construction Companies, LLC, an Arizona limited liability company, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document on behalf of the company.

___________________________________________
Notary Public

(Affix notary seal here)
EXHIBIT A
TO
DESIGN - BUILD AGREEMENT
BETWEEN
TOWN OF CHINO VALLEY
AND
JEBCO CONSTRUCTION COMPANIES, LLC

[Construction Documents]

See following pages.
EXHIBIT B
TO
DESIGN - BUILD AGREEMENT
BETWEEN
TOWN OF CHINO VALLEY
AND
JEBCO CONSTRUCTION COMPANIES, LLC

[Amendments]

See following pages.
EXHIBIT C
TO
DESIGN - BUILD AGREEMENT
BETWEEN
TOWN OF CHINO VALLEY
AND
JEBCO CONSTRUCTION COMPANIES, LLC

[GMP Proposals]

See following pages.
EXHIBIT D
TO
DESIGN - BUILD AGREEMENT
BETWEEN
TOWN OF CHINO VALLEY
AND
JEBCO CONSTRUCTION COMPANIES, LLC

[Master Schedule]

See following pages.
EXHIBIT E
TO
DESIGN - BUILD AGREEMENT
BETWEEN
TOWN OF CHINO VALLEY
AND
JEBCO CONSTRUCTION COMPANIES, LLC

[The Town’s RFQ]

See following pages.
REQUEST FOR QUALIFICATIONS (RFQ)

FOR DESIGN-BUILD SERVICES

FOR THE DESIGN AND CONSTRUCTION OF
UTILITIES SHOP BUILDING AT OLD HOME MANOR AND RESTROOMS
AT MEMORY PARK PROJECT

TOWN OF CHINO VALLEY
2019

IMPORTANT DATES

RFQ ISSUED.................................................. February 22, 2019

PRE-SUBMITTAL CONFERENCE....................... March 6, 2019

REQUEST FOR INFORMATION DEADLINE.... March 13, 2019

PROPOSAL DUE DATE................................. March 27, 2019
REQUEST FOR QUALIFICATIONS

DESIGN AND CONSTRUCTION OF UTILITIES SHOP BUILDING AT OLD HOME MANOR AND
RESTROOMS AT MEMORY PARK PROJECT

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1 Project Description

This request for qualifications (RFQ) is for the procurement of design and construction services for two buildings; a steel shop building for the Utilities Division and a restroom building for Memory Park.

The proposed Utility building, to be located at 2190 Rodeo Dr., shall be a 40’X80’ steel building constructed with 4-12’X14’ roll up doors to allow for two drive through bays. There will also be a finished area for offices, restrooms, and a laboratory. A man-door for the shop area as well as one for the office area will be needed. Windows for the offices and shop area shall be included. The building will need to be plumbed, heated, and cooled.

The proposed restroom building at Memory Park, located at the intersection of Palomino Rd. and N. Road 1 West, shall consist of men’s, women’s and unisex restrooms. The building may be manufactured or site built. Requirements for electrical and plumbing, including any septic upgrades shall be included.

2 Scope of Work

The Design Build (DB) Team will begin in a lead role for preconstruction services and will hold the construction contract with the Town of Chino Valley (the Town). Design phase services are anticipated to include architectural, structural, civil, mechanical, electrical, plumbing, and related work. At some point, the DB Team will assume the risk of delivering the project through a guaranteed maximum price.

The DB Team will be responsible for construction means and methods. There will be no limit to the amount of self-performance allowed by the Town.

The Utility Shop Building shall consist of a steel building on a concrete foundation (see attached sample floor plan). The building may utilize pre-engineered packaged steel building products. The general layout is for an open shop area for two bays that can hold full size dump trucks or similar sized vehicles with a door layout for drive through abilities. The area shall be insulated, heated and cooled. The office spaces shall be heated, cooled, plumbed, have finished walls, doors, and windows.

The restrooms at Memory Park shall be constructed in a new building south of the existing restrooms. The building construction can be manufactured or site built. The men’s room shall consist one toilet and one or two urinals with a sink and appurtenances. The women’s room shall have two toilets, a sink, and appurtenances. The unisex restroom shall have a toilet, sink, changing station, and appurtenances. The unisex restroom shall also be ADA accessible.

Design Services shall include, but are not limited to:

- Kickoff meeting
- Conceptual Design and Cost Estimate
- 60% Design Submittal and Cost Estimate
- Utility and Permit Assistance
- 90% Submittal, Cost Estimate and Guaranteed Maximum Price
- 100% Submittal
All responses to this RFQ are due to the Town by 2:00 pm on March 27, 2019 (Submission Deadline).

3 Pre-submittal Conference

A pre-submittal conference will be held on March 6, 2019 at 10:00 AM Arizona Time at the Town of Chino Valley Public Works/Development Services Conference room at 1982 Voss Drive Chino Valley Arizona 86323. At this meeting, the Town staff will discuss the scope of work, general contract issues and respond to questions from the attendees. This pre-submittal conference is not mandatory, but is recommended for all interested teams.

4 Statement of Qualifications Selection Criteria

The DB Team will be selected through a qualifications-based selection process. Do not include pricing information with the Statement of Qualifications. Firms interested in providing DB services must submit a Statement of Qualifications (SOQ) that addresses the following issues:

A. General Information. (10 points)

1. Provide a general description of the firm and/or team that is proposing to provide DB services. Explain the legal organization of the proposed firm or team. Provide an organization chart showing key personnel.

2. Provide the following information:

   a. List the Arizona professional and contractor licenses held by the firm/team and the key personnel who will be assigned to this project. Provide the license number and explain if held by an individual or the firm.

   b. Identify any contract or subcontract held by the firm or officers of the firm, which has been terminated within the last five years. Identify any claims (public or private, including third party claims) arising from a contract which resulted in litigation or arbitration within the last five years. Briefly describe the circumstances and the outcomes.

   c. Describe the firm’s bonding capacity. Include as an appendix a letter from an A- or better surety company that substantiates the firm’s/team’s stated bonding capacity. (Said letter included in the appendix will not count towards the maximum page limit of the SOQ.)

B. Experience and qualifications of the firm/team. (30 points)

1. Identify three to five pre-engineered metal buildings and restroom buildings in which the firm served as either DB and/or General Contractor within the past five years.
For each comparable project identified provide:

- Description of project.
- Role of the firm (specify whether DB, CMAR, JOC, Construction Manager or General Contractor).
- Project’s original contracted construction cost and final construction cost.
- Construction dates.
- Project Owner.
- Reference information (two names with telephone numbers per project).

C. Experience of key personnel of the construction and design teams to be assigned to this project. (30 points)

1. (5 points) For each key person identified, list at least two projects in which they have played a primary role. If a project selected for a key person is the same as one selected for the firm, provide just the project name and the role of the key person. For other projects, provide:
   - Description of project.
   - Role of the person.
   - Project’s original contracted construction cost and final construction cost.
   - Construction dates.
   - Project Owner.
   - Reference information (two contacts, including roles on the projects and telephone numbers per project).

2. (20 points) Highlight each key person’s experience in the following areas: collaborative design experience on similar projects, utility company assistance, building permit assistance, conceptual costing experience/knowledge, value engineering/constructability experience, and experience with municipal construction projects.

3. (5 points) Provide your subcontractor and consultant selection criteria you plan on implementing. The selection of subcontractors must be based on qualifications or a combination of qualification and price, but should not be based on price alone.

D. DB Experience. (20 points)

1. Describe your firm’s knowledge, training, and/or experience specifically with Design Build Contracting to include:

   a. (10 points) Experience with DB contracts and projects related to municipal or public facilities construction;
b. (5 points) Training and Certifications for any price cost estimating of key team personnel;

2. (5 points) Actual project experience with cost estimating utilizing design build, job order pricing, CMAR pricing, or equivalent

3. The three to five projects previously listed in B1 above will contribute to this sections score.

E. Overall evaluation of the firm/team and its perceived ability to provide the required services. (10 points)

This is to be determined by the selection panel members. No submittal response is required.

5 Submittal Requirements

Firms interested in the above project should submit an SOQ clearly identifying this project on the cover of the SOQ which includes a one-page cover letter plus a maximum length of twelve pages to address the SOQ criteria (excluding resumes but including organization chart). Resumes for each key team member shall be limited to a maximum length of one page and should be attached as an appendix to the SOQ. Please provide an original plus 6 copies (total of seven) of the SOQ by 2:00 pm on March 27, 2019. In addition to hard copies, submittals should include a thumb drive with PDF files of the SOQ.

Delivered or hand-carried submittals must be delivered to the Public Works Department at the address given below. On the submittal package, please display: firm name, project number, and/or project title.

Interested teams are invited to respond in writing to:

Town of Chino Valley
Department of Public Works
ATTN: Frank Marbury, P.E., Public Works Director
1982 Voss Drive, #201
Chino Valley, AZ 86323

Subject: SOQ – DESIGN BUILD SERVICES FOR THE UTILITIES SHOP BUILDING AT OHM AND RESTROOMS AT MEMORY PARK

Any Statement of Qualifications received at the wrong location, unsealed or after the time specified will not be accepted and shall be returned without being opened.

Please be advised that failure to comply with the following criteria will be grounds for disqualification and will be strictly enforced:
• Receipt of submittal by the specified cut-off date and time
• The number of originals and/or copies of the submittal specified
• Adherence to maximum page requirement

Adherence to the maximum page criterion is critical; each page side (maximum 8 ½ by 11-inches) with criteria information will be counted. Pages that have project photos, charts, and graphs will be counted towards the maximum number of pages.

6 SOQ Evaluation and Scoring

The selection criteria and relative weights for selecting the firm/team on the final list are as follows:

<table>
<thead>
<tr>
<th>CRITERIA</th>
<th>WEIGHT</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. General Information. (10 points)</td>
<td>10</td>
</tr>
<tr>
<td>B. Experience and qualifications of the firm/team. (30 points)</td>
<td>30</td>
</tr>
<tr>
<td>C. Experience of key personnel to be assigned to this project. (30 points)</td>
<td>30</td>
</tr>
<tr>
<td>D. DB Experience. (20 points)</td>
<td>20</td>
</tr>
<tr>
<td>E. Overall evaluation of the firm/team and its perceived ability to provide the required services. (10 points)</td>
<td>10</td>
</tr>
</tbody>
</table>

Total Points Available 100

7 Selection Process and Schedule

A Selection Committee will evaluate each SOQ according to the above criteria and will be based solely on qualifications of the firm/team. Interviews will not be conducted as part of the selection process. At their discretion, the Town intends to enter into negotiations with one or all of the qualified firms on the final list in the established order of preference. The Town intends to continue this negotiation process until one contract is awarded.

The following tentative schedule has been prepared for this project:

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>SOQ submittal date</td>
<td>March 27, 2019</td>
</tr>
<tr>
<td>SOQ reviewed by committee</td>
<td>week of April 8, 2019</td>
</tr>
<tr>
<td>Firms notified of selection</td>
<td>week of April 22, 2019</td>
</tr>
</tbody>
</table>

Instructions: The Town of Chino Valley shall not be held responsible for any oral instructions. Any changes to this Request for Qualifications will be in the form of an addendum, which will be furnished to all registered Request for Qualifications holders.

Firms who pick up a copy of the Request for Qualifications packet or are sent a copy through the Town of Chino Valley’s Public Works Department will be included on the Request for Qualifications Holders List.
Firms receiving a copy of this packet through any other means (including the Town website) must register as a Request for Qualifications holder at the Public Works Department or call (928) 636-7140 to register by phone.

Any person or firm desiring to submit a protest in connection with the procurement shall follow the procedures stated in Arizona Revised Statutes 34-603 J.

Questions. Questions pertaining to the consultant selection process or contract issues should be directed to the Town of Chino Valley’s Engineering Department at:

(1) Frank Marbury, fmarbury@chinoaz.net
(2) Steve Sullivan, ssullivan@chinoaz.net

8 Terms and Conditions

This RFQ does not commit Chino Valley to award a contract, to defray any costs incurred in the preparation of a response to this request, or to procure or contract for services.

Chino Valley reserves the right to extend the date by which the submittals are due.

Chino Valley reserves the right to cancel, in part or in its entirety, this RFQ including but not limited to: selection schedule, submittal date, and submittal requirements. If Chino Valley cancels or revises the RFQ, all respondents of record will be notified in writing by Chino Valley.

All submittals become the property of Chino Valley. Information contained in a Request for Qualifications shall be made public after the final list is verified and approved by the Town Manager.

Chino Valley reserves the right to request additional information and/or clarifications from any or all Respondents to this RFQ.

9 Equal Opportunity

Chino Valley is an equal opportunity employer. Minority and women's business enterprises are encouraged to submit Requests for Proposals for this Project.

10 Contract Administration

The Public Works Director, or alternate designated representative, will be the contract administrator on behalf of the Town.
TOWN OF CHINO VALLEY

ADDENDUM NO. 1

RFQ – DESIGN-BUILD SERVICES FOR THE DESIGN AND CONSTRUCTION OF UTILITIES SHOP BUILDING AT OLD HOME MANOR AND RESTROOMS AT MEMORY PARK

SOQ Due Date: March 27, 2019
Time: 2:00 P.M., MST
Place: Town of Chino Valley
Public Works Department
1982 Voss Drive
Chino Valley, AZ 86323

Make all revisions to the request for qualifications document stated herein. Insofar as the original request for qualifications are at variance with this Addendum, the Addendum shall govern.

This Addendum consists of 6 page(s).

RFQ CHANGES:

1. Include attached conceptual floor plan and site plan for reference.


RFI RESPONSES:

1. Question: Will the Utility Shop Building require a sand trap / grease trap?
   Answer: No

2. Question: Will any equipment be hung in the Utility Shop Building?
   Answer: No

3. Question: Will any plumbing design be required outside the buildings?
   Answer: No. Plumbing to be stubbed out. Connection to the Town system should not be included in the scope of this project. Town forces will make any needed connections.

4. Question: Will there be any site design / parking lot design?
Answer: Enough information needs to be provided to obtain the building permit (i.e. floor elevations, locations, etc.). A detailed property survey will not be required for this contract. Any parking lot design will be handled separately.

5. Question: What is the project budget?
Answer: Approx. $350,000 at this time.

6. Will the Town’s Building Department require a boundary survey for building setbacks?
Answer: See above.

BY Frank Marbury

Date 3-21-19

Frank Marbury, PE
Public Works Director
NEW UTILITY'S SHOP BUILDING SITE PLAN

CONCEPTUAL

EXISTING FENCE

FUTURE FENCE

CONCRETE SLAB

SHOP

CONCRETE SLAB

EXISTING BLDG

ACCESS ROAD

WRF

NTS
BUILDING REQUIREMENTS AND DESIGN CRITERIA

This document is not meant to modify any Federal or State laws or Town Ordinances. It is intended to be informative and to be used as a guideline. Where circumstances of a particular job differ from these procedures, the decision of the Building Official will prevail.

Building Codes
All Federal, State and local requirements are applicable to projects constructed within the Town’s jurisdiction whether specifically listed herein or not. The Town of Chino Valley, Arizona, has adopted the following codes and/or standards regulating building construction for all plan review submitted on or after January 1, 2015 and for all work (of any plan review or permit issuance date) starting on or after January 1, 2015:

- 2012 International Residential Code
- 2012 International Building Code
- 2011 National Electrical Code
- 2012 International Plumbing Code
- 2012 International Mechanical Code
- 2012 International Fuel Gas Code
- 2012 International Energy Conservation Code

Design Criteria for the Town of Chino Valley
- Roof Snow Load 30lb
- Wind Speed 90mph Exposure C
- Seismic Design Category C
- Frost Line Depth 18 inches

Building Permit Application
Before a building permit will be issued, all plans and documents related to the building permit application must be approved by the Building Department and all applicable fees paid to the Town of Chino Valley. Permit must be posted on site, and one copy of all approved plans and inspection reports must remain on site, during the entire duration of every project until the certificate of occupancy is issued.

Contractors
All Contractors performing work within the Town of Chino Valley’s jurisdiction must be properly registered with the Town and provide proof of commercial general liability insurance for claims of property damage or bodily injury. Construction or building without a permit, or without prior approved registration with the Town, is subject to a fine and doubling of permit fee.
Plan Review
The Town will first verify submittal documents are complete and contact the applicant directly if additional information and/or documents are required and to discuss any noncompliance or deviation from Town zoning and adopted Code requirements.

Inspections
Before any inspections are requested, a sanitary facility (port-a-john), trash container, posted address numbers, approved plans and applicable silt fences must be properly placed on the work site. **Inspections can be scheduled by calling the IVR (Interactive Voice Response) at (xxx) xxx-xxxx or login at [www.citizenserve.com](http://www.citizenserve.com).** Inspection request received before 6:00 A.M. Monday thru Thursday will be completed the same day. Requests received after 6:00 A.M. will be completed the next business day. The final building inspection and all other required inspections for certificate of occupancy must be approved and the certificate of occupancy issued before occupying the building.

Construction Site
A temporary property address must be posted at the front of the lot and readable from the street. Permanent street numbers meeting code requirements must be displayed before final inspection. A portable sanitary restroom for your workers MUST be on your property until the final inspections are approved. Construction dumpsters or other appropriate means to contain debris must be on site throughout construction. For commercial projects a silt fence is required. Construction area shall be maintained safe and sanitary until job completion. NO construction material, debris, or sanitary restroom facility shall be placed or stored in the public right-of-way or drainage areas at any time. Erosion control (silt fencing) must be in place prior to the first inspection.

Citizen Access Portal
Easy access to the Town of Chino Valley’s Citizen Access Portal (CAP) is found at the official Town website ([www.chinoaz.net](http://www.chinoaz.net)) by clicking on one of the many links provided under Development Services. Most required documents, forms and information related to construction and code enforcement are available at the CAP. Simply create an account, enter all required information and select your own username and password to allow you to submit applications, request inspections, view job status and inspection results as well as other helpful tools. All applications must be submitted on the most current forms, or through the CAP. Use this site as your first resource for information. If you don’t find what you need, please call (928) 636-4427 for the Building Division of Development Services.
EXHIBIT F
TO
DESIGN - BUILD AGREEMENT
BETWEEN
TOWN OF CHINO VALLEY
AND
JEBCO CONSTRUCTION COMPANIES, LLC

[Contractor’s Response to the RFQ]

See following pages.
Request for qualifications (RFQ) For Design-Build Services

FOR THE DESIGN AND CONSTRUCTION OF UTILIZES SHOP BUILDING AT OLD MANOR AND RESTROOMS AT MEMORY PARK PROJECT

Town of Chino Valley 2019 • March 27, 2019
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Experience and qualifications of the firm/team

Tab C
Experience of key personnel of the construction and design teams to be assigned to this project

Tab D
Design Build Experience

Appendix A
Resumes

Appendix B
Surety Letter
March 27, 2019

Town of Chino Valley
Department of Public Works
Attn: Mr. Frank Marbury, P.E. Public Works Director
1982 Voss Drive, #201
Chino Valley, Arizona 86323

Re: SOQ – Design Build Services for the Utilities Shop Building at Old Manor and Restrooms at Memory Park

Dear Mr. Marbury and members of the Selection Committee:

JEBCO Construction Companies is extremely pleased to submit our team’s qualifications to the Town of Chino Valley. Our design build experience and the design of Pre-Engineered Metal Building projects and Park Restroom facilities is unmatched and our dedicated team is ready to provide design build services to the Town of Chino Valley today.

We envision this project as the next step in creating a Town complex at Old Manor to fit the needs of various Town departments and restrooms facility to enhance the Chino Valley Community while expanding and Town of Chino Valley’s mission.

We have associated with Sergio Martinez of Arrington Watkins Architects to bring his 40 years of technical and management experience in the design and planning of over 200 pre-engineered metal building maintenance facilities and public restroom facility projects thru-out the State of Arizona.

As shown in the enclosed qualifications, JEBCO is the most qualified to serve the needs of the Town of Chino Valley. For example:

• Our design and construction team have successfully provided design build services to over 200 projects.
• JEBCO is a leader in pre-engineered metal facility construction within Yavapai County and has completed over 50 design build pre-engineered metal facility projects in the past 10 years.
• Our Owner Jeb Johnson and Project Manager, Robert Morgan grew up and have worked in the Yavapai County area, and knows the dynamic of a smaller community. In addition, both Jeb and Robert have experience working in Chino Valley.
• Have a local sub-contractor base providing local participation.
• We have a record of projects coming in on time and in budget.
• Our design and construction team and consultants have a history of successful pre-engineered metal facility projects, on time and within budget.
• Our team specialize in pre-engineered metal building design and construction. This focus ensures our extensive knowledge and our ability to keep up with the latest technology, environment, and cost, quality concerns.
• JEBCO is an authorized pre-engineered metal building supplier thus, eliminating a middle man.

Our experienced, dedicated, and energetic team is eager to begin working with the Town of Chino Valley.

Very truly yours,

Jeb Johnson
President/CEO
JEBCO Construction Companies

Sergio A. Martinez Jr.
Project Manager
Arrington Watkins Architects
TOWN OF CHINO VALLEY

ADDENDUM NO. 1

RFQ – DESIGN-BUILD SERVICES FOR THE DESIGN AND CONSTRUCTION OF UTILITIES SHOP BUILDING AT OLD HOME MANOR AND RESTROOMS AT MEMORY PARK

SOQ Due Date: March 27, 2019
Time: 2:00 P.M., MST
Place: Town of Chino Valley
Public Works Department
1982 Voss Drive
Chino Valley, AZ 86323

Make all revisions to the request for qualifications document stated herein. Insofar as the original request for qualifications are at variance with this Addendum, the Addendum shall govern.

This Addendum consists of 6 page(s).

RFQ CHANGES:

1. Include attached conceptual floor plan and site plan for reference.

2. Include attached Town of Chino Valley Building Requirements and Design Criteria. Please note: The Town of Chino Valley is anticipating adoption of applicable 2018 codes on July 1, 2019.

RFI RESPONSES:

1. Question: Will the Utility Shop Building require a sand trap / grease trap?
   Answer: No

2. Question: Will any equipment be hung in the Utility Shop Building?
   Answer: No

3. Question: Will any plumbing design be required outside the buildings?
   Answer: No. Plumbing to be stubbed out. Connection to the Town system should not be included in the scope of this project. Town forces will make any needed connections.

4. Question: Will there be any site design / parking lot design?

Acknowledged Addendum No. 1
3/27/19

[Signature]
Frank Marbury, PE
Public Works Director

Date 3/27/19
Provide a general description of the firm and/or team that is proposing to provide DB services. Explain the legal organization of the proposed firm or team. Provide an organization chart showing key personnel.

JEBCO Construction Companies was established in 2002 and offers a wide degree of projects. From new construction of Commercial and Industrial buildings to remodeling and maintaining existing structures.

**JEBCO's delivery method since the inception of the company in 2002 have been primary design build project. Job order pricing or equivalent.**

With our main office located in Prescott, we currently serve all of Arizona and have diverse experience in a broad range of projects including aeronautical, universities, large corporations, medical offices, financial institutions, educational facilities, public facilities, and mining facilities. We offer comprehensive construction services via traditional, CMAR, or design build construction. The JEBCO team brings a wealth of experience and unparalleled service. We also offer value engineering ideas to fit the needs of your client’s budgets and project types. We are committed to providing the highest quality workmanship and being the best in the business.

JEBCO Construction Companies offers a team of specialized staff and services to fit the needs of all our clients and with the knowledge and skills to handle any level of project.

JEBCO Construction Companies has also been a long standing Pre-Engineered metal building supplier since 2002. JEBCO has built a reputation for being one of the top Pre-engineered metal building dealers and contractors in northern Arizona.
PROVIDE THE FOLLOWING INFORMATION:

LIST THE ARIZONA PROFESSIONAL AND CONTRACTOR LICENSES HELD BY THE FIRM/TEAM AND THE KEY PERSONNEL WHO WILL BE ASSIGNED TO THIS PROJECT. PROVIDE THE LICENSE NUMBER AND EXPLAIN IF HELD BY AN INDIVIDUAL OR THE FIRM.

General Commercial Contractor Class B-01 License No. B-256201, held by Jeb Johnson
General Residential Contractor Class B-02 License No. B-1241613, Held by Jeb Johnson
Architecture License No. 17651, Held by Sergio Martinez

IDENTIFY ANY CONTRACT OR SUBCONTRACT HELD BY THE FIRM OR OFFICERS OF THE FIRM, WHICH HAS BEEN TERMINATED WITHIN THE LAST FIVE YEARS. IDENTIFY ANY CLAIMS (PUBLIC OR PRIVATE, INCLUDING THIRD PARTY CLAIMS) ARISING FROM A CONTRACT WHICH RESULTED IN LITIGATION OR ARBITRATION WITHIN THE LAST FIVE YEARS. BRIEFLY DESCRIBE THE CIRCUMSTANCES AND THE OUTCOMES.

There has been no contract or subcontractor held by JEBCO Construction Companies nor its officers of the organization, which has been terminated within the last five years. In addition, JEBCO Construction Services have had any claims that have resulted in litigation or arbitration within the last five years.

JEBCO is bonded by Mindard-Ames Company. They are a Treasury Listed, “A+” (Excellent) best rated surety company and have been able to meet the surety needs of JEBCO. JEBCO has a bonding limit of $5 Million with an aggregate of $6.5 million.
IDENTIFY THREE TO FIVE PRE-ENGINEERED METAL BUILDINGS AND RESTROOM BUILDINGS IN WHICH THE FIRM SERVED AS EITHER DB AND/OR GENERAL CONTRACTOR WITHIN THE PAST FIVE YEARS.

6th Street Warehouse
5,500 square feet
Architect: Synectic Design
Prescott, Arizona
Duane Watkins
928-925-5648
$250,000

Music Mountain Middle School
School / Facility
15,000 square feet
Stroh Architecture
Peach Springs, Arizona
$1,900,000
No Reference

Chino Valley Commerce Center
Warehouse / Mini-Storage
15,000 square feet
Chino Valley, Arizona
Tom Lennon - Owner
$600,000

Asphalt Paving and Supply - Owner
17,500 square feet
Prescott Valley, Arizona
Chris Graff- 928-237-6564
$1,200,000

Little Dealer Little Prices
RV Dealership
22,500 Square Feet
Stroh Architecture
Prescott Valley, Arizona
Paul Brunoforte 602-499-6581
$1,800,000

Parks and Recreation Maintenance Building
Town of Sahuarita
15,000 Square Feet
Cherie Odeski, Procurement Officer 520.344.7103
Debra Einweck; Project Manager 520.344.7103
Brian DeBreceny; Parks and Recreation Maintenance Director 520.344.7103
$1.5 million
### 2018 Pre-Engineered Metal Building Projects

<table>
<thead>
<tr>
<th>Project Description</th>
<th>Dimensions</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Long Meadow Ranch – Stallion Barn</td>
<td>175 X 150</td>
<td>$288,359.00</td>
</tr>
<tr>
<td>Long Meadow Ranch – Cross Arena</td>
<td>See Below</td>
<td>$1,175,429.00</td>
</tr>
<tr>
<td>• Cross Arena</td>
<td>150 X 400</td>
<td></td>
</tr>
<tr>
<td>• Breeze Way</td>
<td>60 X 15</td>
<td></td>
</tr>
<tr>
<td>• Stalls</td>
<td>350 X 60</td>
<td></td>
</tr>
<tr>
<td>Long Meadow Ranch – Cube Storage</td>
<td>80 X 80</td>
<td>$100,645.00</td>
</tr>
<tr>
<td>Long Meadow Ranch – Round Pen</td>
<td>90 X 90</td>
<td>$133,347.00</td>
</tr>
<tr>
<td>Long Meadow Ranch – Vet Building</td>
<td>60 X 40</td>
<td>$47,817.00</td>
</tr>
<tr>
<td>Long Meadow Ranch – Hot Walker</td>
<td>90 X 90</td>
<td>$133,347.00</td>
</tr>
<tr>
<td>Long Meadow Ranch – Horse Club</td>
<td>100 X 150</td>
<td>$262,549.00</td>
</tr>
<tr>
<td>Long Meadow Ranch – Maintenance Bldg</td>
<td>52 X 150</td>
<td>$129,356.00</td>
</tr>
<tr>
<td>Winslow Bus Barn</td>
<td></td>
<td>$139,195.00</td>
</tr>
<tr>
<td>Leon Hunter – Cave Creek</td>
<td>52 X 150</td>
<td>$143,057.00</td>
</tr>
<tr>
<td>Leon Hunter – Williams</td>
<td></td>
<td>$77,680.00</td>
</tr>
<tr>
<td>Watkins Office &amp; Shop</td>
<td>60 X 60</td>
<td>$62,240.00</td>
</tr>
<tr>
<td>Little Dealer Little Prices</td>
<td></td>
<td>$1,585,340.00</td>
</tr>
<tr>
<td>Salt River Material Plant Warehouse</td>
<td></td>
<td>$374,342.00</td>
</tr>
<tr>
<td>Fann Shop</td>
<td>120 X 147</td>
<td>$260,751.00</td>
</tr>
</tbody>
</table>
FOR EACH KEY PERSON IDENTIFIED, LIST AT LEAST TWO PROJECTS IN WHICH THEY HAVE PLAYED A PRIMARY ROLE. IF A PROJECT SELECTED FOR A KEY PERSON IS THE SAME AS ONE SELECTED FOR THE FIRM, PROVIDE JUST THE PROJECT NAME AND THE ROLE OF THE KEY PERSON. FOR OTHER PROJECTS, PROVIDE:
- DESCRIPTION OF PROJECT.
- ROLE OF THE PERSON.
- PROJECT’S ORIGINAL CONTRACTED CONSTRUCTION COST AND FINAL CONSTRUCTION COST.
- CONSTRUCTION DATES. PROJECT OWNER.

REFERENCE INFORMATION (TWO CONTACTS, INCLUDING ROLES ON THE PROJECTS AND TELEPHONE NUMBERS PER PROJECT)

**Jeb Johnson;**
- Description of project. 2,400 s.f. shop and warehouse facility.
- Role of the person; Project Manager
- Project’s original contracted construction cost and final construction cost. $360,000

- Construction dates; Under Construction
- Project Owner; Salt River Materials Group, Salt River Maricopa Pima Indian Tribe
- References;
  - Joe Ontiveros, Project Engineer 928.639.8079
  - Rob Prouty, Project Engineer 928.639.8079

- **6th Street Warehouse**
  - 5,500 square feet
  - Architect: Synectic Design
  - Prescott, Arizona
  - Duane Watkins 928-925-5648
  - $250,000

- **Music Mountain Middle School**
  - School / Facility
  - 15,000 square feet
  - Stroh Architecture
  - Peach Springs, Arizona
  - $1,900,000
  - No Reference

- **Chino Valley Commerce Center**
  - Warehouse / Mini-Storage
  - 15,000 square feet
  - Chino Valley, Arizona
  - Tom Lennon- Owner
  - $600,000

- **Asphalt Paving and Supply - Owner**
  - 17,500 square feet
  - Prescott Valley, Arizona
  - Chris Graff- 928-237-6564
  - $1,200,000

- **Little Dealer Little Prices**
  - RV Dealership
  - 22,500 Square Feet
  - Stroh Architecture
  - Prescott Valley, Arizona
  - Paul Brunoforte 602-499-6581
  - $1,800,000

**Robert Morgan;**
- Description of project. 2,400 s.f shop and warehouse facility.
- Role of the person; Project Manager and Cost Estimator
- Project’s original contracted construction cost and final construction cost. $360,000
- Construction dates; Under Construction
- Project Owner; Salt River Materials Group, Salt River Maricopa Pima Indian Tribe
- References;
  - Joe Ontiveros, Project Engineer 928.639.8079
  - Rob Prouty, Project Engineer 928.639.8079

- **6th Street Warehouse**
  - 5,500 square feet
  - Architect: Synectic Design
  - Prescott, Arizona
  - Duane Watkins
  - 928-925-5648
  - $250,000

- **Music Mountain Middle School**
  - School / Facility
  - 15,000 square feet
  - Stroh Architecture
  - Peach Springs, Arizona
  - Duane Watkins 928-925-5648
  - $250,000

- **Chino Valley Commerce Center**
  - Warehouse / Mini-Storage
  - 15,000 square feet
  - Chino Valley, Arizona
  - Tom Lennon- Owner
  - $600,000

- **Asphalt Paving and Supply - Owner**
  - 17,500 square feet
  - Prescott Valley, Arizona
  - Chris Graff- 928-237-6564
  - $1,200,000

- **Little Dealer Little Prices**
  - RV Dealership
  - 22,500 Square Feet
  - Stroh Architecture
  - Prescott Valley, Arizona
  - Paul Brunoforte 602-499-6581
  - $1,800,000
**Music Mountain Middle School**
- School / Facility
- 15,000 square feet
- Stroh Architecture
- Peach Springs, Arizona
- $1,900,000
- Doug Stroh
- 928.771.0548

**Chino Valley Commerce Center**
- Warehouse / Mini-Storage
- 15,000 square feet
- Chino Valley, Arizona
- Tom Lennon- Owner
- $600,000

**Asphalt Paving and Supply - Owner**
- 17,500 square feet
- Prescott Valley, Arizona
- Chris Graff- 928-237-6564
- $1,200,000

**Little Dealer Little Prices**
- RV Dealership
- 22,500 Square Feet
- Stroh Architecture
- Prescott Valley, Arizona
- Paul Brunoforte 602-499-6581
- $1,800,000

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**Will Yeager;**
- Description of project. 2,400 s.f shop and warehouse facility.
- Role of the person; Project Superintendent
- Project's original contracted construction cost and final construction cost. $360,000
- Construction dates; Under Construction
- Project Owner; Salt River Materials Group, Salt River Maricopa Pima Indian Tribe
- References;
  - Joe Ontiveros, Project Engineer
  - 928.639.8079
  - Rob Prouty, Project Engineer
  - 928.639.8079

**6th Street Warehouse**
- 5,500 square feet
- Architect: Synectic Design
- Prescott, Arizona
- Duane Watkins
- 928-925-5648
- $250,000

**Music Mountain Middle School**
- School / Facility
- 15,000 square feet
- Stroh Architecture
- Peach Springs, Arizona
- $1,900,000
- No Reference

**Chino Valley Commerce Center**
- Warehouse / Mini-Storage
- 15,000 square feet
- Chino Valley, Arizona
- Tom Lennon- Owner
- $600,000

---

**Sergio Martinez;**
- Description of project. 2,400 s.f shop and warehouse facility.
- Role of the person; Architectural project Manager and Designer
- Project's original contracted construction cost and final construction cost. $360000
- Construction dates; Under Construction
- Project Owner; Salt River Materials Group
- References;
  - Joe Ontiveros, Project Engineer
  - 928.639.8079
  - Rob Prouty, Project Engineer
  - 928.639.8079
- Description of project. Grand Canyon West ARFF (airport fire station) 9,400 s.f. pre-engineered metal building. Consisting of 4 apparatus bays, storage, day room, sleeping quarters, restrooms, labs, and watch room.
- Role of the person; Architectural project Manager and Designer
- Project’s original contracted construction cost and final construction cost.
  $3,673,378.00
- Construction dates;
- Project Owner; Hualapai Indian Tribe
  - References;
  - Jason Musselman, PE
  - 602.803.7079
  - Colin Sterns; Project Manager
  - 602.803.7079

- Description of project. 15,000 s.f. pre-engineered metal building for parks and recreation department maintenance shop and administration office facility. Consisting of indoor and outdoor shop areas, indoor warehouse, and administration offices.
- Role of the person; Architectural project Manager and Designer
- Project’s original contracted construction cost and final construction cost. $1.5 million
- Construction dates; Under construction
- Project Owner; Town of Sahuarita, Arizona
- References;
  - Cherie Odeski, Procurement Officer
  - 520.344.7103
  - Debra Einweck; Project Manager
  - 520.344.7103
  - Brian DeBreceny; Parks and Recreation Maintenance Director
  - 520.344.7103

Jeb Johnson; Jeb has over 20 years’ experience in the construction industry, mastering trade by trade from the ground up. Where he had the opportunity to work on a variety of projects’ from small office warehouses to multi-million dollar industrial complexes. I then went on to work for local contractors in Prescott, Arizona learning all phases in Commercial and Residential construction and in 2002 I created JEBCO Construction companies.

- Experienced in a wide range of buildings projects from aeronautical universities, large corporations, doctor offices, financial institutions, schools, public facilities, custom residential homes and remodels
- Earned the reputation for completing projects with a high degree of quality and meeting the projects schedule and budget needs.
- Team oriented delivering the highest quality performance and service possible.
- Providing utility company assistance, building permit assistance, conceptual costing experience/knowledge, value engineering/constructability experience collaborate design services with municipal design and construction projects.

Robert Morgan; Robert has over 20 years of providing utility company assistance, building permit assistance, conceptual costing experience/knowledge, value engineering/constructability experience collaborate design services with municipal design and construction projects.

Will Yeager; Will has over 20 years of providing utility company assistance, building permit assistance, conceptual costing experience/knowledge, value engineering/constructability experience collaborate design services with municipal design and construction projects.

Sergio Martinez; Over 45 years in planning, architecture and construction, as well, as managing small to large Architectural, Planning and Engineering firms, has provided a broad and diverse background. Professional services offered to clients ranging from the very small private business to large complex private corporations, federal, county, municipal, native American, and state government agencies and...
organizations, providing considerable experience in all phases of architecture, planning, construction, engineering, management, and in providing utility company assistance, building permit assistance, conceptual costing experience/knowledge, value engineering/constructability experience collaborate design services with over 300 municipal design and construction projects.

PROVIDE YOUR SUBCONTRACTOR AND CONSULTANT SELECTION CRITERIA YOU PLAN ON IMPLEMENTING. THE SELECTION OF SUBCONTRACTORS MUST BE BASED ON QUALIFICATIONS OR A COMBINATION OF QUALIFICATION AND PRICE, BUT SHOULD NOT BE BASED ON PRICE ALONE.

JEBCO has strategically chosen Arrington Watkins Architects to be the lead for the design team. Based on their outstanding qualifications and reputation for providing design services for these types of facilities and their knowledge and experience working in Chino Valley and the Prescott area.

JEBCO’s selection of subcontractors is through either qualifications only, or the combination of qualifications and price, but never based on price alone. On every project we create a trade contracting plan that is geared towards the specific needs of the project. Whether selected early utilizing a qualifications process, or selected by competitive bidding, we ensure a base of a least three subcontractors in every major trade.

JEBCO’s subcontractor pre-qualifications is a proactive process to ensure the most qualified trade contractors providing the greatest value are selected for the Town of Chino Valley projects. We consider several factors before we narrow down our trade subcontractor list:

- Experience with the work being performed
- Current workload and manpower available for this project
- Experience of lead personnel with completing similar work
- Financial integrity and bondability
- Safety record and current experience modifier

This process ensures only fully qualified subcontractors are invited to propose on the project. Once pre-qualified, trade subcontractors participate on our procurement process. Keys to successful procurement include:

- Understanding the trade coordination among critical building systems and materials.
- Purchasing complete cost for each trade that captures means and methods.
- Detailed scoping to anticipate and resolve issues prior to award.
- Conveying expectations for quality, safety, coordination, and schedule.
- Considerations of lessons learned applied to scope process.
- Communicating to our trade subcontractors our detailed site logistics and sequence of construction.

JEBCO brings years of experience throughout Yavapai County. We understand the value of utilizing local, high performing subcontractors where they are available and have capacity. Our subcontractor selection plan includes three fundamental steps:

1. Prepare for Town approval a template for outlining the qualifications information requested from all subcontractors.
2. We will work with the Town to develop a list of subcontractors to be solicited, including local subcontractors familiar with the Town project. We will recommend trades and firms based on the scope of Design Build.
3. We will administer the subcontractor solicitation, recommendations and award process. Once the proposals have been received we will review, checking for completeness, tabulating each biddr’s pricing, and reviewing their qualifications submittals. After selections have been made and award notices issued, subcontractors agreements will be execute.

SUBCONTRACTOR PLAN

On every project we create a subcontracting plan that is geared toward a specific need of the project and schedule.

- Step 1 – Create Project Specific Plan
- Step 2 – Pre-qualifications
- Step 3 – Subcontractor RFI’s
- Step 4 – Review Results
- Step 5 – Approval and Award
DESIGN BUILD EXPERIENCE | Section D

DESCRIPTION OF YOUR FIRM’S KNOWLEDGE, TRAINING, AND/OR EXPERIENCE SPECIFICALLY WITH DESIGN BUILD CONTRACTING TO INCLUDE:

EXPERIENCE WITH DB CONTRACTS AND PROJECTS RELATED TO MUNICIPAL OR PUBLIC FACILITIES CONSTRUCTION.

JEBCO delivery method since the inception of the company in 2002 have been primary design build project. Many with various municipal and public entities using pre-engineered structural systems.

Arrington Watkins Architects has provided design build services for over 60 buildings using pre-engineered structural systems, representing well over 3 million square feet of space. Uses of the space within these structures have included warehouses, administration, central plants, detention housing, maintenance, education, kitchen / dining, medical, manufacturing, and waste recycling for municipal and public entities.

TRAINING AND CERTIFICATIONS FOR ANY PRICE COST ESTIMATING OF KEY TEAM PERSONNEL;

ACTUAL PROJECT EXPERIENCE WITH COST ESTIMATING UTILIZING DESIGN BUILD, JOB ORDER PRICING, CMAR PRICING, OR EQUIVALENT:

JEBCO’s delivery method since the inception of the company in 2002 have been primary design build project. Job order pricing or equivalent.

It goes without saying that cost is of prime importance in planning, designing and constructing projects. It is continually present from concept and budget through to successful building occupation. Planning for and maintaining financial control of your construction projects is essential, especially in times of economic constraint. JEBCO’s concern for meeting a project’s budgetary requirements is reflected in the cost control procedures and support systems, which are established and employed as standard management and design practice throughout the course of a project. Specific information describing our approach to cost control using Computerized Cost Estimating, Value Engineering, Life Cycle Costing and Change Orders is outlined below.

The Project Team will identify project component costs at a detailed level so that they can be constantly monitored in relation to the quantities and qualities while developing the design, and thus permit all members of the project organization to remain current about the impact of individual design decisions on the overall project cost. Continual updating of the project cost estimate is vital to enable decisions to be made regarding project scope, materials and configuration while keeping the project within budget objectives.

Specifically, the Project Team will:

- Meet with all appropriate members of the Project Team to verify the cost control system to be used for the project.
- Conduct a preliminary space-budget analysis to determine the early constraints and opportunities for design.
- Update the estimated project cost during and at the completion of concept and preliminary design phases, and with the issuance of final contract documents.
• Perform value engineering studies at key points during the design process.

• Participate with other members of the project organization in assessing the problems and opportunities identified by the cost updating process and in developing strategies for balancing the three principle budget components of cost, time and quality.

**Computerized Cost Estimating** – To accomplish the Cost Control procedures outlined above, JEBCO employs an in-house computerized cost data system in preparing quantity surveys and detailed estimates for projects. The national cost data base is supplemented and continuously updated to reflect current labor and material costs on both a national and local level. It can be used to generate the following estimates:

- **Concepts**: Displays square foot costs based on historical data for each building system selected.

- **35% Submittal**: Expansion of material selections for functional building systems, value engineering, life cycle costs, bid comparisons, negotiation, sub-trade analysis and labor durations. Utilization of composites or sub-assemblies to analyze systems and design.

- **Final Submittal**: Trade items using composites or sub-assemblies, are analyzed with systems, elements, and functional use area reports for value engineering, life cycle costs, bid comparisons, negotiation, sub-trade analysis and labor durations.

- **Construction**: Sub-trade estimating (buying list) with systems elements and functional use area reports for detailed trade analysis, bid, change orders, job cost accounting and scheduling.

**Value Engineering** – One of the team’s particular strengths is the Value Engineering of the project. It is an integral part of JEBCO project development process. Key members of the team have completed a 40-hour course and are qualified to contribute to this process. We feel that a comprehensive value analysis is critical to project success. Interaction between the client and the architect/engineer established at the value engineering sessions carries throughout the project and produces a quality product. Members of the team have value-engineered projects ranging from $1 million to $35 million in construction cost.

Our objective in value engineering is not just to reduce cost, we strive to achieve unimpaired program results for minimum cost without sacrificing necessary performance or service levels. Therefore, a system that has been successfully value engineered will still meet the same performance criteria as other more costly alternatives.

**Life Cycle Costing** – During the Life Cycle Costing analysis, each design option is examined relative to the initial cost, annual cost of ownership and the annual cost of operation in future years. The initial cost of developing and equipping a facility is an important consideration in program planning. However, the amount and impact of capital expenditures required to bring the facility into operation often overshadow the commitment to future operating costs. The result can be a decision to build a facility without an adequate understanding of the future cost implications. Life cycle costing is also used to evaluate methods and materials that could reduce design and construction time, thus leading to a facility that is available for use at an earlier date.
OBJECTIVE

A position in which my experience in overseeing projects, attention to details and experience with all phases of construction will have valuable application.

PROFESSIONAL PROFILE

Over 20 years experience in the construction industry, mastering trade by trade from the ground up. Where I had the opportunity to work on a variety of projects’ from small office warehouses to multi-million dollar industrial complexes. I then went on to work for local contractors in Prescott, Arizona learning all phases in Commercial and Residential construction and in 2002 I created JEBCO Construction companies.

- Experienced in a wide range of buildings projects from aeronautical universities, large corporations, doctor offices, financial institutions, schools, public facilities, custom residential homes and remodels
- Earned the reputation for completing projects with a high degree of quality and meeting the projects schedule and budget needs.
- Team oriented delivering the highest quality performance and service possible.

EXPERIENCE

2002 to date

Jebco Construction Companies

Owner

- Responsible for implementing and overseeing daily office and field operations. Responsible for maintaining professional relationships with all related industry personnel. Personally responsible for finding projects to bid, overseeing all estimating, writing and executing contracts with owners and subcontractors, obtaining bid bonds, scheduling, and pricing of change orders.
- Responsible for overseeing the Management aspect of each project successfully bid, in companionship with the appointed Onsite Superintendent.
- Responsibilities include building code compliance, project development, quality control, and certification of occupancy.
- Negotiated cost estimate with clients: maintained daily contact with clients at location sites.
- Developed strong employee and sub contractor productivity and ability to identify, isolate, and eliminate work hazards.
- Design Build, Commercial Contractor, Butler Steel Building and CBC Steel Distribution
- Enforced all OSHA safety regulations.

2002

Les Winther Construction

Carpenter/Supervisor

- Constructed high-end custom homes, additions, and remodels throughout the Northern Arizona.
- Responsibility’s include day to day operations on residential housing, both spec and custom homes.
- Duties included site layout, concrete placement for footings, stem walls, and slabs on grade, framing layout and construction, supervision of subcontractors, interior/exterior finishes, roofing, and punch lists.

2001

Carpenter/Foreman

Carpenter/Foreman

- New residential all phases
- Scope of projects included plot layout, excavation and grading, foundations, concrete and masonry, framing, drywall, tile setting, flooring, cabinetry, window and door casework, interior and exterior trim, exterior sheathing, fencing, decks, and roofing

1995 - 2001

SunState Builders

Superintended/Dirt Foreman

- Developed large parcels of land for commercial projects
- Scope of work included projects ranging from 1,000 sq ft buildings to 500,000 sq ft of building pads
- Ran all earth moving equipment such as scrapers, dozers, road graders, excavators, backhoes, compaction equipment, etc.
- Responsible for checking and maintaining all grades for building pads and parking lots.
AWARDS

JEBCO Construction Companies

- JEBCO has been a Butler Builder for over 10 years, and as such is an independent member of the world wide organization of BUTLER Builders, is awarded for offering quality building products and professional construction services.

- JEBCO had been awarded High performance builder for 3 years.

- JEBCO is recognized and awarded of its magnificent sales record as a BUTLER Builder, is hereby proclaimed by BUTLER Manufacturing Company to membership in THE BUTLER CLUB. Be it known that this award is held in highest esteem by BUTLER by virtue of the member’s forceful salesmanship, professional management and honest business policy so necessary to the success of this industry.

- JEBCO has received awards for being one of CBC top builders including the building Unisource Energy Services

REFERENCES

Jim Simpson
JSC Concrete
928-713-5999

Jim Chamberlain
SunState Builders
480-894-1286

Kern Kendall
Kern Kendall Construction
928-710-7306

Justin Scott
HOAMCO
928-713-6006
EDUCATION


Arizona Western College, Yuma, 1974-1976, Construction Graphics

REGISTRATION

983, Architect Arizona, # 17651

Over 40 years in planning, architecture and construction, as well as managing small to large Architectural, Planning and Engineering firms, has provided a broad and diverse background. Professional services offered to clients ranging from the very small private business to large complex private corporations, federal, county, municipal, native American, and state government agencies and organizations, providing considerable experience in all phases of architecture, planning, construction, engineering, and management.

MAINTENANCE FACILITIES
(PRE-ENGINEERED FACILITIES)

- Coca Cola Warehouse and maintenance facility, new facility, Tucson, Arizona
- Hamilton Aviation, new facility, Tucson, Arizona
- Delta Air Lines, Maintenance Facility, new facility
- Ryan Field Maintenance Shop, new facility
- Waste Management of Tucson, vehicle maintenance facility and operations center, new facility, Tucson, Arizona
- Trico Electric maintenance facility, Marana, Arizona
- Jiffy Lube, renovations to Sears Auto Centers at Tucson and Park Malls, Tucson, Arizona
- 12- Jiffy Lube, new facilities, Tucson, Arizona
- Jiffy Lube, new facility, Casa Grande, Arizona
- Nogales Unified School District No. 1, district maintenance warehouse and distribution center, new facility, Nogales, Arizona
- Tombstone Unified School District #1, District Offices, auto maintenance/carpenter shop, new facility, Tombstone, Arizona
- Caterpillar Conag Expo Building, warehouse and maintenance, addition, Green Valley, AZ
- Hamilton Aviation, new facility, Tucson, Arizona
- Page Unified School District bus and vehicle maintenance facility, new facility, Page, Arizona
- Tombstone Unified School District bus and vehicle maintenance facility, new facility, Tombstone, Arizona
- Page Unified School District facilities maintenance facility, new facility, Page, Arizona
- Nogales Unified School District maintenance facility, new facility, Nogales, Arizona
- Town of Sahuarita parks and recreation maintenance facility, new facility, Sahuarita, Arizona
- Laboratory relocation at Ina Road WPCG, Tucson, Arizona
- Picture Rocks Recreation Center, new facility, Picture Rocks, Arizona
- Composite Warehouse, new facility, Davis Monthan Air Force Base, Tucson, Arizona
- Compass Call Replacement Training Center, Davis Monthan Air Force Base, Tucson, Arizona
- Composite Medical Facility, Davis Monthan Air Force Base, Tucson, Arizona
- U.S. Customs Building, new facility, Davis Monthan Air Force Base, Tucson, Arizona
- FBO Hangar at Sierra Vista Municipal Airport, new facility
OBJECTIVE

To take Construction to the next level of Quality.

EDUCATION


Arizona Western College, Yuma, 1974-1976, Construction Graphics

EXPERIENCE

2011 to Date   Jebco Building Systems, LLC  Prescott, AZ
Supervisor/Carpenter

• Self- Employed

• Remodels

• All Construction of all phases

2003 - 2011   Winther Company  Prescott, AZ
Co- Owner

• Commercial Construction – All Phases

• Residential Construction – All Phases

1997 -2003   Winther Construction  Prescott, AZ
Labor/Carpenter/Supervision

• New Residential all phases

1994-1997   T & H Construction  Prescott, AZ
Equipment Operator

• Drilling Blasting

• Underground Utilities

• Heavy Equipment

REFERENCES

References are available on request.
March 7, 2019

To Whom It May Concern:

RE: Jebco Construction Companies, LLC

We submit this letter in recommendation of our valued client, Jebco Construction Companies, LLC. Minard-Ames Insurance Services LLC has been handling Jebco’s bonding needs since 2012. We have arranged a surety program for them with Merchants National Bonding, Inc. They have been with Merchants National since 2014. They are a Treasury Listed, “A VII” Best rated surety company and have been able to meet the surety needs of Jebco, Inc. They have responded to projects with bond requirements in the $5,000,000 range, with an aggregate program of $6,500,000.

We are confident that Jebco would not enter into any contract for which they were not qualified to undertake by reason of their experience, organization or financial responsibility. In our opinion, Jebco is capably staffed, properly financed and possesses very capable and successful management.

Bonds issued are always based on a satisfactory review of all contract documents, bond forms, verification of financing, and other current relevant underwriting information. Any arrangement for bonds is a matter between the contractor, surety and us. We assume no liability to third parties or to you if for any reason we do not execute said bond or bonds.

We are pleased to share with you our most favorable experience and regard for our client. Should you have any questions, please feel free to call our office.

Thank you.

Sincerely,

Lori L. Dawson-Brown
Underwriting Executive
EXHIBIT G
TO
DESIGN - BUILD AGREEMENT
BETWEEN
TOWN OF CHINO VALLEY
AND
JEOCO CONSTRUCTION COMPANIES, LLC

[Subcontractor Selection Program]

Intentionally left blank. Subcontractor Selection Program is included in Exhibit F.
EXHIBIT H

TO

DESIGN - BUILD AGREEMENT

BETWEEN

TOWN OF CHINO VALLEY

AND

JECBO CONSTRUCTION COMPANIES, LLC

[Traffic Control/Construction Sequencing]

See following pages.

Intentionally left blank.
EXHIBIT I
TO
DESIGN - BUILD AGREEMENT
BETWEEN
TOWN OF CHINO VALLEY
AND
JEBCO CONSTRUCTION COMPANIES, LLC

[Allowable General Conditions Cost Line Items]

See following pages.
ALLOWABLE GENERAL CONDITIONS COST LINE ITEMS

On-Site Project Management Staff
  Safety Coordinator/Assistant(s)  CPM Scheduler
  Project Executive            Superintendent(s)
  Office Engineer(s)       Project Manager(s)
  Project Expeditor(s)       Project Support Staff
  Assistant Superintendent(s)  Out-of-State Project Specific Travel*

Bonds and Insurance
  Builder’s Risk Insurance
  General Liability Insurance
  Payment and Performance Bonds
  Other Project Insurance as Required by Contract

Temporary Project Utilities
  Non-LEED Recycling Dumpsters        Temporary Toilets
  Project Electricity                 Temporary Fire Protection
  Monthly Telephone / Internet Service Telephone / Internet System Installation
  Street Rental and Barricades        Temporary Water Distribution and Meters
  Fencing and Covered Walkways        Temporary Electrical Distribution and Meters
  Site Erosion Control (BMP) and Project Water, Ice and Supplements to Prevent
  Entrance(s)                         Dehydration

Field Offices & Office Supplies
  Partnering Costs                   First Aid Supplies
  Job Photos/Videos                  Reproduction Services
  Project Specific Signage           Monthly Office Supplies
  Postage/Special Shipping           Remote Parking Expenses
  Project/As-Built (Record) Drawings Project Reference Manuals
  Project Milestone Event(s)*        Security System/Watchman
  Move-In/Out and Office Setup       Safety Material and Equipment
  Employee Identification System     Drinking Water and Accessories (Including Ice)
  Small Tools and Storage Trailers  Office Clean-Up/Janitorial Services
  Monthly Office Trailer Rental Costs Field Engineering
  Mobilization and Demobilization    (Equipment Only)

* Specific justification and all estimated costs shall be submitted and approved by the Town prior to any travel or event.
EXHIBIT J
TO
DESIGN - BUILD AGREEMENT
BETWEEN
TOWN OF CHINO VALLEY
AND
JEBCO CONSTRUCTION COMPANIES, LLC

[Pre-Construction Cost Summary]

See following pages.
DESIGN SCOPE OF WORK
Town of Chino Valley
Utilities Shop at Old Manor
And Restrooms at Memory Park

June 28, 2019

Project: Town of Chino Valley
Utilities Shop at Old Manor
And Restrooms at Memory Park
Chino Valley, AZ

Scope of Services: JEBCO shall perform the pre-construction scope of services for the project as herein.

Fee: Client shall compensate JEBCO Construction Services as follows:

Basic Services:
Task 1.0 – Schematic Design A Fixed Sum of: $ 12,490.00
Task 2.0 – Construction Documents A Fixed Sum of: $ 64,940.00
Task 3.0 – Permit Assistance A Fixed Sum of: $ 4,810.00
Task 4.0 – Construction Administration A Fixed Sum of: $ 14,080.00

Basis Services Total A fixed Sum of: $96,320.00

Reimbursable Expenses (in addition to fee): $ 7,000.00

GENERAL DESCRIPTION
Building: It is the intent of the Town of Chino Valley to construct a new 3,200 s.f. Pre-Engineered metal utilities shop building at Old Manor and restrooms at Memory Park.

1. The Utilities Shop Building will include the following features:
   a. Restrooms
   b. Breakroom
   c. Shop Area
   d. 2 – Offices
   e. Small Laboratory
   f. Janitors room
   g. Exterior concrete apron

2. Restroom building will include the following:
   a. 1 – Men’s restroom
   b. 2 – Women’s restroom
   c. 1 – Family restroom

On - Site Development: The onsite and offsite development will be provided by the Town of Chino Valley and to include but not limited to:

• Civil Engineering, i.e, horizontal control, wet and dry utilizes
• All utilities to within 5’ of the exterior of the buildings
• Communications lines
• Sewer and water, invert elevations
• Power

Exception: Septic system and leashing field for the restroom project.
Construction Procurement Method: The project will be constructed using the Design-Build process.

Sustainability goals: None

Project Schedule: It is desirable to complete the design phases, permitting and construction of the project within 12 months.

PROJECT PHASES
The Scope of Work will consist of the phases as outlined in the Contract with the following clarifications:

Task 1.0 Schematic Design (30% Design)
- Create conceptual design approaches (two) based on the program document.
- Meet with key Town staff, to review the progress of the schematic design.
- Develop space plan alternatives
  - Develop a schematic design for approval by the key Town staff.
  - Create a schematic level cost estimate based on the program and schematic design presented in the meetings.
  - Respond in writing to Owner review comments
- Deliverable: 30% documents, including: preliminary site plan, floor plan, elevations, Conceptual cost estimate.

Task 2.0 Construction Documents (90% and 100% Design)
- Develop construction documents necessary to obtain a Building Permit and required by the Contractor to construct the project.
- Participate in coordination meetings.
- Provide complete finish schedule.
- Prepare updates to cost estimates (GMP) at 90%.
- Wet and dry utility coordination
- 90% construction document submittal for Owner review
- Respond in writing to Owner review comments
- 100% pre-final construction documents
- Provide Owner with all revised information.
  - Conversion of electronic files to PDF Town use
  - Final Plans, Specifications and Estimate submitted for record.
- Deliverable: 90% Plans and specification for Town review and approval. 100% pre-final construction documents. Permit submittals. Final Plans, Specifications and GMP.
Task 3.0 Construction Administration
- RFI, Shop Drawings
- Site observations

Task 4.0 Building Permit:
- Submit plans to the Development Services for review.
- Pick up redlines, if required by plan reviewer.
- Resubmit documents for approval.

UTILITY COORDINATION

JEBCO will perform above ground utility coordination for the project. In addition, JEBCO will perform subsurface ground utility coordination for the project as necessary in areas where structures, footings and/or foundations will be crossing utilities or are shown to be within the horizontal separation limits as listed in the Town of Chino Valley design criteria manual. Utility coordination will generally follow the guidance of the Public Improvement Project Guide published by the Arizona Utility Coordinating Committee and the American Society of Civil Engineers (ASCE) Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data.

DESIGN PHASE PROJECT MEETINGS

AW will attend and participate in the following project meetings. JEBCO will prepare and distribute attendance sheet, meeting agenda, and meeting minutes. Meeting minutes will be prepared by JEBCO within five days after the meeting and send to the Town’s engineering project manager for review; then after approval JEBCO will distribute to all meeting participants. Town will be responsible for inviting appropriate Town staff and other stakeholders to project meetings. Meetings included in this scope of work include the following:

<table>
<thead>
<tr>
<th>Meeting Type</th>
<th>Number of Meetings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kick off Meeting</td>
<td>1</td>
</tr>
<tr>
<td>Progress Meetings</td>
<td>4</td>
</tr>
<tr>
<td>Building Department</td>
<td>1</td>
</tr>
<tr>
<td>Council Meeting</td>
<td>1</td>
</tr>
<tr>
<td>Construction Site Visits</td>
<td>4</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>11</strong></td>
</tr>
</tbody>
</table>

PROJECT MANAGEMENT AND COORDINATION

JEBCO shall provide internal project management and control for all aspects of engineering design. Included in this task are management and maintenance of project schedule, records, correspondence, quality control activities, and correspondence with Town staff.
DELIVERABLES

The following deliverables to Town of Chino Valley Engineering Group will be provided to the Town’s Engineering Project Manager as part of this project. The table below does not include the separate deliverables that will be required by the Town of Chino Valley Development Services (Design Review & Building Permit processes)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Utility Coordination</td>
<td>One (1) copy of &quot;no conflict&quot; letter submitted to each utility company at each progress submittal</td>
</tr>
<tr>
<td></td>
<td>One (1) copy meeting minutes from AW/JEBCO/Utility Company Meetings</td>
</tr>
<tr>
<td>30% Design Submittal</td>
<td>Electronic PDF</td>
</tr>
<tr>
<td></td>
<td>One (1) copy of draft cost estimate</td>
</tr>
<tr>
<td>90% Design Submittal</td>
<td>Electronic PDF</td>
</tr>
<tr>
<td></td>
<td>One (1) copy of 60% redline comments</td>
</tr>
<tr>
<td></td>
<td>One (1) copy of GMP</td>
</tr>
<tr>
<td>Pre-Final (100%) Design Submittal</td>
<td>Electronic PDF and REVIT files</td>
</tr>
<tr>
<td></td>
<td>One (1) copy of 90% redline comments</td>
</tr>
</tbody>
</table>

DIRECT COSTS / REIMBURSIBLE EXPENSES

Owner shall reimburse JEBCO for direct costs and reimbursable expenses incurred as part of this project. Along with the architectural/engineering design fee total on the proposal cover sheet, we have provided an estimate of reimbursable expenses. Anticipated direct costs and reimbursable expenses shall include the following:

- Document reproduction for all deliverables
- Sub-consultant services
- Mileage and travel expenses

EXCLUSIONS

The following items are specifically excluded from the Scope of Work and budget and, if required, will either be prepared by others or will be covered by separate agreements between Agate, Inc. and Owner:
1. Aerial Photography
2. Archeological Studies
3. Development Plan
4. Environmental Analysis
5. Geotechnical Analysis
6. Hydrology
7. Title Reports
8. Material Testing
9. Biological Studies
10. On-site and Off-site Road & Utility Improvements
11. Permits and Fees
12. Record Drawing Preparation
13. Models
14. Special Inspections During Construction
15. Traffic Studies
16. Construction Surveying & Layout
17. Site utilities 5’ beyond building envelope
18. IT/Special Systems design documentations
19. Site Survey
20. Civil Engineering
21. Landscape architecture

OWNER RESPONSIBILITIES

- Provide all available site documentation, including utilities and drainage reports
- All site civil engineering, including setting finish floor elevation and utility inverts
- Participate in design meetings
- Coordinate interdepartmental communication.
- Provide document review and feedback at each phase
- Pay all permit submittal fees
- Procure security systems, access control systems, CCTV, CATV, and Alert Monitor via Town vendors
EXHIBIT K
TO
DESIGN - BUILD AGREEMENT
BETWEEN
TOWN OF CHINO VALLEY
AND
JEBCO CONSTRUCTION COMPANIES, LLC

[Performance Bond]

See following page.
KNOW ALL PERSONS BY THESE PRESENTS:

THAT, ___________________________________________________________ (hereinafter called Principal), as Principal, and_________________________________________, a corporation organized and existing under the laws of the State of__________________________, with its principal office in the Town of ________________________, (hereinafter called the Surety), as Surety, are held and firmly bound unto the Town of Chino Valley (hereinafter called the Obligee) in the amount of _________________________ (Dollars) ($_____________________), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the ______ day of _________________ 20___, for the material, service or construction described as _____________________________________________________________________ is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal faithfully performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of the Contract during the original term of the Contract and any extension of the Contract, with or without notice to the Surety, and during the life of any guaranty required under the Contract, and also performs and fulfills all of the undertakings, covenants, terms, conditions and agreements of all duly authorized modifications of the Contract that may hereafter be made, notice of which modifications to the surety being hereby waived, the above obligation is void. Otherwise it remains in full force and effect.

PROVIDED, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the extent as if it were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as part of the judgment reasonable attorney fees that may be fixed by a judge of the Court.

Witness our hands this ______ day of ________________________ 20__.

Principal    Seal

By:____________________________________

Surety      Seal

By:____________________________________

Agency of Record
EXHIBIT L
TO
DESIGN - BUILD AGREEMENT
BETWEEN
TOWN OF CHINO VALLEY
AND
JEOCO CONSTRUCTION COMPANIES, LLC

[Payment Bond]

See following page.
PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS:

THAT, __________________________________________ (hereinafter called Principal), as Principal, and _______________________________, a corporation organized and existing under the laws of the State of __________________________, with its principal office in the Town of __________________________ (hereinafter called the Surety), as Surety, are held and firmly bound unto the Town of Chino Valley (hereinafter called the Obligee) in the amount of ______________________________________ (Dollars) ($___________________), for the payment whereof, the said Principal and Surety bind themselves, and their heirs, administrators, executors, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract with the Obligee, dated the __________ day of _________________ 20___, for the material, service or construction described as ___________________________________________ which Contract is hereby referred to and made a part hereof as fully and to the same extent as if copied at length herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal promptly pays all monies due to all persons supplying labor or materials to the Principal or the Principal’s Subcontractors in the prosecution of the Work provided for in the Contract, this obligation is void. Otherwise it remains in full force and effect.

PROVIDED, however, that this bond is executed pursuant to the provisions of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions, conditions and limitations of Title 34, Chapter 2, Article 2, Arizona Revised Statutes, to the same extent as if they were copied at length in this agreement.

The prevailing party in a suit on this bond shall recover as a part of the judgment reasonable attorney fees that may be fixed by a judge of the Court.

Witness our hands this _______ day of _________________, 20___.

________________________________________
Principal    Seal
By:____________________________________

_______________________________________
Surety      Seal
By:____________________________________

Agency of Record