



CITY OF BUCKEYE

**INVITATION FOR BID
IFB: 2024173**

MILLER ROAD EXPANSION - DURANGO TO LOWER BUCKEYE

CONTACT PERSON

Diana Landeros

Contracts Administrator

623.349.6191

dlanderos@buckeyeaz.gov

Date Issued:	April 22, 2024
Pre-Bid Mtg. /Site Visit:	May 7, 2024 @ 1:00 P.M.
Last Day for Questions:	May 24, 2024 @ 3:00 P.M.
Bid Due Date:	May 31, 2024, no later than 3:00 P.M. local time.

PLEASE NOTE: IF IFB DOCUMENTS WERE DOWNLOADED FROM THE CITY OF BUCKEYE WEBSITE, BIDDER IS RESPONSIBLE FOR OBTAINING ANY AMENDMENTS EITHER THROUGH UPDATES ON THE WEBSITE, OR BY CONTACTING THE CITY CONTACT PERSON.

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SECTION 100

NOTICE TO CONTRACTORS OF INTENT TO RECEIVE BIDS

The City of Buckeye is seeking Bids for the Miller Road Expansion - Durango to Lower Buckeye. Bids will be received electronically **no later than 3:00 PM, MST, May 31, 2024.**

Scope of Work: This project is located in the City of Buckeye. The limits of improvements are from Miller Road from Lower Buckeye Road to Pima Street and Lower Buckeye Road from 1,000 feet West of Miller Road to 1,200 feet East of Miller Road. The work consists of constructing grading for new roadway alignment and profile, pavement, curb, gutter, drainage, street lighting, new traffic signal at Miller Road and Lower Buckeye Road and accompanying power service, signing, pavement marking, APS overhead relocations, signal interconnect conduit, and sewer stubs as shown in the project plans Exhibit C.

The selected contractor will be responsible for maintaining a clean working environment. The work should be closely coordinated with staff so as not to interrupt emergency operations.

Location of the Project: City of Buckeye, Miller Road from Lower Buckeye Road to Pima Street and Lower Buckeye Road from 1,000 ft west of Miller Road to 1,200 ft East of Miller Road.

The Construction Budget is: \$11,500,000.00.

All contractors engaged in City of Buckeye construction shall be licensed in the State of Arizona.

A Pre-Bid Conference will be held on Thursday, May 7, 2024, at 1:00 P.M. via Teams. [Click here to join the meeting.](#) Meeting ID: 256 868 880 554 Passcode: BMZnq2. The purpose of this Conference will be to clarify the contents of this Invitation for Bid to prevent any misunderstanding of the City's intention and desires, and/or to give prospective bidders an opportunity to review the area.

Any doubt as to the requirements of this Invitation for Bid, or any apparent omission or discrepancy should be presented to the City's representative at this Conference. The City's representative will then determine the appropriate action. If necessary, the City's Contracting Officer will issue a written Addendum to the Invitation for Bid.

Attendance to the Pre-Bid conference and site walk isn't mandatory. Although, all interested and potential bidders are encouraged to attend the Pre-Bid Conference and site walk.

Bid Security

The Bidder is required to email and then submit through mail a certified or cashier's check, upon a solvent bank, or a surety bond in an amount equal to ten percent (10%) of the Base Bid made payable to the City of Buckeye. The bid security shall be given as a guarantee that the Bidder will enter into the Contract if awarded to him; and shall be declared forfeited as liquidated damages if he refuses to enter into said contract upon request to do so by the City. The Bid security other than bid bonds will be

returned to the unsuccessful bidders and to the successful bidder upon his execution of a satisfactory payment and performance bond, and contract. Failure by the Bidder to submit bid security will result in rejection of the Bid as non-responsive. If a surety bond is used as bid security, it shall be executed on the form provided in Attachment 1 of the bid package. The surety bond provided as bid security shall be executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1. The surety bond shall not be executed by an individual surety or sureties.

All bids must also include a list of subcontractors being proposed for this project. A Subcontractor List is attached hereto as Attachment 2. The Contractor to whom the Contract is awarded shall, after being awarded the Contract, furnish to the City with a fully executed Contract a satisfactory performance and payment bond in an amount equal to one hundred percent (100%) of the full amount of the Bid, such bond not to be expressly limited as to time in which action may be instituted against the surety company for possible nonperformance of the Contractor. Work shall commence immediately after the issuance of the Notice to Proceed and shall be completed within **Two Hundred Seventy-Five (275) calendar days** from the date established by such notice. Subject to the provisions of the City's Procurement Code, the City reserves the right to reject any or all Bids, to waive or decline to waive irregularities in any bid, or to withhold the award if the City determines it to be in the best interests of the City.

Mistakes discovered before bid opening may be modified or withdrawn by written notice received by the City prior to the time set for bid opening. After bid opening corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted.

In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

- (a) the mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or
- (b) the bidder submits evidence that clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination by the City Manager.

All correspondence relating to this Project should be addressed through Bonfire or:

Diana Landeros
Contracts Administrator, Finance Department
P: 623.349.6191 | Email: dlanderos@buckeyeaz.gov

END OF SECTION

SECTION 200

INSTRUCTIONS TO BIDDERS

To be considered, the Bids must be made in accordance with these Instructions to the Bidders.

Documents. Bidders may obtain a complete set of the Construction Documents from City of Buckeye's website <https://buckeyeaz.bonfirehub.com/opportunities/133992>.

Examination: Before submitting a Bid, the bidders shall carefully examine the Construction Documents, visit the site of the Work, and fully inform themselves as to all existing conditions and limitations, and shall include in the Bid a sum to cover the cost of all items included in the Work. The Bidder, if awarded the Contract, shall not be allowed any extra compensation by reason of any matter or thing, concerning which such bidder might have fully informed himself prior to the Bidding.

Interpretations, Amendments. Should a bidder find any ambiguity, inconsistency, or error in the Construction Documents, or should the bidder be in doubt as to their meaning, the bidder shall at once notify the City, in writing, who will send a written amendment to all bidders of record. Neither City nor its representatives will be responsible for oral instructions or information.

Any amendments issued by the City during the time of bidding are to be included in the Bid and will become a part of the Contract when awarded. The Bidders shall acknowledge receipt of amendments on the Bid form in the space provided. Amendments will be mailed or delivered to each person or firm recorded by the City as having received the bidding documents and will be available for inspection wherever the bidding documents are kept available for that purpose.

If a bidder should fail to receive any amendment, or should fail to acknowledge receipt of same, the Bidder shall have the option of accepting a contract, if offered, including all amendments, at the Bid price, or withdrawing the Bid without penalty. The City is not responsible for ensuring delivery of amendments to any bidder. Failure to receive amendments or failure to acknowledge receipt shall not constitute a basis for claim, protest, or reissue of the invitation to bid.

Bids. To be entitled to consideration, Bids must be submitted on the Bid Form provided, with all blank spaces filled, the signature in longhand, and alterations or erasures initialed by the Bidder.

Where the Bidder is a corporation, the Bid must be signed by the legal name of the corporation followed by the name of the state of incorporation and the legal signature of an officer authorized to bind the corporation to a contract.

All contractors engaged in construction shall be licensed by the Registrar of Contractors in the State of Arizona.

Bids shall be emailed by the due date and time in Bonfire <https://buckeyeaz.bonfirehub.com/opportunities/133992>.

Subject of email shall read: IFB #2024173 – MILLER ROAD EXPANSION - DURANGO TO LOWER BUCKEYE

All documents required as part of the “bid package” shall be completed, scanned as a .pdf, and added as an attachment to the email submittal. The .pdf shall have the name of the company submitting as its title.

All bids received, via email, will be opened, documented and posted on the City of Buckeye’s Bonfire website at <https://buckeyeaz.bonfirehub.com/opportunities/133992>, under the webpage for this solicitation.

The Bidder assumes the responsibility for having the bid submitted on time via email to the address shown above. Any Bids received after the Bid Due Date and Time shall not be considered and will be returned to the Bidder. The Bidder assumes the risk of any delay in the electronic processing of the Contractor’s email through both parties (Contractor and City) network. Bidders must allow adequate time to ensure that the emails are timely received by the City at the designated email address. All time referenced are Buckeye, Arizona local times. Bidders agree to accept the time and date that is recorded on the received email as the official time. Any emails submission that are 3:01 pm. or later on the scheduled due date will be considered late and therefore, returned to sender.

All Bids shall remain firm for a period of **Sixty (60) calendar days** after the date of the Bid opening and the Contractor shall be prepared to begin construction upon the date established by the Advice of Award and Notice to Proceed.

Mistakes discovered before bid opening may be modified or withdrawn by written notice received by the City prior to the time set for bid opening. After bid opening corrections in bids shall be permitted only to the extent that the bidder can show by clear and convincing evidence that a mistake of a nonjudgmental character was made, the nature of the mistake, and the bid price actually intended. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the City or fair competition shall be permitted. In lieu of bid correction, a low bidder alleging a material mistake of fact may be permitted to withdraw its bid if:

- (a) the mistake is clearly evident on the face of the bid document, but the intended correct bid is not similarly evident; or
- (b) the bidder submits evidence that clearly and convincingly demonstrates that a mistake was made. All decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes, shall be supported by a written determination by the City Manager.

Time is of the essence for the Work under the Contract. The Bidder shall note that the Work must be completed **within Two Hundred Seventy-Five (275) calendar days**, and that failure to do so will result in the deduction of One Thousand Seven Hundred Eighty **Dollars and Zero Cents (\$1,780.00)** for each and every calendar day that the Work shall remain uncompleted after the time specified for the completion of the Work, as liquidated damages and not as a penalty.

The City reserves the right to reject any or all Bids, and to award the Contract to the lowest responsive and responsible Bidder, whose bid conforms in all material respects to requirements and criteria set forth in the invitation for bids. The city further reserves the right to waive any informality or irregularity in the bidding process. In addition, the Bidder recognizes the right of the City to reject a Bid if the Bidder fails to furnish any required Bid security, or to submit the data required by the bidding documents, or if the Bid is in any way incomplete or irregular.

Bid Security. The Bidder is required to submit with his Bid a certified or cashiers' check, upon a solvent bank, or a surety bond in an amount equal to ten percent (10%) of the Base Bid made payable to the City of Buckeye. The bid security shall be given as a guarantee that the Bidder will enter into the Contract if awarded to him; and shall be declared forfeited as liquidated damages if he refuses to enter into said contract upon request to do so by the City. The Bid security other than bid bonds will be returned to the unsuccessful bidders and to the successful bidder upon his execution of a satisfactory payment and performance bond, and contract. Failure by the Bidder to submit bid security will result in rejection of the Bid as non-responsive.

If a surety bond is used as bid security, it shall be executed on the form provided in Attachment 1 of the bid package. The surety bond provided as bid security shall be executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1. The surety bond shall not be executed by an individual surety or sureties.

Subcontractor Listing. The submission of a list of subcontractors is for the purpose of determining the qualifications of the subcontractors proposed for the Project. A form for submitting proposed subcontractors is included in Attachment 2 of the Bid Documents. This list must be submitted with the Bid. Lists submitted by unsuccessful Bidders, other than the three (3) apparent low Bidders will be returned unopened upon request. If prior to award of the Contract, the City has a reasonable and substantial objection to any subcontractor, the apparent low Bidder may, prior to the award, either withdraw his Bid without penalty, or may propose an acceptable substitution, provided that there is no change in the Bid cost. Failure of the Bidder to submit an acceptable substitute in a timely manner shall render his Bid non-responsive.

Responsibility of Subcontractors. Since the General Conditions and Amendments to the General Supplementary Conditions of the Contract for construction apply in every pertinent respect to each subcontractor, the Bidder shall carefully instruct each subcontractor to become familiar with them, just as though these sections had been formally included by reference in each division of work. The Bidder shall also caution each subcontractor to become familiar with the contents of referenced specifications and standards, insofar as they affect each subcontractor. Each citation of a standard specification shall be construed to refer to the latest published revision, as of the date of the Invitation to Bid. Consideration will not be given to any claimed ignorance as to contents of any cited specification, since each subcontractor is deemed to be experienced and familiar with his own trade's generally accepted and published standards of quality.

No allowance shall be made on behalf of a subcontractor for errors due to his negligence in not being familiar with the existing site conditions.

Each subcontractor shall make the field measurements necessary for his own work and shall be responsible for the accuracy of those measurements and his work. Also, should any structural difficulties prevent a subcontractor or tradesman from installing his materials or equipment properly, the Contractor shall be promptly notified so that the DP may be consulted on how best to resolve the difficulty.

Should the specifications or detailed contract drawings fail to cover any particular phase of the Work, the installation or maintenance directions provided by the manufacturer shall be followed. Each subcontractor shall acquaint himself with the Work of other trades whose activities are mutually affected so that their efforts are coordinated to avoid mistakes, omissions, disputes or delays.

Each subcontractor shall remove tools, equipment, materials and debris from the site promptly upon completion of the Work and shall leave the work area clean and free of all rubbish and debris.

Each subcontractor shall unequivocally guarantee his entire work to be free from defects of material and workmanship for the **One (1) year warranty period** after acceptance by City.

Insurance Requirements. See Article 12 of the Construction Contract between the City of Buckeye and Contractor for all insurance requirements.

Performance and Payment Bonds. The Contractor is required to provide and pay for performance and payment bonds. Bonds shall cover the faithful performance (100%) of the Contract, and the payment of all obligations (100%) arising thereunder, in such form as the City may prescribe and with such surety or sureties as are approved. The Contractor shall deliver the required bonds to the City not later than the date of execution of the Contract. The Contractor shall require the attorney in fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of his power-of-attorney indicating the monetary limit of such power. Bonds shall be furnished on the forms provided in the Construction Documents. The surety bonds shall be executed solely by a company or companies holding a certificate of authority to transact surety business in the State of Arizona issued by the Director of the Department of Insurance pursuant to Title 20, Chapter 2, Article 1. The bond amounts shall be for One hundred percent (100%) of the Contract amount plus any authorized Change Orders added to the Contract, of which notice to the surety shall be waived. The bonds shall not be executed by an individual surety or sureties.

Summary of Work. See Exhibit B to Construction Contract and Exhibit D to Construction Contract, for description of the Work.

Sales and Use Tax. The Contractor agrees to comply with, and to require all of his subcontractors to comply with, all the provisions of applicable State Sales Excise Tax Law and Compensation Use Tax Law and all amendments to same. To the furthest extent permitted by law, the Contractor further agrees to indemnify and save harmless the City, for, from and against any and all claims and demands made

against it by virtue of the failure of the Contractor or any subcontractor to comply with the provisions of any and all said laws and amendments.

Waiver of Liens. The Contractor is responsible for the payment of all bills for labor and materials furnished by, or to, the subcontractors and himself on this project; and the Contractor shall deliver to himself on this project, and the Contractor shall also deliver to the City before final payment, a Waiver of Liens in duplicate from himself and each of his subcontractors, if any; and at such time he shall certify that he is submitting such lien waivers for all subcontractors involved.

Qualifications of Contractors. The competency and responsibility of bidders, and of their proposed subcontractors, shall be considered in making the award, pursuant to the City of Buckeye Procurement Code.

Each contractor being considered for this project must accurately complete the Qualification Statement provided in Attachment 3 and submit it to the City either at the Bid opening or within twenty-four (24) hours following the Bid opening. Failure to do so may be grounds for rejecting the Contractor's Bid.

Failure to Complete Work within Time for Completion and Liquidated Damages. It is hereby understood and mutually agreed, by and between the Contractor and the City, that the date of beginning, rate of progress and the time for completion of the Work to be done hereunder are essential conditions of this contract; and it is further mutually understood and agreed that the Work embraced in this contract shall be commenced on a date to be specified in the Advice of Award and Notice to Proceed.

The Contractor agrees that said work shall be prosecuted regularly, diligently and uninterruptedly at such rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the City, that the time for completion of the Work will be the time in calendar days identified in these Instructions to Bidders.

For each calendar day that any part of the Work remains uncompleted after the expiration of the time specified, or allowed for completion of the Work stipulated in the Contract, or as automatically increased by the additional work or materials ordered after the Contract is signed, the amount specified within these Instructions to Bidders as liquidated damages shall be deducted from any monies due the Contractor, or if no money is due the Contractor, City shall have the right to recover said sum or sums from the Contractor, from the surety, or from both.

It is understood between the City and the Contractor that it is extremely difficult and impracticable to determine the actual damage the City will sustain by reason of a delay in the completion of the Project. Therefore, it shall be understood that the time to complete the Project, beyond the contractual date of completion, is in itself prima facie evidence of actual damages incurred, and the amount of these deductions are to cover the liquidated damages caused by the loss of use, or limited use, of the Project and other additional City incurred losses, or expenses, due to the failure of the Contractor to complete the Work within the time specified.

Now, if the said contractor shall neglect, or fail or refuse to complete the Work within the time specified, then the Contractor does hereby agree, as a part consideration for the awarding of this contract, to pay the City **Seven Hundred Ten Dollars (\$710.00) per calendar day**, until the Project is completed, not as a penalty, but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the Work.

It is further agreed that time is of the essence of each and every portion of this contract and of the Specifications where a definite and certain length of time is fixed for the performance of any act whatsoever; and whereunder the Contract an additional time is allowed as herein before mentioned for the completion of any work, the new time limit fixed by such extension shall be of the essence of this contract, provided that the Contractor shall not be charged with liquidated damages or any excess cost when the delay in completion of work is due: To unforeseeable cause beyond the control and without fault or negligence of the Contractor, including, but not restricted to, acts of God, or of the public enemy, acts of City, acts of another contractor in the performance of a contract with the City, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. The unusualness of the weather shall be determined by statistics from the local Weather Bureau over a period of the last ten (10) years. Upon request of City, the Contractor shall obtain statistical information from the Weather Bureau to support his claim for extension caused by unusual weather condition. Provided, further, that the Contractor shall, within ten (10) days from the beginning of such delay, notify the City's representative in writing, of the causes of the delay, who shall ascertain the facts and extent of the delays and notify the Contractor within a reasonable time of his decision in the matter.

Title VI Solicitation Notice:

The City of Buckeye, Arizona, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

Site/Project Description: MILLER ROAD EXPANSION - DURANGO TO LOWER BUCKEYE

CONSTRUCTION BUDGET: \$11,500,000.00

END OF SECTION

SECTION 300
BID FORMS

BID

IFB No. **2024173**

Project Name: **MILLER ROAD EXPANSION - DURANGO TO LOWER BUCKEYE**

Due Date: May 31, 2024, no later than 3:00 p.m., MST

Bid from: _____

 (Name of Firm)

To: City of Buckeye

The following bid is made for construction services for the City of Buckeye, Arizona, in accordance with Construction Documents. The undersigned certifies that the Construction Documents, as well as the proposed construction site and conditions affecting the Work have been carefully examined; that the amount and nature of the Work to be done is thoroughly understood; and that at no time will misunderstanding of the drawings, specifications, or conditions to be overcome be pleaded.

The undersigned certifies that he or his firm is currently licensed under the provisions of ARS Sections 32-1151 and 32-1169. The undersigned further certifies that he or his firm has a privilege license pursuant to ARS Section 42-5005.

The undersigned has read Section 2, "Instructions to Bidders", paragraph "Sales and Use Tax" and understands that all sales and use taxes applicable to this project are included in all bid prices. The undersigned has read the Construction Contract between the City of Buckeye and Contractor and will execute said agreement if awarded the Contract. Any exceptions to the terms and conditions have been stated in writing and submitted on a separate sheet with this bid. The undersigned understands that any exceptions taken to the Construction Contract that are not accepted and/or approved by the City may be a basis for rejection of the Bid as nonresponsive.

RECEIPT BY THE UNDERSIGNED OF THE FOLLOWING AMENDMENTS IS HEREBY ACKNOWLEDGED:

AMENDMENT NUMBER: _____	DATED: _____
AMENDMENT NUMBER: _____	DATED: _____
AMENDMENT NUMBER: _____	DATED: _____
AMENDMENT NUMBER: _____	DATED: _____

BASE BID:

The undersigned proposes to complete all of the Work in accordance with said Construction Documents, plans, specifications and all associated amendments for the sum of:

Dollars (_____).

Amount shall be shown in both words and figures. In case of discrepancy, the amount shown in words shall govern.)

ITEM NO.	ITEM DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	EXTENDED AMOUNT
General Conditions					
1	Construction Survey, Staking, Lines and Grades, and As-Builts	LS	1	\$ 0.0	\$ 0.00
2	Contractor Quality Control	LS	1	\$ 0.0	\$ 0.00
3	City of Buckeye Controlled (Allowance)	AL	1	\$230,000.00	\$230,000.00
4	Traffic Control (Allowance)	AL	1	\$650,000.00	\$650,000.00
	General Conditions Sub-Total				
Roadway Items					
5	Roadway	LS	1		\$ 0.00
	Roadway Items Sub-Total				
Drainage Items					
6	Drainage	EA	1		\$ 0.00
	Drainage Items Sub-Total				
Signing & Marking Items					
7	Signing & Markings	EA	10		\$ 0.00
	Signing & Marking Items Sub-Total				
Utilities Items					
8	Utilities	LS	1		\$ 0.00
	Utilities Items Sub-Total				
Grand Total					

Submitted by: _____

SIGNATURE: _____

NAME: _____

TITLE: _____

Principal Office: _____

Address: _____

Telephone: _____

Facsimile: _____

M _____ being duly sworn deposes and says that he/she is the
_____ of _____ Contractor(s), and that answers to the
foregoing questions and all statements therein contained are true and correct.

Subscribed and sworn before me this _____ day of _____, 20__

Notary Public: _____

My Commission Expires: _____ day of _____, 20__

SECTION 400

BASE CONSTRUCTION CONTRACT

**CONSTRUCTION CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
TBD**

Contract No. 2024173

THIS CONTRACT is entered into as of [REDACTED], by and between the CITY OF BUCKEYE, an Arizona municipal Corporation (“City”) and [REDACTED] (“Contractor”). The terms of this Contract are to be construed consistently with the other Contract Documents enumerated in Article 1 of the General Conditions of the Construction Contract, attached hereto as **Exhibit A** and incorporated herein by reference.

In consideration of the mutual promises of the parties, the City and the Contractor agree as follows:

1. **THE WORK:** The Contractor shall furnish all labor, materials, equipment, and services, as more fully set forth in **Exhibit B**, attached hereto and incorporated herein by reference, as required to complete the Miller Road Expansion – Durango To Lower Buckeye, as more fully set forth in **Exhibit C**, attached hereto and incorporated herein by reference.

2. **CONTRACT TIME:** The Contractor shall commence the Work only if and when directed in a written Notice to Proceed signed by the City. Substantial Completion, as defined herein, shall be achieved within **Two Hundred Seventy-Five (275) calendar days**. In view of the difficulty or impossibility of determining the City’s damages from delay, should the Contractor fail to achieve Substantial Completion by that date, as extended by any City approved Change Orders, the Contractor agrees to pay and will pay to the City, in addition to all other sums pursuant to the Contract Documents, the sum of **One Thousand Seven Hundred Eighty Dollars and Zero Cents (\$1,780.00)** for each calendar day of delay as liquidated damages for such delay and not as a penalty. This sum may be withheld from the balance of the Contract Price as it becomes due. Should liquidated damages exceed the Contract Price due or to become due, then the Contractor shall pay the City the difference within 3 days of receipt of written demand.

3. **CONTRACT PRICE:** Subject to increases and decreases for Change Orders in accordance with the Contract Documents, the City shall pay to the Contractor the following Contract Price, in progress payments as provided in the Contract Documents: [REDACTED] Dollars and [REDACTED] Cents (\$).

4. **SUPPLEMENTAL TERMS AND CONDITIONS:** The following supplemental terms and conditions and/or documents are part of this Contract:

- A. General Conditions of the Construction Contract.
- B. Contractor Bid Forms.
- C. Project Plans.
- D. Insurance Requirements
- E. Payment and Performance Bonds.
- G. Final Drainage Report
- F.

5. BONDS: The Contractor shall provide all required bonds in the forms attached hereto as **Exhibit E**.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first set forth above.

CITY:

CITY OF BUCKEYE,
an Arizona Municipal corporation

Dan Cotterman, City Manager

ATTEST:

Lucinda Aja, City Clerk

RECOMMENDED:

William Kauppi, Chief Financial Officer

APPROVED AS TO FORM:

K. Scott McCoy, City Attorney

CONTRACTOR:

_____,
a(n) _____

By: _____

Its: _____

**EXHIBIT A
TO
CONSTRUCTION CONTRACT
BETWEEN
CITY OF BUCKEYE
AND
CONTRACTOR NAME**

(General Conditions)

See following pages.

**GENERAL CONDITIONS
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ARTICLE 1 GENERAL DEFINITIONS

“Addenda” means clarifications or changes in the Work provided to bidders in writing prior to the public bid on the Contract.

“Contract Documents” or “Contract” means the Construction Contract Between City and Contractor, the General Conditions of the Construction Contract, any Supplemental Conditions of the Construction Contract, the Drawings, the Specifications, the Performance and Payment Bonds, the Project Manual, Addenda and Modifications.

“Date of Substantial Completion” shall be the date certified by the City that the work is in the Condition defined herein as substantial completion.

“Day” means calendar day unless specifically otherwise provided herein or by law.

“Modifications” means Change Orders signed by the City, or other written amendments signed by both the City and the Contractor at or after the execution of the Contract, or the City’s written interpretations or directions for minor changes in the Work. A “minor change” is defined as one having no impact on cost or time or the City’s approved design intent, as determined by the City.

“Project” means all components of the improvements to be constructed for the City, regardless of whether the Work is all or only a part.

“Project Manual” means the written volume so titled which includes the bid documents, sample forms, specifications, and description of the project.

“Substantial Completion” means the Contractor’s work is sufficiently complete in accordance with the Contract Documents so that the City can occupy or utilize the work or designated portion thereof for the use for which it is intended.

“Work” consists of all labor (including supervision), materials, equipment, supplies and other items reasonably required to construct all or a portion of the Project according to the Contract Documents.

ARTICLE 2 INTENT

A. The Contract represents the entire and integrated agreement between the City and the Contractor, and it supersedes all prior oral or written negotiations, representations or agreements. The Contract may only be changed by written modifications, and the Contractor understands and agrees that if the Contractor proceeds with any work upon verbal request only, Contractor is agreeing by his conduct that such work, or change in the work, constitutes a minor change.

B. The Contract Documents are to include all items reasonably necessary to construct the Work, expressly or by inference. Words and abbreviations which have well-known technical, or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

ARTICLE 3 CONTRACTOR

A. The Contractor is the individual or legal entity identified in the Contract Documents who is licensed to perform the Work under the laws of the State of Arizona. The Contractor shall only use duly licensed Subcontractors in connection with the Work, subject to the provisions for City approval contained in the Contract Documents.

ARTICLE 4 OTHER CONTRACTORS AND COOPERATION

A. The City reserves the right to award other contracts related to the Project, or to perform certain work itself. Such other work may or may not be known to the City or disclosed to the Contractor prior to bidding this project. The Contractor shall afford the City and other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall properly coordinate its Work with theirs in such manner as the City may direct. The Contractor shall also assure at its own cost reasonable access of other contractors to the site and their work.

B. Upon request of the Contractor, the City will provide the Contractor with a copy of all plans, specifications, schedules and other data relating to other contracts or work. The Contractor shall thoroughly examine these documents and shall within three (3) days of completing such examination notify the City in writing of any conflicts with the Work to be performed by the Contractor. In no event shall such notice be given so late as to interfere with or delay the work to be performed by the Contractor. Failure of the Contractor to request, review, or provide written notice as provided above shall constitute a waiver of any objections or claims the Contractor may have as a result of the necessity to coordinate the Contractor's work with other activities.

C. Should the Contractor sustain any damage through any act or omission of any other contractor, Contractor shall have no claim or cause of action against the City for such damage and hereby waives any such claim. The Contractor does not waive any claim or cause of action against any other contractor or subcontractor to recover any and all damages sustained by reason of the acts or omissions of such other contractor. The phrase "acts or omissions" as used in this section shall be defined to include, but not be limited to, any reasonable delay on the part of any such other contractor, whether due to negligence, gross negligence, inadvertence or any other cause.

D. Should the Contractor cause damage to the work or property of any other contractor or of the City, the Contractor shall upon receiving due notice, promptly attempt to settle with such other contractor by agreement, repair or otherwise to resolve the dispute. If such separate contractor sues or initiates a proceeding against the City on account of any damage alleged to

have been caused by the Contractor, the City shall notify the Contractor who shall, to the furthest extent permitted by law, indemnify and hold harmless for, from, and against defend such proceedings, and if any judgment or award against the City arises there from the Contractor shall pay or satisfy it and shall reimburse the City for all attorney's fees and court or other costs which the City has incurred.

ARTICLE 5 **SITE CONDITIONS AND ENVIRONMENTAL MATTERS**

A. The Contractor shall thoroughly acquaint himself with all available information concerning the conditions of the Work and is responsible for correctly and fully estimating the difficulty and cost of successfully performing the Work.

B. The Contractor agrees that it has thoroughly examined the site, plans and specifications, boring data and all other soils information and as-built data made available and by submission of the bid herein avows that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or existing obstacles to be encountered. The Contractor acknowledges that boring data and other soils information and as-built data made available is only a general indication of materials and/or conditions likely to be found adjacent to holes bored or in existing structures or facilities or other areas. If the Contractor determines that the information is erroneous, inadequate or ambiguous, it shall immediately report its conclusions to the City in writing. If the Contractor determines that the information is erroneous, inadequate, or ambiguous, and after reporting its conclusions to the City, remains dissatisfied or uninformed, the Contractor shall refrain from submitting a bid, or if the Contractor does submit a bid, the Contractor shall be deemed to have waived any claim it may have as the result of the alleged erroneous, inadequate or ambiguous information.

C. The Contractor shall immediately, and before such conditions are disturbed, notify the City in writing of:

1. Subsurface or latent physical conditions encountered at the site which differ materially from those indicated in the Contract and which were not known by the Contractor or could not have been discovered by careful examination and investigation of the information available at bid time and which could adversely affect the timely performance of the Work or its cost; or

2. Unknown and unexpected physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered in the locale or generally recognized as inherent in Work of the character provided for in the Contract.

D. The City shall within ten (10) days, or such other reasonable time as necessary, investigate the conditions discovered. If the City find that conditions are so materially different as to support an equitable adjustment in the Contract Price or the Contract Time, this will be done by written Change Order. If the City determine that no Change Order will be issued, the Contractor shall continue with the Work at no additional cost and under no change in Contract Time.

E. No claim by the Contractor for an increase in the Contract Price or Contract Time hereunder shall be allowed without proper advance notice and an adequate opportunity for the City to investigate.

F. Environmental Matters: Contractor shall provide or cause to be provided a copy of this Section (Environmental Matters) to each Subcontractor and each Sub-subcontractor participating in the Work.

1. Definitions. The following terms will have their respective designated meanings:

“Environmental Law” means any and all laws, ordinances, regulations, rules and administrative and court decisions (federal, state and local) now or hereafter in effect and as in effect from time to time and as amended from time to time pertaining to environmental conditions or to protection or regulation of the environment (including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.); the Resource Conservation and Recovery Act of 1976 and the Solid Waste Disposal Act (42 U.S.C. 6901, et seq.); the Toxic Substances Control Act of 1976 (15 U.S.C. Section 2601, et seq.); the Superfund Amendments and Reauthorization Act of 1986, Title III (42 U.S.C. Section 11001 et seq.); the Clean Air Act (42 U.S.C. Section 7401, et seq.); the Federal Water Pollution Control Act (33 U.S.C. Section 1251, et seq.); the Safe Drinking Water Act (42 U.S.C. Section 300f, et seq.); the Hazardous Materials Transportation Act (49 U.S.C. Section 5101, et seq.); the Oil Pollution Act (33 U.S.C. Section 2701 et seq.); the Arizona Environmental Quality Act (A.R.S. Section 49-101, et seq.); the Arizona Underground Storage Tank Act (A.R.S. Section 49-1001, et seq.); the Arizona Water Quality Assurance Revolving Fund Act (A.R.S. Section 49-281, et seq.) and any successor statutes to the foregoing and any regulations, rules or guidelines promulgated pursuant thereto.)

“Hazardous Substance” means any of the following: (i) any petroleum, oil, gasoline, kerosene, other petroleum product, flammable substance, volatile organic compound, volatile solvent, explosive, asbestos, polychlorinated biphenyl, dioxin, toxic herbicide or pesticide, radioactive material, radon gas and materials containing formaldehyde; (ii) any material, substance or waste now or hereafter defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “extremely hazardous substances,” “restricted hazardous wastes,” “toxic substances,” “regulated substances,” “solid wastes,” “pollutant,” or “contaminant” or words of similar import in any Environmental Law; (iii) any other material, substance or waste now or hereafter classified or regulated as “hazardous” or “toxic” under any Environmental Law; (iv) any material, substance or waste now or hereafter listed in the United States Department of Transportation Table (49 CFR 172.101) or classified by the United States Environmental Protection Agency as “hazardous” (40 CFR Part 302) or in any successor or replacement tables or classifications as in effect from time to time; and (v) any Hazardous Waste.

“Hazardous Waste” means “hazardous waste”, as defined in the Resource Conservation and Recovery Act of 1976 and the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) and any successor statutes and any regulations, rules or guidelines promulgated pursuant thereto as in

effect from time to time (including, without limitation, any such waste resulting from removal of, demolition of, modifications of or additions to part or all of any existing structure, facility or equipment).

“Contractor Hazardous Waste” means any Hazardous Waste arising during or from the Work that is generated by the acts or omissions of Contractor, a Subcontractor or any Sub-subcontractor (including, without limitation, a Contractor Release) and that is not City Hazardous Waste.

“City Hazardous Waste” means Hazardous Waste (i) that consists of Hazardous Substances in any existing structure, facility or equipment on City’s property or otherwise present on City’s property at commencement of the Work, and (ii) that has become Hazardous Waste due to any part of the Work. However, City Hazardous Waste does not include any Hazardous Substance that has become a Hazardous Waste due to any Contractor Release.

“Project Hazardous Waste” means any Hazardous Waste arising on City’s property from the Work (including, without limitation, Contractor Hazardous Waste and City Hazardous Waste), regardless of: (a) whether generated by the acts or omissions of City, Contractor, a Subcontractor or a Sub-subcontractor; (b) whether it consists of Hazardous Substances that were on or in City’s property at commencement of the Work and that have become Hazardous Waste in the course of the Work; and (c) whether it consists of Hazardous Substances that are brought on to City’s property for or during the Work by Contractor, a Subcontractor or a Sub-subcontractor and that have become Hazardous Waste in the course of the Work.

“OSHA” means the Federal Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.) and any successor statutes and any regulations, rules or guidelines promulgated pursuant thereto as in effect from time to time.

“Release” means any discharging, disposing, dumping, emitting, emptying, escaping, injecting, leaching, leaking, pouring, pumping, releasing, spilling, or similar action or event.

“Contractor Release” means a Release of a Hazardous Substance (including, without limitation, Hazardous Substances that were on or in City’s property at commencement of the Work) arising from acts or omissions of Contractor or any Subcontractor or Sub-subcontractor or their employees or workers. However, Contractor Release does not include Releases of pre-existing Hazardous Substances on City’s property of which City had not made Contractor aware and as to which Contractor, Subcontractors and Sub-subcontractors acted reasonably.

G. General Requirements.

1. Compliance with Environmental Law and OSHA. Contractor shall comply with, and shall cause all Subcontractors and Sub-subcontractors to comply with, this section and with all Environmental Law and OSHA applicable to (i) Contractor, (ii) Subcontractors, (iii) Subsubcontractors, (iv) the Work and (v) all of their activities in respect of the Work.

2. Hazardous Substances. (i) Hazardous Substances may be transported to and from and stored, used and be present on City's property in such quantities as are generally recognized to be usual and customary for performance of the Work. (ii) Hazardous Waste may be generated on City's property of such kinds and in such quantities as are generally recognized to be usual and customary in connection with performance of the Work. Hazardous Waste so generated may be stored temporarily on City's property. (iii) Prior to final completion of the Work, Contractor shall remove or cause to be removed from City's property and disposed of in accordance with Environmental Law and OSHA any Hazardous Substances (other than Project Hazardous Waste) brought onto City's property during the Work or used in connection with the Work. (iv) Other than as provided in (i), (ii) and (iii), Contractor shall not, and Contractor shall cause all Subcontractors and Sub-subcontractors to not, dispose of, generate, manufacture, process, produce, Release, treat or otherwise store, use or have in or on or transport to or from City's property any Hazardous Substance, regardless of whether the Hazardous Substance is preexisting on City's property or otherwise.

3. Releases of Hazardous Substances. Upon any Release of any Hazardous Substance in connection with the Work, whether relating to a pre-existing condition on City's property (for example, arising from any demolition of, modification of, or addition to any structure, facility or equipment) or relating to acts or omissions of Contractor, a Subcontractor or a Sub subcontractor, Contractor shall take any immediate action reasonably necessary to contain the Release. City may elect to have Contractor control and carry out any containment, clean-up, removal and remediation activity. Alternatively, City shall have the right to elect to control and carry out any containment, clean-up, removal and remediation activity. Regardless of who takes the actions, Contractor shall absorb, without reimbursement from City, all costs and expense incurred by Contractor in connection with any Contractor Release. In addition, Contractor shall pay or reimburse City for all costs and expenses incurred by City relating to any Contractor Release. If the amount is not paid promptly, City may offset the amount against any amount payable by City to Contractor under the Contract Documents or otherwise. Remediation, removal, and other cleanup action arising from any Release shall be in full compliance with Environmental Law and OSHA and shall be subject to approval by City. In addition, City may require remedial, removal or other cleanup action in excess of applicable minimum requirements of Environmental Law and OSHA (A) as reasonably necessary or appropriate in the judgment of City to permit human use and habitation of City's property and to permit use of City's property, and (B) as reasonably consistent in the judgment of City with such habitation and uses.

4. Hazardous Waste. City will arrange for handling, storage and disposal of any Project Hazardous Waste. On an interim basis until City can make arrangements, Contractor shall assure proper handling (including, without limitation, segregation from waste that is not Hazardous Waste) and storage of Project Hazardous Waste in full compliance with Environmental Law and OSHA. Contractor shall pay all of City's expenses of storing, handling and disposing of Contractor Hazardous Waste. City will deliver a statement to Contractor showing City's expenses, and Contractor will promptly pay such amount to City. If the amount is not paid promptly, City may offset the amount against any amount payable by City to Contractor under the Contract Documents or otherwise.

5. Notifications to City. Contractor shall notify City's Project Manager immediately upon occurrence of any of the following: (i) any discovery by Contractor, a Subcontractor or any Sub-subcontractor of any Hazardous Substance in any existing structure, facility or equipment on City's property. (ii) any Release of any Hazardous Substance on City's property in connection with the Work; (iii) the creation or generation of any Hazardous Waste resulting from the Work (including, without limitation, Hazardous Waste arising from the removal of, demolition of, modification of, or addition to any existing structure, facility or equipment); (iv) the need for any remediation or removal of any Hazardous Substance relating to the Work whether relating to a pre-existing condition on City's property or to acts or omissions of Contractor, a Subcontractor or a Sub-subcontractor; or (v) any claim, demand, inquiry, investigation, litigation or other action or proceeding by any governmental authority or other person relating to any Hazardous Substance, Hazardous Waste, Environmental Law or OSHA relating to the Work. Except for immediate action to contain any Release of any Hazardous Substance and except for interim handling and storage of Project Hazardous Waste, Contractor shall not take any action as to any matter in (i), (ii), (iii), (iv) or (v) without the prior written approval of City and City shall have the right to elect to control and carry out any such action or matter.

6. Other Asbestos. Contractor and each Subcontractor and Sub-subcontractor to comply with all requirements of Environmental Law and OSHA concerning any other asbestos in the Work area.

H. Construction Site Safety Requirements: Contractor shall have sole responsibility and liability for construction site safety. Without limiting other actions in this regard, Contractor shall, and shall cause each Subcontractor and Sub-subcontractor to, comply with worker health and safety requirements in Environmental Law and OSHA. In addition, Contractor shall take all reasonable necessary and appropriate steps to assure the health and safety of persons occupying any part of the facility in which the Work site is located or in the vicinity of or passing by the Work site and shall also take all reasonable necessary and appropriate steps to protect from damage or destruction the property of City and other persons in any part of the Facility in which the Work site is located or in the vicinity of or passing by the Work site. Among other actions in this regard Contractor shall comply with the requirements of the applicable fire code.

I. Environmental, Health and Safety Concerns by Contractor, Subcontractors or Subsubcontractors. If in the course of the Work, any environmental, health or safety concern exists or arises, whether relating to a Hazardous Substance, OSHA or otherwise, then the Work activities related to the concern must be discontinued until the concern is resolved. This means prior to disturbing a suspected Hazardous Substance or otherwise interacting with a potential health or safety hazard. The City's Project Manager must be notified immediately of the concern. Work shall not resume until approval has been provided by City. Close coordination will be maintained between City and Contractor so the Project schedule is impacted the least amount possible.

J. Scope of Indemnity. The indemnity in Article 13 of this Contract includes any claim by any person and City's attorneys' fees and other costs and expenses in defending any claim by any person that City is responsible or liable for any of the following arising from the acts or omissions of Contractor, any Subcontractor, any Sub-subcontractor or any of their employees or

other workers relating to the Work: (i) any violation of Environmental Law or OSHA; (ii) any failure by Contractor, any Subcontractor or any Sub-subcontractor to perform or comply with any obligation or requirement in this Article, (iii) any Contractor Release of any Hazardous Substance; (iv) any improper disposition of any Hazardous Substance or Hazardous Waste; (v) any claim by any employee, agent, independent contractor or other worker of Contractor, any Subcontractor or any Sub-subcontractor and any claim by any other person of personal injury, death or property damage arising from any Contractor Release of any Hazardous Substance or arising from any failure by Contractor, any Subcontractor or any Sub-subcontractor to comply with any Environmental Law or OSHA or this section.

ARTICLE 6 **PRODUCT SAMPLES, TESTS, AND CERTIFICATES**

A. The Contractor shall furnish Product Samples of all items requested or required by the City. Product Samples shall be properly identified and submitted with such promptness as to cause no delay in Work or in the work of any other contractor and to allow time for consideration by the City. The City will review Product Samples.

B. Each Product Sample must be accompanied by a letter of transmittal containing the following information:

1. Date of Submission
2. Name of Project
3. Location of Project
4. Branch of Work (Specification Section Number)
5. Project Number
6. Name of Submitting Contractor
7. Name of Subcontractor

C. The Contractor shall furnish to the City a certificate stating that material or equipment submitted complies with Contract Documents. If a certificate originates with the manufacturer, the Contractor shall endorse it and submit it to the City together with a statement of compliance in its own name.

D. No tests, inspections or approvals performed or given by the City or others acting for the City or any agency of Federal, State or Local government nor any acts or omissions by the City in administering this Contract shall relieve the Contractor from its duty to perform the Work in accordance with the Contract Documents and applicable law.

E. Unless the City is authorized at the time of submittal to return samples at the Contractor's expense, rejected samples will be destroyed.

F. After delivery of materials, the City may make such tests as it deems necessary, with samples required for such tests being furnished by and at the cost of the Contractor. Any test is for the benefit of the City and shall not relieve Contractor of the responsibility for providing quality control measurements to assure that Work strictly complies with the Contract

Documents. No test shall be construed as implying acceptance of materials, work, workmanship, equipment, accessories or any other item or thing.

G. On the basis of the test results, materials, workmanship, equipment or accessories may be rejected even though general approval has been given. If items have been incorporated in Work, the City shall have the right to cause their removal and replacement by items meeting Contract Document requirements or to demand and secure appropriate reparation to the City from the Contractor.

ARTICLE 7 AS-BUILT DRAWINGS

A. Prior to Substantial Completion, the Contractor shall complete and turn over to the City the As-Built Drawings. The As-Built Drawings shall consist of a set of drawings which indicate all field changes that were made to adapt to field conditions, changes resulting from contract Change Orders and all buried and concealed installation of piping, conduit and utility services. All buried and concealed items both inside and outside the facility shall be accurately located on the As-Built Drawings as to depth and in relationship to not less than two permanent features such as interior or exterior wall faces. The As-Built Drawings shall be clean and all changes, corrections and dimensions shall be given in a neat and legible manner in a contrasting color.

B. For any changes or corrections in the Work which are made subsequent to Substantial Completion, revisions shall be submitted to the City prior to Final Payment.

ARTICLE 8 SUPERINTENDENCE BY THE CONTRACTOR

A. The Contractor shall have a competent superintendent on the site at all times during the progress of the Work. Contractor's superintendent must be acceptable to the City. The superintendent shall have such assistants with such individual specialized competencies including, but not limited to, CPM scheduling, as may be necessary to fully understand and oversee all aspects of the Work. The superintendent and his assistants all shall be physically fit for their Work and capable of going to all locations where Work is being performed. A communication to the superintendent or his designated assistants by the City is binding upon the Contractor. The Contractor's superintendent shall be responsible for the prevention of accidents at the site. The Commercial Construction Safety Code of the Arizona Industrial Commission shall apply to all Work, and a copy of the Code shall be available at the site.

B. The Contractor shall at all times enforce strict discipline and good order among the workers on the Project and shall not employ or continue to employ any unfit person on the Project or any person not skilled in the work assigned to him. The Contractor shall be responsible to the City for all acts and omissions of its employees, Subcontractors, Suppliers, anyone whom the Contractor may allow to perform or inspect or supervise any Work, and their agents and employees together with anyone whom the Contractor may allow to come on the Project site. In addition, if the Contractor receives written notice from the City to dismiss those subcontractors or employees or one who is a hindrance to proper or timely execution of the

Work, the Contractor shall dismiss those employees and agrees to replace those dismissed without delay to the Project and at no additional cost to the City.

C. The Contractor shall competently and thoroughly direct and superintend all of the Work and shall be solely responsible for all construction safety, means, methods, techniques, sequences and procedures. It shall coordinate and schedule all Work under this contract, the performance of all its employees, Subcontractors, and Suppliers, and the timely procurement of all necessary labor, materials, equipment, supplies, and all else needed to do the Work.

ARTICLE 9 SUBCONTRACTS

A. The Contractor shall supply with its bid to the City a written list of all proposed subcontractors and suppliers. The City will promptly reply to the Contractor in writing stating whether the City, after due investigation, has any objection to any such proposed subcontractor or supplier. The Contractor shall not employ any subcontractor or supplier against whom the City has reasonable objection. If, prior to the award of the Contract, the City has a reasonable objection to any subcontractor or supplier and refuses in writing to accept such person or organization, the apparent low bidder may, prior to the award, either withdraw his bid without forfeiture of bid security or may propose an acceptable substitution thereof provided that same results in no change in the bid price. Failure of the bidder to submit an acceptable substitute in a timely manner shall render its bid nonresponsive.

B. No substitution or change shall be made by the Contractor in the subcontractor/supplier list after its submission to the City without prior written approval by the City. Unapproved or untimely substitutions may be cause for invalidation of the Contractor's bid in the City's discretion, thereby rendering the Contract voidable.

C. All work performed for the Contractor by a subcontractor shall be pursuant to an appropriate written agreement which specifically binds the subcontractor to all applicable terms and conditions of the Contract Documents, but no contractual relationship shall exist between any subcontractor or supplier of any tier and the City, unless the City invokes the assignment provisions of the following subsection. Upon request, the Contractor shall provide fully executed copies of any subcontracts and purchase orders to the City.

D. The Contractor hereby assigns to the City (and its assigns) all its interest in any subcontracts and purchase orders now existing or hereinafter entered into by the Contractor for performance of any part of the Work, which assignment will be effective upon termination of the Contract by the City and only as to those subcontracts and purchase orders which the City assumes in writing. All subcontracts and purchase orders shall provide that they are freely assignable by the Contractor to the City and its assigns. Such assignment is part of the consideration to the City for entering into this Contract with the Contractor and may not be withdrawn prior to final completion.

E. The City may require each proposed subcontractor whose subcontract will exceed \$100,000.00 to furnish a performance bond and a payment bond on City-approved forms in the

full amount of its subcontract. The City will reimburse the Contractor for the documented cost of the subcontractor's performance bond premiums in the event the City requires such bonds by the subcontractor.

ARTICLE 10 COMMUNICATIONS

A. All project notices, requests, instructions, modifications, approvals, and claims must be in writing, unless expressly specified otherwise in the Contract.

B. Communications will be deemed to have been made if delivered in person or if mailed to the address designated in the Contract or otherwise agreed upon by the parties.

ARTICLE 11 PERMITS, TAXES, AND FEES

A. The Contractor shall secure and pay for any necessary building permits and for all other permits, fees, licenses and inspections necessary for the proper execution and completion of the Work, and shall immediately deliver copies to the City. The Contractor shall be responsible for complying with all applicable Federal, State and local laws, codes, notice requirements, and regulations applicable to the site and prosecution of the Work. Contractor shall be responsible for and pay any costs associated with or arising from any non-compliance.

B. The Contractor shall pay all taxes for and related to the Work or its portion thereof which are legally enacted at the time bids are received, whether or not yet effective.

ARTICLE 12 INSURANCE

See Exhibit D

ARTICLE 13 INDEMNIFICATION

A. To the fullest extent permitted by law, Contractor agrees to defend, indemnify and hold Owner, its officers, agents and employees, harmless for, from and against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by Contractor's breach of any of the terms or provisions of this Contract, or by any negligent, grossly negligent or strictly liable act or omission of Contractor, its officers, agents, or employees, in the performance of this Contract; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of Owner, its officers, agents, employees or separate contractors. The provisions of this paragraph are solely for the benefit of the parties hereto and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

ARTICLE 14 PROGRESS AND SCHEDULING

A. Planning, scheduling and progress monitoring are essential functions of the Contractor. Within ten (10) days after the award of the Contract, the Contractor shall prepare and submit for the City a Schedule of Values allocating the Contract Price among the various portions of the Work for purposes of progress payments. The Schedule of Values shall be substantially equivalent to AIA Forms G702 and G703 or as specified by the City.

B. The Contractor shall also furnish the City with a Narrative Report corresponding with each monthly update which shall include a description of current and anticipated problem areas, delaying factors and their impact, fragmentary networks (fragnet) of delays, and an explanation of corrective action taken or proposed. If the Project is behind schedule in any month, the Contractor's Narrative Report shall indicate precisely what measurements it will take in the next thirty days to put the Work back on schedule.

C. The Contractor shall employ and supply a sufficient force of workers, material and equipment, and shall prosecute the Work with such diligence so as to maintain the rate of progress indicated on the Progress Schedule, to prevent work stoppage, and to ensure completion of the Project within the Contract Time.

D. The Contractor shall be responsible to prepare, submit and maintain the schedules and Narrative Reports indicated above, and the failure to do so may be considered a material breach of this Contract. Any additional or unanticipated cost or expense required to maintain the schedules shall be solely the Contractor's obligation and shall not be charged to the City.

ARTICLE 15 DAILY LOG

A. The Contractor shall maintain a daily log of construction activities for each calendar day of the Contract Time, using a form approved by the City. The Contractor shall document all activities at the Project site, including:

1. Weather conditions showing the high and low temperatures during work hours, the amount of precipitation received on the job site, and any other weather conditions which adversely affect Work at the site;
2. Soil conditions which adversely affect Work at the site;
3. The hours of operation by Contractor and individual Subcontractor personnel;
4. The number of Contractor and Subcontractor personnel present and working at the site, by subcontract and trade, and updated schedule activity number.
5. The equipment active or idle at the site;
6. A description of the Work being performed at the site, by updated schedule activity number.
7. Any delays, disruptions or unusual or special occurrences at the site;
8. Materials received at job site; and
9. A list of all visitors at the site.

B. The Contractor shall provide copies of the daily logs to the City on a weekly basis. The daily log does not constitute written notice to the City when such notice is required by the Contract Documents.

ARTICLE 16 MISCELLANEOUS DUTIES

A. The Contractor shall submit to the City upon request all payrolls, reports, estimates, records and any other data concerning Work performed or to be performed and concerning materials supplied or to be supplied, as well as Subcontractor payment applications and each Subcontractor's progress payment check. The requirements of this subsection shall be provided in all contracts between the Contractor and its Subcontractors.

B. During construction and for five (5) years after Final Payment, the Contractor shall retain and shall also require all Subcontractors to retain for review and/or audit by the City all correspondence, meeting minutes, memoranda, electronic media, books, accounts, reports, files, time cards, material invoices, payrolls, and evidence of all communications, direct and indirect costs, and all other matters related to the bidding and performance of the Work.

C. Upon request by the City, a legible copy or the original of any or all such records shall be produced by the Contractor at any time during or after construction as the City may request.

D. The Contractor shall be responsible for laying out its own Work and for any damage which may occur to work of any other contractor because of the Contractor's own errors or inaccuracies. The Contractor shall also be responsible for unloading, uncrating, storing and handling all materials and equipment to be erected or placed by it, whether furnished by the Contractor or others.

E. The Contractor, Subcontractors, and Suppliers shall be responsible for taking all appropriate field measurements prior to fabrication and installation of any item. Such measurements shall be taken sufficiently in advance so as to avoid any delay or potential delay. Failure to adhere to this provision shall render such delays the responsibility of the Contractor.

F. Unless otherwise specifically mentioned, all anchors, bolts, screws, fittings, fillers, hardware, accessories, wiring, conduit, ductwork, trim and other parts required for or in connection with any item or material to make a complete, serviceable, finished and quality installation shall be furnished and installed as part of the item whether or not expressly called for by the Drawings or Specifications.

G. All materials shall be shipped and stored and handled in a manner that will afford protection and ensure their being in factory-new condition at the time they are incorporated in the Work. After installation, they shall be properly protected against damage or deterioration until Final Completion of the Project.

H. When standards and specifications issued by The American Society of Testing and Materials, the American Institute of Steel Construction, the U.S. Department of Commerce (Commercial Standards), or other technical or standard setting organizations are cited in the Contract Documents, such standards or specifications (and all related standards or specifications) shall be equally as binding and have the full force and effect as though incorporated word for word. Unless otherwise specifically stated, the standards and specifications referred to shall be the latest edition or revision of such specifications that is in effect on the date of the public bid.

I. Any part of the Work damaged during installation or prior to final acceptance of Work shall be repaired so as to be unnoticeable and to be equal in quality, appearance, serviceability and other respects to an undamaged item or part of the Work. Where this cannot be fully accomplished the damaged item or part shall be replaced. After installation, all exposed surfaces and parts of an item or of the Work shall be cleaned in a manner that will not damage the finish or any of the parts of the item, so that the completed work is left in first class condition, free of all defects. All damaged or defaced Work shall be repaired or replaced to the City's satisfaction at the expense of Contractor.

J. The Contractor shall procure and furnish to the City all guarantees, warranties, manuals, and spares that are called for by the specifications or that are mentioned in the manufacturer's product literature. Guaranties and warranties shall commence as of the date of Substantial Completion of the Project.

K. The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save the City harmless from loss on account thereof, except that the City shall be responsible for loss attributable when a particular design, process or the product of a particular manufacturer or manufacturers is specified. If the Contractor has any reason to believe that the design, process or product specified could be an infringement of a patent, it shall be responsible for such loss unless it promptly gives such information in writing to the City.

L. The Contractor shall limit its operations to the confines of the Project, except as necessary to connect to existing utilities, and shall not, without the prior written permission of the affected property City, and encroach on property outside the site. Contractor shall not permit unauthorized persons or activities on the site and shall maintain the site in a safe and secure manner.

M. The Contractor shall prearrange time with the City whenever it becomes necessary to interrupt any service to make connections, alterations or relocations and shall fully cooperate with the City in doing Work so as to cause the least annoyance and interference with the continuous operation of the City's business or official duties. Any existing plumbing, heating, ventilating, air conditioning or electrical disconnections which may affect portions of this construction or building or any other building must be coordinated with the City to avoid any disruption of operation within the building or construction or other building or utilities. In no case, unless previously approved in writing by the City, shall utilities be left disconnected at the end of a workday or over a weekend. Any interruption of utilities, whether negligently, intentionally, or accidentally, shall not relieve the Contractor's responsibility for the interruption

or from liability for loss or damage caused by such interruption even though such loss or damage was not foreseeable by Contractor or subcontractor, or from responsibility for repairing and restoring the utility to normal service. Repairs and restoration shall be made before the workmen responsible for the repair and restoration leave the job.

N. The Contractor at all times shall keep the premises free from accumulation of waste materials or rubbish caused by his operations. If the Contractor fails to properly clean up during construction, or if a dispute arises between the Contractor and/or separate Contractors as to their responsibility for cleaning up, the City may clean up and charge the costs thereof to the Contractors responsible as determined by the City. At the completion of the work he shall remove all his waste materials and rubbish from and about the Project as well as all his tools, construction equipment, machinery and surplus materials. If the Contractor fails to clean up at the completion of the work, the City may do so and the cost thereof shall be charged to the Contractor.

ARTICLE 17 INSPECTION OF WORK

A. All Work done and all materials are subject to inspection by the City to determine if they conform to the Contract Documents. The City shall at all times have access to the Work, including materials being fabricated or stored off site. The Contractor shall furnish at the Contractor's cost any facilities necessary for sufficient and safe access to the Work.

B. Inspections, tests, measurements, or other acts of the City are for the sole purpose of assisting the City in determining that the Work, materials, rate of progress, and quantities comply with the Contract Documents and/or Contractor's requests for payment. These acts or functions shall not relieve the Contractor from performing the Work in full compliance with contract requirements nor relieve the Contractor from any of the quality, compliance and responsibility for the Work assigned to it by the Contract Documents. No inspection by the City shall constitute or imply acceptance or waiver of rights.

C. Nonconforming Work or materials may be rejected and Contractor shall correct such rejected Work without additional compensation, even if the Work or materials have been previously inspected or accepted by the City or even if the City failed to observe the unsuitable Work or materials.

D. Any Work required to be inspected by the City prior to being covered, which is covered up without prior inspection or without prior consent of the City, must be uncovered and recovered by the Contractor, if requested by the City, at no cost to City, notwithstanding the provisions of the following subsection.

E. Contractor shall notify the City in writing at least 48 hours prior to the time at which the City must be present to perform an inspection. Failure to provide such notice will place the Contractor at risk for all consequences of non-inspection and having to uncover work.

ARTICLE 18

CORRECTION OF WORK

A. If any portion of the Work is covered over contrary to the request of the City or as required by the Contract or the applicable building standards, it must be uncovered for observation at the Contractor's expense if requested by the City in writing.

B. If any portion of the Work, other than those portions required to be inspected by the City prior to being covered, has been covered over, the City may request that it be uncovered for observation. If such portion is found to be in accordance with the requirements of the Contract Documents, the cost of uncovering it shall be charged to the City as a Change Order. If such portion is found not to be in accordance with the requirements of the Contract Documents, the Contractor shall bear such costs.

C. The Contractor shall promptly remove from the site and replace any material or correct any Work found by the City to be defective or failing to conform to the requirements of the Contract, whether or not fabricated, installed or completed, and whether discovered before or after Substantial Completion. The Contractor shall bear all costs of correcting such Work or material, including the cost of necessary additional professional services and the cost of repairing or replacing all work of separate contractors or subcontractors damaged by such removal or correction. The City shall notify the Contractor immediately in writing upon its knowledge that additional professional services will be necessary and of the extent and estimated costs of the additional services. The City may consent to accept such Work or material with an appropriate adjustment in Contract Price.

D. If the Contractor does not promptly replace or correct such Work or material, the City may replace or correct the Work or material, and charge or deduct the cost of removal and replacement from any monies due to the Contractor, or recover such costs from the Contractor.

E. If, within two (2) years after the date of Substantial Completion, any of the Work is found to be defective or not in accordance with the requirements of the Contract, the Contractor shall correct it promptly after receipt of a written notice from the City to do so. If the Contractor does not promptly replace or correct such Work or material, the City may replace or correct the Work or material, and charge or deduct the cost of removal and replacement from any monies due to the Contractor, or recover such costs from the Contractor. Nothing contained in this section shall be construed to establish a period of limitation with respect to any obligation of the Contractor under the Contract or the law. The obligation of the Contractor under this section shall be in addition to and not in limitation of any obligations imposed by special guaranties or warranties required by the Contract, given by the Contractor, or otherwise recognized or prescribed by law.

F. If, during the running of a guarantee or warranty period, the Contractor must perform repair work to any portion of the Work, the running of the warranty or guarantee period is tolled from the time the defect or deficiency is discovered through the time when the Contractor successfully completes all repairs and retesting and start-up activities.

ARTICLE 19

DELAYS AND TIME EXTENSIONS

A. If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the City, or by any separate Contractor employed by the City, or by changes in the Work, or by labor disputes, fire, unusual delay in transportation, unusually severe weather conditions, adverse soil conditions, unavoidable casualties, delays specifically authorized by the City, or by causes beyond the Contractor's control, avoidance, or mitigation, and without any fault or negligence of the Contractor or Subcontractor or Supplier at any tier, then the Contract Time shall be extended by Change Order for such reasonable time as the City may determine that such event has delayed the critical path of the Work or individual milestone or overall completion of the Work after considering the advice of the City, if the Contractor complies with the notice and documentation requirements set forth below. The Contractor shall pay any additional fees or costs incurred by the City as the result of delays caused by the Contractor for circumstances not excused as provided herein.

B. Initial notice of any delay in the Work shall be made in writing to the City immediately but in no event later than 24 hours after discovery of the event giving rise to the delay. Then, Contractor shall provide additional details of the delay in writing to the City within seven (7) calendar days from the beginning of the delay. Failure to meet these time requirements shall absolutely bar any and all later claims. The detailed notice shall indicate the cause of the delay, the anticipated length of the delay, the probable effect of such delay upon the progress and cost of the Work, and potential mitigation plans. If the cause of the delay is continuing, the Contractor must give written notice every month at the same time it submits the updated progress Narrative Report to the City. Within fifteen (15) days after the elimination of any such delay, the Contractor shall submit further documentation of the delay and, if applicable, a formal written request covering an extension of time for such delay. The written request for time extension shall state the cause of the delay, the number of days' extension requested and provide a fully documented analysis of the Progress Schedule, including a fragnet and any other data demonstrating a delay in the critical path of the Work or individual milestone or the overall project completion. If the Contractor does not comply with the notice and documentation requirements set forth above, the claim for delay is absolutely barred.

C. If the Contractor incurs damages related to expenses caused by a delay for which the City is solely responsible, which is unreasonable under the circumstances, and which was not contemplated by the parties at the time of formation of this Contract, then the parties shall attempt to reach an agreement on the Contractor's claim, provided that the Contractor has notified the City in writing as specified above, including why the City is believed by the Contractor to be solely responsible for the delay. Failure to provide such timely notice shall be deemed an absolute and final waiver of any rights to additional sums. Any disputes will be resolved in accordance with the City of Buckeye Procurement Code, as amended or superseded.

D. The Contractor shall have no right to claim for alleged extended or unabsorbed home office overhead; claims for delays shall be limited to provable extended site costs.

E. The date of beginning and the time for completion as specified herein are ESSENTIAL CONDITIONS of this Contract; and it is further mutually understood and agreed that the Work

embraced in this Contract shall be commenced on a date to be specified in the notice to proceed or at a preconstruction meeting, but in no event later than ten (10) days after the execution of this Contract, whichever first occurs. Said Work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will ensure full completion thereof within the time specified. The time for completion of the same takes into consideration the average climatic range and usual industrial conditions prevailing in this locality. If the Contractor shall neglect, fail or refuse to complete the Work within the time herein specified, or any extension thereof granted by the City, then the Contractor does hereby agree to pay to City the per diem amount specified in the Contract. This amount is agreed to be liquidated damages for such breach and not a penalty therefore. The per diem amount shall be paid for each and every calendar day that the Contractor shall be in default after the time stipulated in the Contract for completing the Work. The amount is fixed and agreed upon by and between the Contractor and City because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages the City would in such event sustain. Said sums may be withheld by the City from any amounts due to the Contractor from the City, whether as the result of this Contract or any other obligation between the City and the Contractor.

F. The parties hereby agree that if the Contractor submits an original or updated schedule which shows the project and/or individual Milestone(s) completing earlier than required by the adjusted contractual completion date(s), the differences between the forecasted early completion and the required completion shall be considered Project-owned float available for use by both the City and the Contractor.

G. The Contractor shall not sequester shared float through such strategies as extending activity duration estimates to consume available float, using preferential logic, using extensive crew/resource sequencing, etc. Since float time within the schedule is jointly owned, no time extensions will be granted nor delay damages paid until a delay occurs which extends the work beyond the adjusted Contract completion date. Since float time within the Construction Schedule is jointly owned, it is acknowledged that City-caused delays on the project may be offset by City-caused time savings (i.e., critical path submittals returned in less time than allowed by the Contract, approval of substitution requests which result in a savings of time to the Contractor, etc.). In such an event, the Contractor shall not be entitled to receive a time extension or delay damages until all City-caused time savings are exceeded and the Contract completion date or milestone date is also exceeded.

H. It is agreed that no time extensions shall be granted nor delay damages paid unless the delay is clearly demonstrated by the updated Construction Schedule current as of the month the change was issued or the delay occurred and which delay cannot be mitigated, offset, or eliminated through such actions as revising the intended sequence of work or other reasonable means.

ARTICLE 20 SUSPENSION OF WORK

A. The City may, at any time and without cause, order the Contractor in writing or cause the Contractor to suspend, delay or interrupt all or any part of the Work for such period of time as

the City may determine to be appropriate for its convenience. Equitable adjustment shall be made for any increase in the Contract Time necessarily caused by such suspension or delay by written Change Order.

ARTICLE 21 RIGHT TO STOP WORK

A. If the Contractor fails to correct defective Work as required, or fails to carry out the Work in accordance with the Contract Documents, the City by written notice, may order the Contractor to stop the Work or any portion of the Work, until the cause for the order has been eliminated to the satisfaction of the City.

B. The City may stop Work without written notice for 24 hours whenever in its professional opinion such action is necessary or advisable to ensure conformity with the Contract Documents. The Contractor shall not be entitled to an adjustment in the Contract Price or Contract Time under this subsection. The right of the City to stop the Work shall not give rise to a duty on the part of the City to exercise this right for the benefit of the Contractor or others.

ARTICLE 22 CHANGES

A. After this Contract is signed, Modifications in the Contract Price, the Contract Time or Scope of the Work may only be made by written Change Order.

B. By written directive at any time, the City may make any changes within the general scope of the Contract or issue additional instructions, require additional or modified Work or direct deletion of Work. The Contractor shall not proceed with any change involving an increase or decrease in cost or time without prior written authorization from the City and shall proceed in accordance with the procedures set forth in this section. If the Contractor proceeds with any change involving an increase or decrease in cost or time without written authorization as required by this paragraph, the Contractor hereby waives all rights or claims Contractor may have as a result of the change. The City's right to make changes shall not invalidate the Contract or relieve the Contractor of any liability. Any requirement of notice of change to the Surety shall be the responsibility of the Contractor.

C. The cost or credit to the City resulting from a change in Work shall be determined in one or more of the following ways:

1. By unit prices stated in the Contract.

2. By cost, as defined below, properly itemized and supported by sufficient, substantiating data to permit evaluation, plus a fee of ten percent (10%) of items (a) through (h)

described below. Such costs shall be itemized by crafts as defined within the schedule of values and limited to the following items directly allocable to the change in the Work:

(a) Cost of materials, including delivery but excluding Subcontractor-supplied materials.

(b) Fully-burdened cost of labor, including, but not limited to, payroll taxes, social security, old age and unemployment insurance, vacation and fringe benefits required by agreement or routinely paid by contractor, and worker's or workman's compensation insurance but excluding Subcontractor's labor.

(c) Rental value of equipment and machinery to be established by rental receipts and not to exceed reasonable and customary rates for the locale of the Work. For owned equipment, contractor must prove reasonable rental rate pursuant to actual ownership costs.

(d) Cost of Subcontracted work calculated as above and Subcontractor's Field Supervision calculated in accordance with paragraph (e) below, plus Subcontractor's insurance and bond premiums as applicable. Insurance and bond premium cost shall not exceed a total of two percent (2%) of Subcontractor's documented cost.

(e) Contractor's Field Supervision not to exceed five percent (5%) of (a), (b) and (d) above; the parties agree that this mark-up shall fully cover all contractor Field Supervision overhead.

(f) Contractor's insurance and bond premiums not to exceed a total of two percent (2%), or documented cost.

(g) Sales tax at full value.

(h) If this method of cost or credit calculation is selected, in no event shall the combined total fee including all levels or tiers of Subcontractors exceed twenty percent (20%) of the total cost of paragraphs (a), (b), (c) and (d). Field Supervision is to be excluded at all levels for the purposes of the limit imposed by this paragraph.

3. By mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; provided that such lump sum shall not exceed that amount calculated under item 2 above.

D. If none of the above methods is agreed upon, the Contractor shall promptly proceed with performing the change, upon receipt of a written order signed by the City. Any dispute regarding the pricing methodology or cost of the change shall not relieve the Contractor from proceeding with the change as directed by the City. The cost or credit to the City shall be determined by the City on the basis of the preceding subsection.

E. A fully executed Change Order shall be full and final settlement of all claims for direct, indirect, delay, disruption, inefficiency and any other consequential costs related to items

covered or affected, as well as time extensions. Any such claim not presented by the Contractor for inclusion in the Change Order is irrevocably waived.

F. In an emergency affecting the safety of life, or of the structure, or of adjoining property, the Contractor, without special instruction or authorization from the City, is permitted to act at its discretion to prevent threatened loss or injury. Any compensation claimed by the Contractor on account of such emergency work shall be determined in accordance with this section.

ARTICLE 23

PAYMENT

A. Payments on account of the Contract Price will be made monthly as Work progresses. Payment Applications, covering labor, material, equipment, supplies, and other items completed, delivered, or suitably stored on site during a period ending on the last calendar day of each month, shall be submitted to the City by the Contractor on the current edition of AIA Documents G702 and G703, within five (5) days after end of the period. Payment Applications shall be notarized, shall be supported by such data substantiating the Contractor's right to payment as the City may require, and reflect retainage, if any, as is provided. All payments shall be subject to any offset or retainage provisions of the Contract.

B. Each payment made to the Contractor shall be on account of the total amount payable to the Contractor, and title to all Work covered by a paid partial payment shall thereupon pass to the City. Nothing in this section shall be construed as relieving the Contractor from the sole responsibility for care and protection of materials and Work upon which payments have been made, for restoration of any damaged Work, or as a waiver of the right of the City to require fulfillment of all terms of Contract Documents.

C. The City, within seven (7) days after receipt of the Payment Application, will either issue a Certificate for Payment for such amount as is properly due or issue written notice of the reasons for withholding such a certificate.

D. The issuance of a Certificate for Payment will constitute a representation by the City, observations at the site and the data comprising the Application for Payment, that the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in his certificate); and that the Contractor is entitled to payment in the amount certified.

E. Payment may be withheld in whole or in part to protect the City on account of:

1. Unsatisfactory job progress as determined by the City.
2. Defective Work or materials not remedied.
3. Disputed Work or materials.
4. Claims or other encumbrances filed or reasonable evidence indicating probable filing of claims or other encumbrances by Subcontractors or Suppliers, or others.

5. Failure of the Contractor to make payment to Subcontractors or Suppliers within seven (7) days after receipt of each progress payment.
6. A reasonable doubt as determined by the City that the Work can be completed for the unpaid balance of the Contract Price or within the Contract Time.
7. The Contractor's failure to perform any of its contractual obligations under the Contractor Documents, or any other Contract with the City.
8. Deficiencies or claims asserted by City against Contractor arising from any other project. Within fourteen (14) days following the receipt of the Certificate of Payment, the City shall pay to the Contractor the value of the Work in place and materials suitably stored at the site. The remaining 10% shall be retained by the City until the Contract is 50% completed at which time the retainage shall be reduced to 5%; provided that: (a) the Contractor is making satisfactory progress on the Contract; and (b) in the City's sole judgment, there is no specific cause or claim requiring a greater amount than 5% to be retained. Thereafter, the City shall pay the Contractor 95% of the value of the Work, unless and until it determines satisfactory progress is not being made, at which time the 10% retainage may be reinstated. Such 10% reinstatement would be 10% of the total contract value of Work in place and materials stored. The City's sole judgment concerning the satisfactory progress of the Work shall be final.

F. Within sixty (60) days after the issuance of the Certificate of Final Completion by the City and receipt of all other documents required by the Contract, all retained amounts shall be paid to Contractor as part of Final Payment:

1. The Final Payment shall not become due until the Contractor delivers to the City full and final unconditional releases from Subcontractors and major Suppliers acknowledging payment in full. Any claim filed thereafter shall be the responsibility of the Contractor.

2. If any claim remains unsatisfied after all payments are made, the Contractor shall immediately upon demand refund to the City all monies that the latter may be compelled to pay in discharging such claim including all costs, interest and attorneys' fees.

G. If any payment of the Contract Price is not made within thirty (30) days and without just cause, interest shall thereafter accrue on the unpaid principal balance at the minimum rate allowed by state law (A.R.S. § 44-1201) on the due date.

ARTICLE 24 WARRANTY

A. The Contractor warrants that all materials and equipment furnished under this Contract will be new unless otherwise specified, and that all Work will be free from faults and defects and in strict conformance with the Contract Documents.

B. Neither provision of manufacturers' warranties nor Final Payment nor use or occupancy of all or a portion of the Premises by the City shall constitute an acceptance of Work not performed in accordance with the Contract Documents or relieve the Contractor or its sureties of liability with respect to any warranties or responsibility for faulty materials and workmanship.

C. This warranty shall continue for a period of 1 year from the date of final acceptance of the work. If the City takes possession of any part of the work before final acceptance, this warranty shall continue for a period of 1 year from the date the City takes possession.

D. The Contractor or its sureties shall remedy any defects in the Work and any resulting damage to the Work or the Work of others at its own expense.

E. The Contractor shall be liable for correction of all damage resulting from defective Work. If the Contractor fails to remedy any defects or damage, the City may correct the Work or repair the damages and the cost and expense incurred in such event shall be paid by or be recoverable from the Contractor.

F. The warranties provided in this section shall be in addition to and not in limitation of any other warranty or remedy provided by law or by the Contract Documents.

ARTICLE 25 SUBSTANTIAL COMPLETION

A. When the Contractor requests a Substantial Completion Inspection for the Work or a designated portion thereof, the City shall determine the validity of the request. A list of items to be completed or corrected shall be prepared by the Contractor and presented to the City with the request for inspection. By submitting a request for Substantial Completion Inspection the Contractor thereby certifies that it has performed a thorough inspection of the Project in preparing the list of items to be completed or corrected, has consulted with its subcontractors, and that the remaining incomplete or defective work shall be completed within thirty (30) days of submission of the request. The City shall evaluate the Contractor's request and list of uncompleted items and, if appropriate in their judgment, add to or delete items from the list necessary to complete the work. The failure to include items on any punch list shall not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. By submitting a request for Substantial Completion Inspection, the Contractor thereby certifies that the remaining incomplete or defective Work required by the Contract Documents shall be completed within thirty (30) days.

B. If the City, on the basis of Substantial Completion inspection, determines that the Work has been substantially completed in accordance with the Contract Documents, then the City will prepare a Certificate of Substantial Completion, which shall establish the date of Substantial Completion; shall state the responsibilities of the Contractor for remaining punchlist items, maintenance, heat and utilities, security, and damage to the work; and shall fix the time, not to exceed thirty (30) days, within which the Contractor shall complete the punch list. The Certificate of Substantial Completion shall be submitted by the City to the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate. The Project shall not be deemed substantially complete until the Certificate is issued irrespective of City occupancy.

ARTICLE 26 FINAL INSPECTION

A. When the Contractor submits in writing to the City a request for a final inspection of the Work, the City shall determine the validity of the request. Following the inspection, if there are items to be completed or corrected, the City will determine the dollar value to be withheld in accordance with the retainage provisions of the Contract. In the event that the Contractor has not completed the punch list items within the time designated in the Certificate of Substantial Completion, the City retains the right to have these items corrected at the expense of the Contractor, including all architectural, engineering and inspection costs and expenses incurred by the City.

B. The City shall not be required to release the retainage until such items have been completed and inspected.

ARTICLE 27 ASSIGNMENT OF CLAIMS

A. The City and Contractor recognize that in actual economic practice overcharges resulting from antitrust violations are in fact borne by City. Therefore, the Contractor hereby assigns to City any and all claims for such overcharges. The Contractor in all subcontracts shall require all Subcontractors to likewise assign all claims for overcharges to the City.

ARTICLE 28 DISPUTES

A. All of Contractor's claims and disputes shall first be referred to the City for initial determination, by written notice, not more than seven (7) days from the occurrence of the event which gives rise to the dispute, or not more than seven (7) days from the date that the Contractor knew or should have known of the problem. Unless the claim is made in accordance with these time requirements, it is irrevocably waived. The City shall render a written decision within a reasonable time. The City's decision may be reviewed in accordance with City of Buckeye Procurement Code, as amended or superseded. Any claim not timely filed or not complete at the time of filing is irrevocably waived.

B. Any failure of the City to make a decision within the time limit set forth shall not be construed as acquiescence in all or any part of the Contractor's claim for relief. Unless otherwise agreed in writing, the Contractor shall carry on the Work and maintain its progress during any claims and controversy proceedings, and the City shall continue to make payments to the Contractor in accordance with the Contract Documents.

ARTICLE 29 FORUM

A. No suit or action shall be commenced hereunder by any claimant other than in the Arizona Superior Court, and only after all contractual and administrative procedures have been fulfilled. By submitting a bid for this project, Contractor agrees to be bound by the City of

Buckeye Procurement Code Dispute Resolution Procedures and waives any objections to those procedures.

ARTICLE 30 TERMINATION BY THE CITY

A. This Contract may be terminated by the City under the conditions stated in A.R.S. § 38-511.

ARTICLE 31 TERMINATION FOR CAUSE

A. The City may terminate the Contract upon the occurrence of any one or more of the following events:

1. If the Contractor refuses or fails to prosecute the Work, or any separable part, with such diligence as will ensure its completion within the Contract Time; or if the Contractor fails to complete the Work within the Contract Time;

2. If the Contractor or any of its key subcontractors is adjudged a bankrupt or insolvent or makes a general assignment for the benefit of creditors, or if the Contractor or any of its key subcontractors or a third party files a petition to take advantage of any debtor's act or to reorganize under the bankruptcy or similar laws concerning the Contractor or any of its key subcontractors, or if a trustee or receiver is appointed for the Contractor or any of its key subcontractors or for any of the Contractor's property on account of the Contractor's insolvency, and the Contractor or its successor in interest or any of its key subcontractors does not provide adequate assurance of future performance in accordance with the Contract within ten (10) days after receipt of a request for assurance from the City;

3. If the Contractor fails to supply sufficient skilled workmen or suitable materials or equipment;

4. If the Contractor fails to make prompt payments to subcontractors or suppliers at any tier, or for labor, materials or equipment;

5. If the Contractor fails to comply with laws, ordinances, rules, codes, regulations, orders or similar requirements of any public entity having jurisdiction;

6. If the Contractor fails to follow any reasonable instructions by the City;

7. If the Contractor performs Work which deviates from the Contract Documents, and neglects or refuses to correct rejected Work; or

8. If the Contractor otherwise violates in any material way any provisions or requirements of the Contract Documents. Once the City determines that sufficient cause exists to justify the action, the City may terminate the Contract without prejudice to any other right or remedy the City may have, after giving the Contractor and its Surety seven (7) days' notice by issuing a

written Declaration of Default. The City shall have the sole discretion to permit the Contractor to remedy the cause for the contemplated termination without waiving the City's right to terminate the Contract.

B. If the Contract is terminated, the City may take over the Work and prosecute it to completion, by contract or otherwise, and may exclude the Contractor from the site. The City may take possession of the Work and of all of the Contractor's tools, appliances, construction equipment, machinery, materials, and plant which may be on the site of the Work, and use the same to the full extent they could be used by the Contractor, without liability to the Contractor. In exercising the City's right to prosecute the completion of the work, the City may also take possession of all materials and equipment stored at the site or for which the City has paid the Contractor but which are stored elsewhere, and finish the Work as the City deems expedient. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished.

C. If the unpaid balance of the Contract Price exceeds the direct and indirect costs and expenses of completing the Work, and all City damages including liquidated damages and compensation for additional professional and consultant services, such excess shall be used to pay the Contractor for the cost of the Work it performed and a reasonable allowance for overhead and profit. If such costs exceed the unpaid balance, the Contractor shall immediately upon demand pay the difference to the City. In exercising the City's right to prosecute the completion of the Work, the City shall have the right to exercise its sole discretion as to the manner, methods, and reasonableness of the costs of completing the Work, and the City shall not be required to obtain the lowest figure for Work performed in completing the contract. If the City takes bids for remedial Work or completion of the project, the Contractor shall not be eligible for the award of such contracts.

D. If the Contract is terminated, the City may demand that the Contractor's Surety take over and complete the Work on the Contract. The City may require that in so doing, the Contractor's Surety not utilize the Contractor in performing the Work. Upon the failure or refusal of the Contractor's Surety to take over and begin completion of the Work within 20 days after the demand, the City may take over the Work and prosecute it to completion as provided above.

E. The City shall have the option of requiring any, all or none of the Subcontractors to perform according to their subcontracts and may assign any or all of the subcontracts to a general contractor selected to complete the Work.

F. If the City takes over the Work, unexecuted orders entered into by the Contractor for performance of any part of the Work will be effective upon acceptance by the City in writing and only as to those subcontracts and purchase orders which the City designates in writing.

G. The Contractor shall be liable for any damage to the City resulting from the termination or from the Contractor's refusal or failure to complete the Work, and for all costs necessary for repair and completion of the Project over and beyond the amount of the Contract. The Contractor shall be liable for all legal fees and costs required to enforce the provisions of the Contract.

H. If the City terminates the Contract, the Contractor shall remain liable for liquidated damages for delay until such reasonable time as may be required for final completion of the Work. Such damages shall be in addition to and not in lieu of any other damages sustained by City in completing the Work.

I. In the event the Contract is terminated, the termination shall not affect any rights of the City against the Contractor. The rights and remedies of the City under this section are in addition to any other rights and remedies provided by law or under this Contract. Any retention or payment of monies to the Contractor by the City will not release the Contractor from liability.

J. If the Contract is terminated under this section, and it is determined for any reason that the Contractor was not in default under the provisions of this Section, the termination shall be deemed a Termination for Convenience of the City and, the rights and obligations of the parties shall be determined in accordance with the following section.

ARTICLE 32 TERMINATION FOR CONVENIENCE OF THE CITY

The City, by written notice to the Contractor, may terminate this Contract in whole or in part when sufficient appropriated or other funds are not available or in the sole discretion of the City it is in the City's best interest. In such case, the Contractor shall be paid for all Work executed and reasonable termination expenses, and a reasonable allowance for profit and overhead on Work done, provided that such payments exclusive of termination expenses shall not exceed the total Contract Price as reduced by other contract payments previously made to the Contractor and as further reduced by the value of the Work as yet not completed. The Contractor shall not be entitled to profit and overhead on Work, which was not performed.

ARTICLE 33 ASSIGNMENT OF CONTRACT

Contractor shall not assign any amount or part of the Contract or any of the funds to be received under the Contract unless Contractor has the prior written approval of the City and the Contractor's Surety has been given notice and has given written consent to any such assignment.

ARTICLE 34 LAW TO GOVERN

This Contract is made under and shall be construed in accordance with the laws of the State of Arizona. If any portion of this Contract is found to be unenforceable the rest and remainder of the Contract shall remain in full force and effect so as to effectuate the intent of the parties. Each party acknowledges that it has had an opportunity to review this Contract with counsel and this document shall be construed fairly and equitably so as to effectuate the intention of the parties irrespective of who is determined to have been the drafter of the document.

ARTICLE 35 E-VERIFY REQUIREMENTS

To the extent applicable under A.R.S. §41-4401, the Contractor and its subcontractors or subconsultants warrant compliance with all federal immigration laws and regulations that relate to their employees and compliance with the E-verify requirements under A.R.S. §23-214(A). The Contractor's or its subcontractor's or subconsultant'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 City.

ARTICLE 36 FEDERAL IMMIGRATION LAWS AND REGULATIONS

Consultant warrants that it complies with all Federal Immigration laws and regulations that relate to its employees and complies with A.R.S. § 23-214.A. Consultant acknowledges that pursuant to A.R.S. § 41-4401 and effective September 30, 2008, a breach of this warranty is a material breach of this contract subject to penalties up to and including termination of this contract, and that the City retains the legal right to inspect the papers of any employee who works on the contract to ensure compliance with this warranty.

ARTICLE 37 ISRAEL

Pursuant to A.R.S. § 35-393.01, Contractor certifies that it is not currently engaged in, and agrees for the duration of the Contract to not engage in, a boycott of Israel, or any entity that does business in Israel or any territories controlled by Israel.

ARTICLE 38 FORCED LABOR OF ETHNIC UYGHURS

Pursuant to A.R.S. § 35-394, Contractor certifies that it does not, and will not for the duration of the Contract, use the forced labor, any goods or services produced by the forced labor, or any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China..

END OF SECTION

**EXHIBIT B
TO
CONSTRUCTION CONTRACT
BETWEEN
CITY OF BUCKEYE
AND**



(Contractor Bid Forms)

See following pages.

**EXHIBIT C
TO
CONSTRUCTION CONTRACT
BETWEEN
CITY OF BUCKEYE
AND**



(Project Plans)

See Bonfire Website

**EXHIBIT D
TO
CONSTRUCTION CONTRACT
BETWEEN
CITY OF BUCKEYE
AND**



(Insurance Requirements)

See following pages.

INSURANCE

1. Concurrently with the execution of the Contract, the Contractor shall furnish the City of Buckeye a certificate of insurance on a standard insurance industry ACORD form. The ACORD form shall be issued by an insurance company authorized to transact business in the State of Arizona.
2. Contractor, subcontractors and sub CONTRACTOR'S shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property, which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees, or subcontractors.
 - A. The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract.
 - B. The City in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this Contract by the Contractor, his agents, representatives, employees, subcontractors or sub CONTRACTOR'S and Contractor is free to purchase such additional insurance as may be determined necessary.
 - C. Minimum Scope and Limits of Insurance. Contractor shall provide coverage at least as broad and with limits of liability not less than those stated below.
 - (i) Commercial General Liability-Occurrence Form Policy shall include bodily injury, property damage, and broad form contractual liability and XCU coverage.

General Aggregate	\$2,000,000
Products-Completed Operations Aggregate	\$1,000,000
Personal & Advertising Injury	\$1,000,000
Each Occurrence	\$1,000,000

The policy shall be endorsed to include the following additional insured language: "The City of Buckeye shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor."

- (a) Automobile Liability- Bodily injury and property damage for any owned, hired, and non-owned vehicles used in the performance of this Contract

Combined Single Limit (CSL)	\$1,000,000
-----------------------------	-------------

The policy shall be endorsed to include the following additional insured language: "The City of Buckeye shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor" including automobiles owned, leased, hired or borrowed by the Contractor."

(b) Workers Compensation and Employers Liability

<u>Workers Compensation</u>	<u>Statutory</u>
Employers' Liability	
Each Accident	\$ 1,000,000
Disease-Each Employee	\$ 1,000,000
Disease-Policy Limit	\$ 1,000,000

The policy shall contain a waiver of subrogation against the City of Buckeye.

(c) Professional Liability

Each Claim	\$2,000,000
Annual Aggregate	\$2,000,000

- (i) The required professional liability coverage must cover work done or to be done or on the behalf of the Contractor.
- (ii) In the event that professional liability insurance required by this Contract is written on a "claims made" basis, coverage shall be maintained for two years past completion and acceptance of the Work or services required by this Contract.
- (iii) Should any Job Order include the services of design as an integral part of the work, any professional liability shall specifically delete any design-build or similar exclusions that could compromise coverage's because of the design-build delivery of the Project.

(d) Umbrella/Excess Liability: Umbrella/Excess Liability insurance with a limit of not less than \$5,000,000 per occurrence combined limit Bodily Injury and Property Damage, that "follows form" and applies in excess of the Commercial General Liability, Automobile Liability, and Employer's Liability, as required above.

(e) Additional Insurance Requirements. The policies shall include, or be endorsed to include, the following provisions:

- (i) On insurance policies where the City of Buckeye is named as an additional insured, the City of Buckeye shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.

- (ii) The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- (iii) Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.
- (f) Sub consultant's and Subcontractor's Insurance. Contractor's certificate(s) shall include all subcontractors as additional insureds under its policies or subcontractors shall maintain separate insurance as determined by the Contractor, however, subcontractor's limits of liability shall not be less than \$1,000,000 per occurrence / \$2,000,000 aggregate. All coverage's for subcontractors and sub CONTRACTOR'S shall be appropriate to cover all of its work performed herein.
- (g) Notice of Cancellation. Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given, by certified mail, return receipt requested to:

William Kauppi
Chief Financial Officer, Finance
City of Buckeye
530 East Monroe Avenue
Buckeye, Arizona 85326

- (h) Acceptability of Insurers. Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with an A. M. Best's rating of no less than A -. The City in no way warrants that the above required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- (i) Verification of Coverage:
 - (i) Contractor shall furnish the City Certificates of Insurance (ACORD form or equivalent approved by the City) and with original endorsements effecting coverage as required by this Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. *Any policy endorsements that restrict or limit coverages shall be clearly noted on the certificate of insurance.*
 - (ii) All certificates and endorsements are to be received and approved by the City before work commences. Each insurance policy required by this Contract must be in effect at or prior to the earlier of commencement of work under this Contract or the signing of this Contract and remain in effect for the duration of the Project. Failure to

maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

- (iii) All certificates of insurance required by this Contract shall be sent directly to the City of Buckeye, Contracts Manager. The contract number and project description shall be included on the Certificates of Insurance. The City reserves the right to require complete, certified copies of all insurance policies required by this Contract, at any time.
- (j) Approval. Any modification or variation from the insurance requirements in this Contract shall be approved by the City, whose decision shall be final. Such action will not require a formal contract amendment, but may be made by administrative action.
- (k) Approval, disapproval or failure to act by the City regarding any insurance supplied by Contractor or its Subcontractors shall not relieve Contractor of full responsibility or liability for damages, errors, omissions or accidents as set forth in this Contract. Neither the bankruptcy or insolvency of Contractor's insurer nor any denial of liability by Contractor's insurer shall exonerate Contractor from the liability or responsibility of Contractor set forth in this Contract.

**EXHIBIT E
TO
CONSTRUCTION CONTRACT
BETWEEN
CITY OF BUCKEYE
AND**

(Payment and Performance Bonds)

See following pages.

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS THAT:

Name of CONTRACTOR

Address of CONTRACTOR

a _____, hereinafter called PRINCIPAL and
(Corporation), (Partnership) or (Individual)

Name of SURETY

Address of SURETY
hereinafter called SURETY, are held and firmly bound unto

City of Buckeye
Name of OWNER

530 East Monroe Avenue, Buckeye, AZ 85326
Address of OWNER

hereinafter called OWNER, in the total aggregate penal sum of _____
Dollars (\$_____)

in lawful money of the United States, for the payment of which sum well and truly to be made, we
bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally,
firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that, whereas the PRINCIPAL entered into
a certain contract with the OWNER, DATED THE _____ day of _____, 20____, a copy of
which is hereto attached and made a part of the construction contract for
_____.

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, A.R.S., and all liabilities on this bond shall be determined in accordance with
the provisions, conditions and limitations of title 34, chapter 2, article 2, A.R.S., to the same extent
as if they were copied at length in this Contract.

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.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each one of which shall be deemed an original, this _____ day of _____, 20__.

PRINCIPAL’S ATTEST:

PRINCIPAL

By: _____
Attorney-in-Fact

(SEAL)

Address: _____

SURETY’S ATTEST:

SURETY

By: _____
Attorney-in-Fact

(SEAL)

Address: _____

PLEASE NOTE:

1. *Date of BOND must not be prior to date of CONTRACT.*
2. *If CONTRACTOR is partnership, all partners should execute BOND.*
3. *Surety companies executing BONDS must appear on the Treasury Department’s most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.*
4. *Use of this form as an instrument of SURETY for this project is not mandatory. Use of other forms normally deemed acceptable in the State wherein the project is located may be allowed.*

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS THAT:

Name of CONTRACTOR

Address of CONTRACTOR

a _____, hereinafter called PRINCIPAL and
(Corporation), (Partnership) or (Individual)

Name of SURETY

Address of SURETY

hereinafter called SURETY, are held and firmly bound unto

City of Buckeye
Name of OWNER

530 East Monroe Avenue, Buckeye, AZ 85326
Address of OWNER

hereinafter called OWNER, in the total aggregate penal sum of _____
Dollars (\$_____) in lawful money of the United States, for the payment of
which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators,
successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that, whereas the PRINCIPAL entered into
a certain contract with the OWNER, DATED THE _____ day of _____, 20__, a copy of
which is hereto attached and made a part of the construction contract for
_____.

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, A.R.S., and all liabilities on this bond shall be determined in accordance with
the provisions of title 34, chapter 2, article 2, A.R.S., to the extent as if it were copied at length in
this Contract.

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.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each one of which
shall be deemed an original, this _____ day of _____, 20__.

PRINCIPAL'S ATTEST:

PRINCIPAL

By: _____
Attorney-in-Fact

(SEAL)

Address: _____

Witness as to PRINCIPAL

Address

SURETY'S ATTEST:

SURETY

By: _____

(SEAL)

Address: _____

Witness as to SURETY

Address

PLEASE NOTE:

1. *Date of BOND must not be prior to date of CONTRACT.*
2. *If CONTRACTOR is partnership, all partners should execute BOND.*
3. *Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the project is located.*
4. *Use of this form as an instrument of SURETY for this project is not mandatory. Use of other forms normally deemed acceptable in the State wherein the project is located may be allowed.*

ATTACHMENT 1

SURETY BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, _____

(Contractor's Name)

as Principal, and _____, as Surety, are hereby held and firmly bound into City of Buckeye as OWNER in the penal sum of _____ for the payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed this _____ day of _____, 20__.

The Condition of the above obligation is such that whereas the Principal has submitted a certain BID, attached hereto and hereby made a part hereof to enter into a contract in writing, for **IFB No. 2024173 – Miller Road Expansion Durango to Lower Buckeye**.

Now, therefore, if the obligee accepts the proposal of the principal and the principal enters into a contract with the obligee in accordance with the terms of the proposal and gives the bonds and certificates of insurance as specified in the standard specifications with good and sufficient surety for the faithful performance of the contract and for the prompt payment of labor and materials furnished in the prosecution of the contract, or in the event of the failure of the principal to enter into the contract and give the bonds and certificates of insurance, if the principal pays to the obligee the difference not to exceed the penalty of the bond between the amount specified in the proposal and such larger amount for which the obligee may in good faith contract with another party to perform the work covered by the proposal then this obligation is void. Otherwise it remains in full force and effect provided, however, that this bond is executed pursuant to the provisions of § 34-201, Arizona Revised Statutes, and all liabilities on this bond shall be determined in accordance with the provisions of the section to the extent as if it were copied at length herein.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

(Principal) (L.S.)

(Name of Surety)

By: _____
(Signature)

ATTACHMENT 2

SUBCONTRACTOR LIST FORM

This attachment to the Bid Form must be submitted in a sealed envelope along with the Bid Form. Each envelope shall bear the name of the Contractor making the submittal with identification of contents contained therein. The Contractor must list below the names of all qualified subcontractors or suppliers he will employ for the various portions of the Work indicated. It is the responsibility of the General Contractor to ascertain that all subcontractors for this project meet the requirements of applicable state statutes. The Contractor may list himself to perform one or more of the listed categories of work for which he has any requisite state licenses when required. In this case, all personnel performing such work at the site shall be carried on his own payroll. If equipment is leased with operators, the operators need not be carried on the Contractor's payroll. List only a single name for each listing. List names only for base bid as per your bid. Lists submitted by unsuccessful bidders will be returned unopened if requested.

[illegible]

Respectfully Submitted,

(Name of Firm)

ATTACHMENT 3

**CITY OF BUCKEYE, ARIZONA
CONTRACTOR'S QUALIFICATION STATEMENT**

Name of Firm: _____

Address: _____

City, State, Zip Code: _____

Telephone No: _____

Facsimile No: _____

The undersigned certifies under oath the truth and correctness of all statements and of all answers to questions made hereinafter.

(1) How many years has your firm been in business as a general contractor? _____ years

(1.1) How many years has your firm been in business as a general contractor in the State of Arizona? _____ years

(2) How many years has your firm been in business under its present business name?
_____ years

(3) List states and categories in which your firm is legally qualified to do business:

State	Category(ies)
_____	_____
_____	_____
_____	_____

(4) List the percentage of work normally accomplished with your own forces: _____

(4.1) Will you need to expand your work force for this project? _____

(4.2) Present number of personnel employed: _____

(5) Have you ever failed to complete any project awarded to your firm? If so, explain circumstances on separate sheet. (Check One) _____ No

_____ Yes, See attached explanation

(5.1) Within the past five (5) years, has any officer or partner of your firm ever been an officer or partner of another firm that failed to complete any project awarded to it?

(Check one) _____ No

_____ Yes, see attached explanation.

(6) On a separate sheet, List separately all construction projects greater than **\$300,000.00** awarded, in-progress, or completed in the past five (5) years by your firm. Include project, owner (address and telephone number), Design Professional, contract amount, percent complete, and scheduled completion date.

(7) On a separate sheet, list the construction experience and provide resumes of key individuals of your firm. Include the Project Manager, Superintendent, and Assistant Superintendent for this project; and identify their previous levels of responsibility for those projects listed in Paragraph 6.

(8) References: (Bank, Trade, and Professional) Provide name, address, and telephone number. List three.

1. _____

2. _____

3. _____

(9) Name of bonding company and name and phone number of agent.

_____, _____, _____
Company Name Contact Name Phone Number

(10) Scheduling techniques to be employed by your firm to expedite construction.

(11) List your Arizona Contractor's License Number(s) and category.

AZ ROC# _____ CATEGORY: _____

(12) List your Dun & Bradstreet (D&B) Number: _____

(13) Is your Firm qualified to participate in Federal Projects: YES: _____ NO: _____

(14) Is your Firm familiar with requirements for Davis Bacon Payroll? YES: _____ NO: _____

Name of Organization: _____

(Check One) Corporation ____
Joint Venture ____

Partnership ____
Other ____

Individual ____

Submitted by:

SIGNATURE: _____

NAME: _____

TITLE: _____

Principal Office: _____

Address: _____

Telephone: _____

Facsimile: _____

Email: _____

M_____ being duly sworn deposes and says that he/she is the
_____ of _____ Contractor(s), and that answers to the foregoing
questions and all statements therein contained are true and correct.

Subscribed and sworn before me this _____ day of _____, 20____

Notary Public: _____

My Commission Expires: _____ day or _____, 20_____

**EXHIBIT F
TO
CONSTRUCTION CONTRACT
BETWEEN
CITY OF BUCKEYE
AND**

(Final Drainage Report)

See Bonfire Website

**EXHIBIT G
TO
CONSTRUCTION CONTRACT
BETWEEN
CITY OF BUCKEYE
AND**

(Technical Provisions and Specifications)

See Bonfire Website